

BEFORE THE FINANCIAL COMMISSIONER (EXCISE)

HIMACHAL PRADESH, SHIMLA-171009

Appeal No.: 01/2023

Date of Institution: 18-04-2023

Order Date: 01-07-2023

In the matter of:-

M/s Alco Spirits Private Limited,
village Kundla (Gumti) Kala Amb,
tehsil Nahan, District SirmourAppellant
Vs
Collector Excise (South Zone)Respondent

Present:-

1. Shri Rakesh Sharma and Ms Sakshi Gautam, Learned Advocates for the Appellant.
2. Smt. Monika Attreya, ACST&E (Legal Cell) for the Respondent.

ORDER

1. This is an appeal by M/s Alco Spirits Private Limited, village Kundla (Gumti) Kala Amb, tehsil Nahan, District Sirmour (hereinafter referred to as "the Appellant"), filed under section 68 (2) of the Himachal Pradesh Excise Act, 2011, against the order dated 20-03-2023, passed by the Collector Excise (South Zone).
2. The briefs in the matter are that the licensed premises of the Appellant were inspected on 27-10-2022 by a team led by the Assistant Commissioner State Taxes & Excise (Excise), District Sirmour. During the course of inspection of Appellant bottling plant/license-premises, conducted in the presence of Officer I/c Bottling Plant and Authorized signatory of the plant, variation in the stock of ENA in Spirit Storage Vats was noticed. Actual quantity/stock found was 23413.000 Bulk Litres whereas on relevant stock register it was 23418.000Bulk Litres. Thus, there was a difference of 5.000 BLS (less). Similarly, during the cross checking of Blending Storage Vats variation in the stock of ENA was noticed and actual quantity was found 48384.000 Bulk Litres whereas on the relevant stock register recorded quantity was 48469.93Bulk litres. Thus, there was a difference of 85.93 BLS (less).



3. Dy. Commissioner State Taxes & Excise, In Charge District Sirmour forwarded the report of above inspection to the Learned Collector (Excise), South Zone, the Respondent, for further proceedings against the Appellant. The Learned Collector vide notice dated 23 January, 2023, issued to the Appellant, quoted the above variations in stock as liable for action under section 29 and 43 of the Himachal Pradesh Excise Act, 2011; and directed the Appellant to appear before him on 13-02-2023 to show cause as to why penalty should not be imposed for the mentioned contravention. Accordingly, the Appellant appeared before the Learned Collector on above date and after hearing the Appellant, the Learned Authority proceeded to compound the matter for a sum of Rs. 10, 000/-, for reported variation in stock and further, imposed a penalty of Rs. 5, 00, 000/- under condition No. 13 (vi) of the **ANNOUNCEMENTS FOR THE ALLOTMENT OF RETAIL EXCISE VENDS BY RENEWAL FOR THE YEAR 2022-23** (hereinafter referred to as "the ANNOUNCEMENTS"). This was in addition to excise levies, if any, as applicable on the reported variation/difference in stock. The appellant, felt aggrieved by the orders above, is in appeal against this order.

4. Shri Rakesh Sharma, Learned Advocate for the Appellant argued that the reported variation of 5 and 85.93 Bulk litres in Spirit Storage Vats and Blending Vats, respectively, is within the permissible wastage limit allowed under Rule 101-A of the Punjab Distillery Rules, 1932 (as Applicable to Himachal Pradesh). As per provisions of the Rules above wastage to the extent of 0.5 percent is permissible in respect of Spirit Store Room and wastage of 1 per cent is allowed during Bottling Operation. The above reported wastage of 5 Bulk litres in Spirit Storage Vats is far less than the permissible wastage of 386.27 Bulk Litres of ENA as initially, during the month of October a total of 99858.00 Bulk Litres of ENA was received in the Vat. Similarly, the reported wastage of 85.93 Bulk Litres of Blended Spirit is again far less than the permissible wastage of 167.42Bulk Litres as Blended Spirit of 16741.64 was received during the month of October. Learned Advocate further contended that variation noticed by the inspecting officer during the inspection carried out on 27.10-2022 was, thus minor and within legally



permissible limit. He further argued that dips of different other Vats were also checked and were found to be matching with the records and that stock of finished goods was also found matching with the records. Ld. Counsel for the Appellant argued that in view of above there is no violation/contravention of the provisions of the HP Excise Act, 2011, therefore, the proceedings initiated under section 29 and 43 of the HP Excise Act, 2011 and under provisions 13. vi) of the **ANNOUNCEMENTS** be quashed and set aside in the interest of justice and law.

