BEFORE THE COMMISSIONER OF STATE TAXES AND EXCISE, HIMACHAL PRADESH, SHIMLA-09

Application/Representation No. 09/2022-23
Date of Institution: 27-09-2022
Date of Decision: 21-06-2023

In the matter of:-

M/s Lakhbir Singh S/o Sardar Joginder Singh
R/o H. No. 12/482, Bharat Nagar, Pathankot,
District Gurdaspur, Punjab
Licensee Unit No. 7, Rakh, Chamba .....**Applicant**

Versus

State of H.P. & Ors. .....**Respondents**

Present:-

1. Shri Satish Kumar Awasthi, Ld. Advocate for the Applicant.
2. Shri Sandeep Mandyal, Ld. Sr. Law Officer, for the State.
3. Shri Ramesh Sharma, Ld. Advocate for the HPBL.

ORDER

This order shall dispose of the representation filed by "the Applicant", whereby the Applicant is claiming refund in terms of Clause 6.5 of the Announcements of Excise Allotments/Tender for the year 2016-17 (hereinafter referred to as "Announcements for the year 2016-17"). In fact, the Applicant has restricted his claim of license fees to Rs. 54, 34, 081/-. The Applicant is also claiming transportation charges @ Rs. 15/- per case which the Applicant purported to have been incurred for procuring liquor from wholesale vends situated at Chamba and also from Nagrota Bagwan at District Kangra which was stated to be at a distance of almost 130 K.M. from the Applicant's liquor vend(s). In fact the applicant was the licensee of liquor vends under Unit No. 7, Rakh in Chamba District.

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2. The notices of this application were issued to the Respondent and thereafter the respective parties were heard at length.

3. It was argued by the Learned Counsel for the Applicant that initially wholesale vends and thereafter the HPBL failed to procure and provide liquor equivalent to the MGQ (Minimum Guarantee Quota). It was the HPBL who in fact was responsible for the scarcity and non providing of liquor for which the Applicant is entitled to claim refund of license fee stated to have been restricted by the Applicant, himself at Rs. 54, 34, 081/-.

4. It was also argued on behalf of the Applicant that as per Excise Act, Rules and Announcements, it was the statutory duty of Excise Department to ensure that there was no shortage of liquor at least of the MGQ (Minimum Guarantee Quota), but the Respondent Department failed to ensure regular supply of liquor, firstly, through its L-1& L-13 wholesale supplier and thereafter from the HPBL. It was further argued that the Applicant who is retail vender cannot be made to suffer due to the arbitrary and unprofessional acts of HPBL and L-1 & L-13 wholesalers. The Applicant was forced to pay License Fee even for the shortage of supply by the wholesale vends as well as by the HPBL.

5. It was further argued that the Applicant had to incur extra charges for transporting liquor from various wholesale vends at Chamba and Nagrota Bagwan District Kangra, which was almost 130K.M. from their liquor vends and the Applicant had to spend extra amount @ Rs. 15/- per case which is required to be now paid by the Department/HPBL to the Applicant.

6. It was further argued that the Hon'ble High Court in CWP No. 1790/2016 titled as *"M/s Rajinder Negi Vs State of HP and other"* (along with other connected matters), in a similar case, has specifically directed the Respondent to provide the benefit of county liquor as well as IMFS (Indian Made Foreign Spirit). It was thus vehemently argued that the Hon'ble High Court vide its order dated 10.03.2017 passed in CWP Number 1790/2016 has directed the Respondents to provide relief even with respect to IMFS (Indian Made Foreign Spirit).

7. It was further argued on behalf of the Applicant that the inflated/ incomplete data has been furnished by the HPBL, whereas the

comparative data furnished by the Applicant in tabular form clearly establishes that there is a shortage of supply of liquor by the HPBL in the first quarter for which the Applicant is entitled for claiming refund.

8. Per contra, it was argued on behalf of the State that the Applicant did not establish on record that the Applicant was provided less quantity of quota especially qua the specific brands of country liquor. It was further argued that the Clause 6.5 of the Announcements was applicable to Country liquor and not to IMFS. It was further argued that the claim for providing compensation or claim for damages is beyond the ambit and scope of the Clause 6.5 of the Announcements.
9. It was further argued on behalf of the State that the Applicant had participated in the open tender process with open eyes and had accepted all terms and conditions of the Excise Announcements and hence the Applicant cannot raise any claim against the provisions of the Tender Allotment.
10. It was further argued on behalf of the State that the Applicant did not place the demand in time before the Respondent(s) especially HPBL with reference to extra brands etc. The Applicant filed complaints in the matter very late i.e. in the last week of February, March, 2017 and thereafter. It was further argued that the Applicant failed to prove any grievance as per the terms and conditions of the Announcements.
11. I have heard both the parties in the matter and examined the record with minute detail. In nutshell, the case of the Applicant is that due to shortage of supply of liquor by the HPBL, the Applicant suffered losses. The Applicant is also claiming extra transportation charges purported to have been incurred by the Applicant @ Rs. 15/- per case.
12. The Clause 2.6 of the Announcements provided that:

