

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE) -
CUM-COMMISSIONER OF STATE TAXES AND
EXCISE, HIMACHAL PRADESH, SHIMLA-09**

Appeal No.: 25 of 2021-22

Date of Institution: 16-03-2022

Date of Order: 31-03-2022

In the matter of: -

Anil Katoch & Company (Partners)
Unit No. 135, Kangra,
Distt. Kangra, H.P.

..... Appellant

Versus

Collector (Excise)-cum

- Joint Commissioner State Taxes & Excise,

North Zone, Palampur, District Kangra (HP). Respondent

Present:

1. Shri Sanjeev Bhushan, Ld. Senior Advocate and Shri Rakesh Chauhan, Ld. Advocate for the Appellant.
2. S/Shri Sandeep Mandyal, Ld. Law Officer and Ravi Kumar, ASTEO, Palampur Circle for the Respondent.

ORDER

1. The present appeal has been filed against the order dated 28-02-2022 passed by the Collector (Excise)-cum- Joint Commissioner State Taxes & Excise, North Zone, Palampur whereby the Licenses in Form L-14 M/s Anil Katoch & Co. [Partners: (1) Sh. Anil Katoch S/o Sh. Shiam Paul R/o V&PO Mahakal Tehsil. Baijnath District Kangra H.P., (2) Sh. Parbhat Singh S/o Sh Jhandu Ram R/o House No. 40, Ward No. 8, Housing Board Colony, Nagar Hamirpur District Hamirpur H.P., (3) Sh. Rajeev Rana S/o Sh. Dhani Ram Rana R/o V&PO Nagehar Tehsil Baijnath District Kangra H.P., (4)



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Sh. Mukesh Kumar S/o Sh. Gurbachan Singh R/o Village Duhki PO Seuyi Tehsil Dadasiba District Kangra H.P. & (5) Sh. Vishal Rana S/o Sh. Onkar Rana R/o Village Tika Aima PO & Tehsil Palampur District Kangra H.P.] are licensee of Unit No. 135 comprising of total forty (40) vends namely L-14 Bandla, L-2 Bandla, L-14 Tanda, L-2 Tanda, L-14 Boda, L-14 Sullah, L-14 Panapar, L-14 Bhawarna, L-2 Bhawarna, L-14 Palampur Near Old Bus Stand, L-2 Palampur Near Old Bus Stand, L-14 Palampur Near New Bus Stand, L-14 Panchrukhi, L-2 Panchrukhi, L-14 Gadyara, L-14 Jharet, L-14 Punner, L-14 Nagni, L-14 Purba, L-14 Thural, L-14 Tinbar, L-14 Dagoh, L-14 Averi, L-14 78 Miles (Avery) NH, L-14 Lower Lambagaon, L-14 Alampur, L-14 Chadhiar, L-14 Paprola, L-2 Paprola, L-14 Lohardi, L-14 Multhan, 61 Miles of L-14 Jharet, Malanoo of L-14 Punner and Kothi of L-14 Sari in District Kangra L-14 Bir (Beed), L-14 Lambagaon, L-14 Kotlu, L-14 Beirghata, L-14 Sari, L-14 Kathla, L-14 Draman, L-14 Jalag & L-14 Ropri and four sub-vends namely Paror of L-14 Panapar, 61miles of L-14 Jharet, Melanoo of L-14 Punner Kothi of L-14 Sari in Distt Kangra in respect of Unit No.135 (District Kangra) in District Kangra have been cancelled with immediate effect under section 29 of the HP Excise Act, 2011.

2. Brief facts in the case are that the Dy. Commissioner of State Taxes & Excise, Kangra at Dharamshala vide his order dated 17.02.2022 intimated that during the inspection of L-14 Bhawarna, L-14 Nagni and L-14 Thural, L-14 Alampur, L-14 Bandla, L-14 Sullah, L-14 Panapur, L-14 Boda and L-14 Purba on 26.01.2022



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and 27.01.2022, the District Excise Team and Circle Authorities seized the brand of 'Pure Santra' bearing Batch No. 6 & 7 of November 2021. Thereafter, it came to the knowledge of the Respondent that the licensees whose stock was seized and handed over to them on sapurdari has sold some quantity of seized stock of liquor. The teams were constituted by the Respondent to inspect the L-14 liquor vends of District Kangra. As per the report submitted by the team so constituted, it was intimated that the licensees have breached the trust by violating the directions given by the Excise Officers while handing over the seized stock of the liquor to the licensees on sapurdari and sold some quantity of liquor of 'Pure Santra' bearing Batch No. 6 & 7 of Nov. 2021 and in order to make the deficiency good of the seized liquor, the licensee of the vends has intermingled the other brands of liquor in the seized stock.

