

**BEFORE THE COMMISSIONER OF STATE TAXES AND
EXCISE, HIMACHAL PRADESH, SHIMLA-171009**

Case No. 106/2016-17

(In CWP No. 154 of 2017)

Date of order: 13.09.2021

Representation in the matter of:-

Sh. Azad Singh S/o Sh. Lekh Ram,
R/o Hose No. 791, Village Kishangarh,
Chandigarh (UT)

.....Applicant

Versus

1. State of Himachal Pradesh through Principal Secretary (Excise & Taxation), to the Government of Himachal Pradesh, Shimla -2.
2. Excise & Taxation Commissioner, Himachal Pradesh.
3. Assistant Excise & Taxation Commissioner, District Solan (HP)
4. Assistant Excise & Taxation Commissioner, Revenue District BBN District Solan (HP)

.....Respondents

Present:-

1. Ms. Narvada, Advocate, for the applicant.
2. Shri Rakesh Rana, Deputy Director (Legal), Legal Cell, for the Department.

Disposal Proceedings of the Representation:

I. Introductory:

The instant representation has come up before the undersigned in consequence to the order passed by the Hon'ble H.P. High Court on 18.01.2017 in CWP No. 154 of 2017; whereby it was held by the Hon'ble H.P. High Court that:

Consequently, in view of the aforesaid request having been made by learned counsel for the petitioner, present petition is disposed of with direction to respondents No. 2 & 3 to decide the representation (Annexure P-1) within a period of three weeks, preferably on or before 10.2.2017. Needless to say that authority concerned, before passing speaking order on the representation having been filed by the petitioner, shall afford an opportunity of being heard to the petitioner. Petitioner to submit copy of the instant order to the concerned





authorities to enable them to do the needful within the stipulated period. Pending application(s), if any, also stands disposed of.

In compliance with orders above, the applicant has preferred the instant representation.

II. Case History:

1. The briefs in the matter are that the applicant above was a partner of a Toll Lessee firm M/s Raman Kumar, Baddi-Barotiwala-Dherowal Unit in Revenue District BBN, for the financial year 2011-12. The applicant was, also, a liquor-licensee for the year 2014-15 in the districts of Solan (Kumarhatti, Unit No. 33), Sirmour (Govindghat, Unit No. 23) and Revenue District BBN (Panjehra, Unit No. 13) in the State of Himachal Pradesh. Subsequent to *PUBLIC NOTICE*, dated 05-03-2015, issued by the Excise & Taxation Commissioner, Himachal Pradesh, applications were invited for the renewal of retail liquor licences for the year 2015-16. The applicant above submitted renewal applications on 20-03-2015 to renew his above liquor vend Units. The payable license fee and renewal fee, amounting to ₹ 62, 13, 188/- for the above Units was also paid by him. The applications of the applicant above were neither taken on record nor accepted by the Department on the grounds that he was one of the partners in a defaulter firm M/s Raman Kumar, toll lessee under the Himachal Pradesh Toll Act, 1975. The firm above was a declared defaulter worth ₹ 1, 87, 88, 458/- for the year 2011-12, under the HP Tolls Act, 1975. So, in view of terms and condition No. 6 of the *PUBLIC NOTICE* issued vide No. 7-588/2014-EXN-5949-76, dated 05-03-2015, by the Excise & Taxation Commissioner, Himachal Pradesh, he could not have participated in the Excise Allotments 2015-16, hence renewal applications of the applicant were rejected. The applicant through instant representation submitted that since he had already deposited a sum of ₹ 62, 13, 188/- as License renewal fee, and as the Units were not renewed in his name, so, the above amount along with payable interest @ 18% per annum may be refunded to him as per below clause 2.25 of the *ANNOUNCEMENTS* :-

If the allotment in respect of any vend/unit made by the Selection committee is rejected or not confirmed by the Financial Commissioner (Excise), the deposits of basic license fee/security made

by the concerned applicant(s) as mentioned in Paras 2.20 and 2.21 above, shall be refunded to such applicant without any interest thereon. Deposit of security shall confer no right on the applicant for the grant of a license.

2. Aggrieved by the provisions of the ANNOUNCEMENTS, whereby his applications for the renewal of licenses were not accepted, the applicant filed writ petition before the Hon'ble HP High Court, mentioned in the introductory above. It is imperative to mention here that before approaching this forum, the applicant had approached the Hon'ble HP High Court by way of three Civil Writ Petitions being numbered as 1972 and 2077 of 2015 decided on 08-03-2016 and 154 of 2017 disposed off on dated 18-01-2017, wherein, respondent has been directed to decide the representation, annexed as Annexure P-1 in the CWP No. 154/2017, of the appellant.