> ***"The details of location of each retail vend/unit reserve price, the minimum guaranteed quota of liquor fixed for each vend and other levies as may be applicable, shall be available with the AETC/ETO in charge of the District and also with the Deputy Commissioner of District who shall display the same on the office notice board for the information of the intending tenderers one day before the first day fixed for the receipt of the tenders".***

Thus, it is evident from the Clause 2.6 itself that the terms and conditions of the Announcement qua the location of each retail unit, MGQ etc. were already made aware to the Applicant even prior to the initiation of the tendering process.

13. Notably, Clause 2.38 of the Announcements regarding the setting up of HPBL was already incorporated in the Announcements. The Applicant participated in the tender process voluntarily out of his own free will and volition after fully understanding the terms and conditions of the Announcements. The Clause 4.3 of the Announcements deals with the lifting of the MGQ of Country Liquor and IMFS and also the manner in which the license fee regarding the same is to be paid.

14. The Clause 4.4(d) of the Announcements has specific provisions of lifting in the subsequent month any unlifted quota of the month, it provides that:

> ***"4.4(d) In case the licensee is unable to lift the Minimum Guaranteed Quota within a month he shall still be required to pay the full installment of licence fee for that month which shall be paid by the last day of the month provided that the last installment for the month of March shall be paid in full by the licensee by 15th of March. However, less quota lifted in any month can also be issued in the subsequent month on application by the licensee in respect of which the license fee stands deposited."***

Conversely, the Clause 4.4(e) of the Announcements provides for adjustment of excess of MGQ in the subsequent month.

Thus, the collateral reading of 4.4 (d) and 4.4 (e) clearly shows that if the Applicant/Licensee is unable to lift the MGQ within a month or lifted MGQ in excess (of quota) then despite of that fact, the Applicant is still required to pay full installment of license fee for that month, however, the less quota lifted in any month can also be issued in the subsequent month on an application by the Applicant/Licensee in respect of which license fee stood deposited or in case the Applicant has lifted more than MGQ then the Applicant/licensee is at liberty to adjust such excess quota in subsequent month, as the case may be.

Thus, if at all the Applicant had any grievance regarding the shortage of supply of any liquor than the MGQ; the Applicant could have easily redressed his grievance by invoking Clause 4.4(d) of the Announcements. There is nothing on record or in the pleading of the Applicant, whatsoever, that after the alleged shortage of supply of the liquor, the Applicant has, timely, made such application. Therefore, the Applicant, in the absence of timely Application/information made in terms of Clause 4.4(d) of the Announcements is estopped from claiming any refund of the proportionate license fee by his own act, conduct and omission.

15. Regarding grievances of the Applicant/Petitioner regarding the country liquor and IMFS (Indian Made Foreign Spirit), the Clause 6.5 of the Announcements provide that:

> ***"Licensees shall not be entitled to any compensation or claim for damages if the supplies of country liquor to him fall short of the quota fixed in respect of his vend or vends. He will, however, be entitled to the refund of the proportionate license fee in such contingency provided he establishes to the satisfaction of the Excise and Taxation Commissioner that such a shortfall of supplies did not occur because of any fault on his own part. Such claim for refund shall be preferred and considered only after the close of the financial year."***

It is evident from the Clause 6.5 of the Announcements that it is applicable only with respect to Country Liquor and not IMFS. In these circumstances, the grievances of the Applicant are only to be redressed within the parameters of law and in the present case in accordance with the Announcements for the year 2016-17. These Announcements has force of the law. It is settled law that **"Expressio Unious Est Exclusio Alterius"** i.e. where a statute requires to do a certain thing in a certain way, the things must be done in that way and following other courses is not permissible.

In this background, since Clause 6.5 of the Announcements only deals with country liquor, therefore, no benefit regarding IMFS can be given to the Applicant by invoking Clause 6.5, itself.

In other words, the scope of Clause 6.5 of the Announcements cannot be extended so as to include IMFS in the same that too in

the absence of any specific provisions. Furthermore, the bare perusal of the Clause 6.5 clearly provides that the Applicant shall not be entitled to any compensation or claim for damages if the supply of country liquor for short of quota fixed in respect of his vend/vends. Thus, the bare perusal of the Clause 6.5 of the Announcements shows that providing of any relief for compensation and claim for damages is beyond the ambit and scope of the Clause 6.5 of the Announcements.