3. It was argued on behalf of the Appellant that the action of the Respondent is unjust, unfair and discriminatory and the same has been taken without affording any opportunity of being heard to the Appellant. It was further argued on behalf of the Appellant that the Appellant has not breached the trust rather the brands told not to be sold was not sold by the Appellant. It was further argued that the Appellant has not breached the provisions of the Section 29 of Excise Act which can be invoked only in circumstances where the violations are very clear and the person concerned is completely in an illegal act. It was further argued that in a similar case where the one case of 'Pure Santra' brand liquor was seized, the orders were passed and despite the orders to not to sale those seized liquor the



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same was being sold but the authorities let out the said vends without any action. It was further argued that the action was taken against the appellant on the basis of political interference. It was further argued that Sh. Prabhat Singh and Sh. Rajiv Rana are silent partners and vends where anomalies were detected were operated by the partner of the unit Sh. Mukesh Kumar.

4. Per Contra, it was argued by Ld. Law Officer on behalf of the Respondent that the Appellants have violated the directions given to them by the Excise Authorities and therefore the order passed by the Respondent is legally sustainable in the eyes of law. It was further argued on behalf of the Respondent that upon verification the seized stock was found deficient and the seized stock was intermingled with the other brands and even excess stock was found. It was further argued that the brands other than "Pure Santra" which were seized was found to be without any passes.
5. I have heard both the parties & gone through the record of the case carefully. Arguments advanced in the present Appeal give rise to the following points of determination:-
 - i. Whether the order dated 28.02.2022 passed by the Collector (Excise) North Zone, Palampur is sustainable under Law?
 - ii. Final order.
6. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-

Point No. (i) Yes



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Point No. (ii) Final order: Appeal dismissed as per operative part of the order.

REASONS FOR FINDINGS:

7. It is admitted case of the parties that the liquor was earlier seized and it was handed over on sapurdari to the licensees with the specific directions to keep the same in safe custody till the final disposal of the case by the Excise & Taxation Department. It is also evident from the record that as many as four teams have been constituted to verify the quantity of seized stock from the liquor vends of respective licensees. The perusal of the record shows that there was difference of seized stock vis-à-vis the stock of liquor found during the inspection. For example, there were as many as 98 cases of Brand "Pure Santra" bearing Batch No. 6 & 7 of Nov. 2021 with respect to L-14 Thural was seized and during verification of the seized stock 25 cases of "Pure Santra" Brand was found less. Similarly, as many as 448 cases of brand "Pure Santra" of similar batch was seized from L-14 Nagni and during inspection in as much as 281 cases of seized "Pure Santra" was found less. Furthermore, upon the verification it was also found that later on Country Liquor brand Mandi No.1 and Nalagarh No.1 were found intermingled with the brand "Pure Santra" and no passes were issued with respect to that liquor.

8. The perusal of the record also shows that the statements of the salesmen were also recorded during the verification of seized stock and those salesmen have admitted the factum of seized liquor being sold. For example, one Sh. Dilwar Singh Salesman of L-14



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Vend Sullah has categorically admitted that he has sold 26⁹ cases of seized stock and he has also informed this to the licensee. Similarly, Sh. Ashish Kumar present on behalf of Sh. Mukesh Kumar partner could not give any satisfactory reply for the brand intermingled with other brands of Country Liquor and the liquor seized was sold by them. It is evident from Annexure-A which forms part and parcel of the impugned order that there is difference of seized liquor vis-à-vis the verification of the seized stock by the team constituted vide order dated 20.02.2022 which fact is sufficient to conclude that the licensee have breached the trust and violated the directions issued by the Excise Authorities to keep the seized liquor given to them on sapurdari, in safe custody.