III. Case Proceedings:

1. In compliance with the orders of the Hon'ble H.P High Court, the matter, in order to afford opportunity of being heard to the applicant, was listed for hearing on various dates since 29-07-2017. On one pretext or other, major that the applicant engaged four different counsels in the matter, the matter was last heard on 18-08-2021; the parties were heard in the matter and the order was reserved on the day. The same is being released today.

IV. Arguments of the Applicant:

The Counsel for the applicant, Ms. Narvada submitting written arguments in the matter contended that:

- 1) The applicant denies the assertion of the department that he is a defaulter under HP Tolls Act; since, as on this day, there are no acts of aversion of any excise duty, whatsoever, by applicant to the respondents and no demand is pending against the applicant and so he, in an arbitrary and illegal manner, cannot be made to suffer by issuance of list containing names of blacklisted defaulters; consequently, the impugned action of debarring him from renewal of Units, in pursuant to the communications



dated 15-01-2015, 22-01-2015 and 05-03-2015, is unreasonable and has been implemented without affording reasonable opportunity of being heard in as much as the applicant was made to suffer huge financial losses due to this communication;

- 2) The applicant had only signed the bidding documents for the Financial Year 2011-12 for the firm M/s Raman Kumar, toll lessee and no partnership deed was executed;
- 3) Till date no notice has been received by the applicant regarding paying of any amount on behalf of the lessee;
- 4) Default firm partner M/s Raman Kumar had filed one writ petition before the Hon'ble HP High Court and the Court had stayed the demand as created for the year 2011-12 in which the Department alleged that the applicant was partner; hence M/s Raman Kumar cannot be treated as defaulter under the HP Tolls Act, 1975;
- 5) As per information available with the applicant, the land and other assets mortgaged by Shri Raman Kumar are more than the default amount and, further, partner Raman Rana has undertaken to pay the amount;
- 6) Nevertheless, the applicant, too, is ready to fulfil all its obligations under the HP Excise Act, 2011 and Toll Act, 1975 as a surety; provided that he is given a reasonable opportunity of being heard in the matter;
- 7) And while making announcements on 05-03-2015 for renewal of the licenses for L-14 vends, it was notified by the Department that the holder of L-14 license will be permitted to renew their licenses and accordingly the applicant had deposited the license fee and the renewal fee, but the respondents without following the principles of natural justice rejected the renewal applications.

V. Reply by the Department:

Mr. Rakesh Rana, Deputy Director (Legal Cell) submitted for the Department that the State Govt. vide its letter dated 15-01-2015 had conveyed the approval to blacklist the defaulters of the dues of the Department, including their sureties, and, further, to debar such defaulters from participating in all processes including Tender-cum-Auction, Renewal, Draw of Lots, and Negotiation etc. initiated by the

Department, in order to grant various licenses under the HP Excise Act, HP Tolls Act or under any other Departmental enactment in future. The Excise and Taxation Commissioner conveyed the aforesaid approval to the subordinate authorities vide letters dated 21-01-2015 and 12-03-2015, requesting the authorities not to allow the defaulters and their sureties to participate in the process of allotment/renewal of excise vends for the year 2015-16 and also lease of right to collect toll for the year 2015-16. The communication issued above had prior approval of the State Govt. and therefore, the contention of the applicant that the aforesaid impugned communication is illegal, arbitrary and beyond the powers of the Excise & Taxation Commissioner, HP is not tenable and as such the representation being devoid of any merit is liable to be dismissed.

VI. Findings:

I have heard the contentions put forth by both the parties and carefully perused the record, impugned notices, directions from the Department, various representations submitted by the applicant to various authorities, the replies of the authorities below and directions by the Hon'ble High Court to this forum. Case record reveals that the applicant has made repeated requests to the various authorities to refund him the money deposited with the Department, but refundable to him on account of non-renewal of licenses of Excise Units for the year 2015-16 in the Districts of Sirmour, Solan and Revenue District BBN.