16. Notably, the proviso to Clause 6.5 itself shows that burden of proof lies upon the Applicant to establish that there is shortfall of the supplies and further this shortfall did not occur because of any fault on the part of the Applicant. Thus, it is crystal clear from the proviso itself that the applicant has to prove that:

a) There is shortfall of supplies;

b) Such shortfall of supplies did not occur because of any fault on his part. As far as alleged shortage of supply is concerned,

Firstly, it is evident from the record that the Applicant did not make any application for issuance of less quota lifted in any month in the subsequent month in respect of which the license fee stood already deposited;

Secondly, it is evident from the record that the applicant has not timely placed the written demand before the Respondent (s) with respect to the extra brands/liquor in as much as the application was required to be made in the subsequent month for making good the deficiency of less quota in the previous month, thus adverse inference ought to have been drawn against the applicant especially when as the application/demand so made was vague and general without specifying either previous or subsequent month in contravention of Clause 4.4 (d) of the Announcements;

Lastly, the Applicant has specifically pleaded in the present application that the Applicant used to get liquor from wholesale liquor vends at Chamba and Nagrota Bagwan, District Kangra.

The Clause 2.38 provides for the establishment of HPBL. The Clause 2.38 is reproduced herein below for the sake of brevity:

> ***"2.38. A company will be set up under the Himachal Pradesh Excise and Taxation Department which shall be exclusively responsible for the procurement of all kinds of liquor i.e. Country Liquor, IMFS, Beer, Wine and RTD etc. in the State and shall further supply liquor so procured as wholesale-licensee to all the retail vends i.e. L-2, L-14 & L-14A etc. during the year 2016-17. After the Company starts its operation, the retail licensees shall lift liquor i.e. Country Liquor, IMFS, Beer, Wine and RTD etc only from the Company's licensed and prescribed premises."***

The applicant participated in the tender process voluntarily out of his free will and volition (which in fact was made known to him even before initiating the tender process) after fully understanding the terms and conditions especially the nature and effect of the Clause 2.38 of the Announcements. Thus, the Applicant was bound to lift the liquor i.e. country liquor etc. from the company's licensed and prescribed premises.

It is evident from the record also that the HPBL has opened proper depot for supply of liquor of all brands which were approved by the Department and the Applicant and the other licensees/ retailers/vendors were required to lift the liquor from any of these depots as per their demands in the State of H.P. There is nothing on the record to show that the Applicant had put in his demand in the manner prescribed under Clause 4.4(d) for some more brands and stock which were not available in the depot. Furthermore, though as per the Excise Announcements, it was the prerogative of the State to decide on the mode of supply and State of HP was within its jurisdiction to decide its policy matter. Furthermore, it is evident from the record that the HPBL obtained 16 wholesale licensees for sale of country liquor and IMFS in the month of July itself and 24 more licensees have been procured by the HPBL in the month of August, 2016 and these licensees were spread across the State.

Thus, no case for refund of proportionate license fee made out in the absence of any application for making good the deficiency of

the alleged shortage of supply in any subsequent month in terms of Clause 4.4 (d) of the Announcements.

Thus, it is evident from the averments in the application that the suitable arrangements have been made by the Respondents for the supply of MGQ to the Applicant and the pleas raised by the Applicant are not only mutually inconsistent but also mutually destructive in as much as on the one hand the Applicant is stating that there is a shortage of supply of liquor and on the other hand the Applicant himself is admitting that he had to get liquor from wholesale vends at Chamba and Nagrota Bagwan, District Kangra. Thus, it is crystal clear from the averments made in the present application, itself that the Applicant has not only admitted but also proved one thing that the Applicant has received his fixed quota either from the wholesale vends at Chamba or from Nagrota Bagwan, District Kangra.

Furthermore, Clause 10.2 of the Announcements provides that ***"the licensee shall have to make their own arrangement for procuring liquor"***. In this background, the Applicant is not entitled to any refund in terms of Clause 6.5 of the Announcements.

17. As far as the comparative data in tabular form annexed with the present application is concerned, the same has no evidentiary value in as much as the same is self serving document as it neither bears signature of its author nor any endorsement in the nature of attestation etc. regarding its truthfulness and genuineness.

18. In view of the discussion made hereinabove, I am of the considered opinion that there is no merit in the application and the same is liable to be dismissed and is accordingly dismissed. Let all the parties be informed accordingly. File may be consigned to the record room after completion.

Announced on 21st June, 2023

Commissioner of State Taxes & Excise
Himachal Pradesh.

17605-10

Endst. No. ST&E/CoST&E-Reader/2023 Dated 22-06-23

Copy forwarded to:-

1. Shri Lakhbir Singh S/o Sardar Joginder Singh R/o H. No. 12/482, Bharat Nagar, Pathankot District Gurdaspur, Punjab.
2. Himachal Pradesh Beverages Limited, through its Managing Director, Himachal Pradesh, SDA Complex, Block No. 30, Shimla-9
3. Collector Excise, North Zone, Palampur District Kangra.
4. Dy. C (ST&E), District Chamba.
5. Shri Sandeep Mandyal Sr. Law Officer.
6. IT Cell

Reader to the
Commissioner of State Taxes & Excise
Himachal Pradesh