9. Admittedly, the Appellants are holding L-14 licenses. The Appellant himself undertook (as per the supplementary Condition No. 6 of the L-14 license) to comply with the provisions contained in Excise Announcements/ Allotment/Renewal for the year 2021-22 and all the directions, order etc been issued by the Hon'ble High Court and Excise Department in H.P. The said supplementary Condition No. 6 provides that:

"6. The licensee in addition to the provisions of the Himachal Pradesh Excise Act. 2011 and the rules framed there under shall also comply with the provisions contained in the Announcements Excise Allotment Renewal for the year 2021-22 and all the notifications, instructions, directions and orders issued by the Hon'ble High Court & the Excise authorities in Himachal."



Similarly, the Condition No. 1.4 Chapter-I of the Excise Announcements for the year 2021-22 provides that:

" 1.4. All the licensees shall be bound to comply with all the dictions and orders of the Commissioner of State Taxes and Excise-cum-Financial Commissioner (Excise), Himachal Pradesh and all the other Excise Officers, which may be issued from time to time by them."

10. Further, sub-rule 1 of Rule 37 of General Conditions of applicable to all the licensees of Himachal Pradesh Liquor License Rules, 1986 provides that:

"37(1). The licensee shall be bound to observe all rules under the Punjab Excise Act as applied to Himachal Pradesh as applicable to this license and the general and special conditions of his license."

11. It is evident from the aforesaid provisions that the licensee is under statutory obligation to abide by the terms and conditions and orders issued by the Excise Authorities and by selling the seized stock and intermingling other brands with the seized stock has violated the directions given by the Excise Authorities.
12. As far as the contentions of the Appellant that Prabhat Singh and Rajiv Rana are only silent partners in the firm and vends anomalies detected were operated by the Partner Sh. Mukesh Kumar is concerned, admittedly, the Licensee Appellant/Company has five partners i.e. Sh. Anil Katoch, Sh. Prabhat Singh, Sh. Rajeev Rana, Sh. Mukesh Kumar and Sh. Vishal Rana. It is settled law that the relationship of partnership arises from contract and not from status and every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while that person is a partner. Therefore, the stand taken by the Appellant that he is not liable for



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anomalies conducted by Sh. Mukesh Kumar partner of the firm is not legally sustainable in the eyes of law.

13. As far as the contention of the Appellant that no opportunity of being heard was given to him, it is evident from the record and impugned order itself that due opportunity has been given to the Appellant. Rather, the Appellant has submitted written submissions during the course of hearing before the Respondent.
14. As far as contention of the Appellant that the Respondent let out the other vends for the similar violations and imposed harsh punishment upon the appellant is concerned, this Court has already dismissed the appeal against the order dated 26.03.2022, whereby the Respondent has cancelled the L-2 and L-14 licenses of the units of that vends, vide its order dated 29.03.2022.

Final Order

For the aforesaid reasons recorded here-in-above, while discussing the point no (i); I find no merit in the Appeal and the same is liable to be dismissed and is accordingly dismissed.

15. Let the copy of this order be supplied to all concerned. The file after due completion be consigned to record room.

Announced on 31st of March, 2022.

**Financial Commissioner (Excise)
Himachal Pradesh**

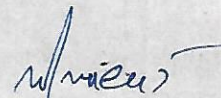
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Endst. No. DoSTE/FC (Excise)-Reader/2021-22/9101-9106

Dated: 31-03-2022

Copy for information to:

1. Shri Anil Katoch, S/o Shri Shiam Paul, R/o V.P.O. Mahakal, Tehsil Baijnath, District Kangra, HP, 176 063.
2. The Collector (Excise)-cum- Jt. Commissioner, State Taxes & Excise, (North Zone), Palampur, Kangra, Himachal Pradesh, 176 061.
3. Dy. Commissioner (ST&E), District Kangra at Dharmashala (HP), 176 215.
4. S/Shri Rajesh Kumar and Rakesh Chauhan , Advocates Chamber No. 406, HP High Court, 171 001.
5. Shri Sandeep Mandyal, Law Officer (Legal Cell) (HQ).
6. IT Cell



Reader to
Financial Commissioner (Excise),
Himachal Pradesh, Shimla

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FINAL ORDER