5. Ms Monika Attreya, ACST&E, representative for the Respondent contended that during the course of inspection stock taking of Spirit namely ENA and Blended Spirit was carried out from different Vats and quantity checked in terms of dip and bulk liters. After perusal and cross checking *vis a vis* physical stock and record maintained as per registers (in Form D-14), certain variations were noticed in the Spirit Store vats and BLR Blending vats. The variation in stock was five and 85.93 Bulk Litres respectively in SSR and BV. This variation in stock was reported to the Learned Collector (South Zone) through District In-Charge. The Learned Collector after hearing the Appellant found that the above reported variation in stock was an offence as per provisions 13. vi) of the **ANNOUNCEMENTS** and accordingly compounded the matter for a sum of Rs. 10, 000/- under section 66 (2) of the HP Excise Act, 2011. Learned Collector (South Zone), further proceeded to impose a penalty of Rs. 5, 00, 000/- under provision *ibid* of the **ANNOUNCEMENTS FOR THE YEAR 2022-23**.
6. I have heard the contentions put forth by both the parties, perused the reports and record as well. I have also carefully gone through the findings given in the impugned order. Perusal of record and impugned orders reveals that there is no dispute regarding the fact that the ENA stock in Spirit Storage Vats was found less by 5 bulk litres only when compared with the respective Vat Register D-14. Similarly, there is no dispute regarding the fact that stock of Blended Spirit in Vats was less by 85.93 Bulk Litres as compared to Stock Registers. Also, Stock taking of bottled IMFL and Country liquor was carried out in the presence of both, the Officer in Charge of the Bottling Plant and the authorised signatory



on behalf of the Appellant. A comparison of stock as per D-14A and as per physical verification revealed nil difference in terms of Quarts, Pints and Nips. Perusal of the record and reports further reveals that no case of violation of the provisions of the Act/Rules or the **ANNOUNCEMENTS** has been made out against the Appellant either by the inspection team or by the District In Charge forwarding the inspection report to the Learned Collector (South Zone).

As per the provisions of Rule 9.101-A of the Punjab Distillery Rules, 1932 the following scales of wastage allowance for the Spirit are prescribed for all the distilleries and bottling plants:-

WASTAGE ALLOWANCE IN CASE OF

Spirit Store room	Re-distillation	Bottling operation	Bottled Spirit Room
0.5 percent	1 percent	1 percent	0.5percent

Similarly, whereas Sub-Rule 2 under Rule 9.101A of the Punjab Distillery Rules, 1932 provides for levy of duty only where the wastage of spirit exceeds the prescribed limit, Sub-Rule 3 provides for calculation of wastage for each month and Rule 25 of the **Himachal Pradesh Bonded Ware House, Rules 1987** provides for Stock taking of liquor, both bottled and bulk, by the officer-in-charge on the last working day of each month after all the transactions for the day have been completed. Also, Clause 7.3 of the **ANNOUNCEMENTS**, permits tolerances of about one per cent even for bottles of standard capacities.

In the instant Appeal matter, the reported wastage is 5 Bulk litres of ENA in Spirit Store room and 85.93 Bulk Litres of Blended Spirit during bottling operation. The reported wastages above need to be ascertained whether the same are within the allowed wastage limit of 0.5 percent and 1 percent respectively?

7. For the facts mentioned and observations made in Para 6 above, the finding of the Learned Collector (South Zone) that wastage should have been accounted for in D14 at the time of the inspection does not appear to be in consonance with the above quoted provisions of the Rules/sub-



rules and the **ANNOUNCEMENTS**, therefore, the impugned order, being non speaking and non specific about the reported variation, whether the same is in excess of the prescribed limit or whether the %age wastage as allowed/permissible under Rule 9.101-A has been taken into consideration or not, is quashed and set aside. The appeal, being on merits, is, therefore, allowed. The matter needs to be decided afresh and is accordingly remanded back to the Learned Collector (South Zone) to decide the same, preferably within six weeks of date of passing this order. Needless to say that while deciding the matter the above observations are to be taken into consideration and the Appellant is needed to be afforded the opportunity of being heard as well.

All the concerned parties be informed and the file after due completion be consigned to record room.

Announced on 1st of July, 2023

Financial Commissioner (Excise)

Himachal Pradesh

Endst. No. DoST&E/FC(E)-Reader/2023 18609-13 Dated 01-07-23

Copy to:

1. M/s Alco Spirits Private Limited, village Kundla (Gumti) Kala Amb, tehsil Nahan, District Sirmour.
2. Collector (Excise), South Zone.
3. Dy. Commissioner State Taxes & Excise, District Sirmour, HP.
4. Legal Cell, HQ.
5. IT Cell.

Reader