2. The State Govt. vide its letter dated 15-01-2015 had conveyed the approval to blacklist the defaulters of the dues of the department and their sureties and to debar them from taking part in all processes including Tender-cum-Auction, Renewal, Draw of Lots, and Negotiation etc. initiated by the Department in order to grant various licenses under the HP Excise Act, 2011, HP Tolls Act, 1975 or under any other Departmental enactments in future. Aforesaid approval was duly conveyed to the subordinate authorities vide letters dated 21-01-2015 and 12-03-2015, requesting the authorities not to allow the defaulters and their sureties to participate in the process of allotment/renewal of excise vends for the year 2015-16 and also lease of right to collect toll for the year 2015-16. In view of the fact that the



directions to blacklist the defaulters and debar them from participating in the bids, renewals were from the Government and were duly issued through PUBLIC NOTICE also, vide No. 7-588/2014-EXN 5949-76, dated 05-03-2015 and incorporated in ANNOUNCEMENTS for the year 2015-16, would not render these directions as arbitrary and illegal. Clause 2.7 of the ANNOUNCEMENTS under sub-clause (iv), for the relevant year provided as under :

2.7 (iv) He should not be a defaulter of any Government dues and should have cleared all the arrears, if any, due to be paid by him by the date of filing of application for allotment.

Condition No. 6 of the PUBLIC NOTICE above also provided as under:

6. The licensee should not be a defaulter of Government dues and should have cleared all arrears, if any, due to be paid by him by the date of filing of application for renewal. Such defaulters shall not be granted renewal and their applications shall summarily be rejected.

Hence, the contention of the applicant that directions are arbitrary and illegal is non-meritorious.

3. The licenses of the Units above could not be renewed in his name as the applicant was partner in a defaulter firm M/s Raman Kumar, and, thus, under above impugned directions, was blacklisted on non-payment of toll dues of ₹ 1, 87, 88, 458/- on account of lease amount, interest and penalty levied in respect of Baddi-Barotiwala-Dherowal Toll Unit for the year 2011-12. It is worthwhile to mention here that the Financial Commissioner (Appeals) vide order dated 16-08-2017 in Appeal No. 7/20015(Toll Tax), has, though, ordered a compensation of ₹ 1, 69, 93, 590/- to the firm; the Deputy Commissioner (State Taxes & Excise) Revenue District BBN has informed that an amount to ₹ 45, 87, 520/-, as on this date, is still payable by the applicant as arrears under the Himachal Pradesh Land Revenue Act, 1954.
4. Further perusal of the record also reveals the fact which is, also, not denied by the applicant that the applicant had duly signed the bid sheets when the firm M/s Raman Kumar was allotted the lease of right to collect toll for Baddi/Barotiwala-Dherowal Unit for the financial year 2011-12. Thus, the

applicant was one of the bidders of the firm, along with S/Shri Raman Kumar Rana, Nangal (PB), Kuldeep Grover, Moga (PB), Ashwani Guleria, Kangar (HP) and Gurdial Singh, Jakhera, Una (HP). The applicant along with above bidders were declared as successful bidder vide letter No. EXN-BBN-Toll-2010-2011-3326, dated 24-03-2011. So, he cannot deny being a partner in the above firm.

5. As per terms of the Toll Lease, the applicant, along with other partners, were to abide by the terms and conditions of the Toll Announcements 2011-12 and deposit the entire lease fee within the same financial year. But perusal of the record, in the matter, reveals that an office order dated 8.10.2012 was issued by the concerned Assistant Excise and Taxation Commissioner to the firm M/s Raman Kumar to deposit an amount of Rs 1, 87, 88, 458/- on account of balance toll license fee, interest, penalty and TDS. Aggrieved against the demand above, Shri Raman Kumar, a partner in the firm M/s Raman Kumar filed Civil Writ Petition No. 9588/2012 before the Hon'ble H.P. High Court. The writ petition was filed by Sh. Raman Kumar in the individual capacity and not as representative of the firm. The Hon'ble Court had granted stay in the matter vide order dated 07-11-2012, subject to the condition that the petitioner would deposit an amount of ₹ 32, 00, 000/-. The stay order passed in the aforesaid writ petition therefore, has no bearing, in the present representation filed by the petitioner as he was not a party in the above CWP as the same was filed by Sh. Raman Kumar in the individual capacity and not as representative of the firm, added by the fact the stay above was conditional and was subject to deposit of ₹ 32, 00, 000/-.
6. On directions of the Hon'ble High Court, M/s Raman Kumar filed an appeal before the Financial Commissioner (Appeals) against the above amount of ₹ 1, 87, 88, 458/-. The Financial Commissioner (Appeals) vide order dated 16.8.2017 allowed a compensation of ₹ 1, 69, 93, 590/- to the firm and directed the respondents to settle the account of the appellant immediately. Accordingly, the accounts of the appellant were settled at ₹48, 85, 622/- by the Respondent No. 4.
7. An update status report from the Districts of Solan, Sirmour and Revenue District BBN was sought in the matter. It has been reported and informed by the Deputy Commissioner (State Taxes & Excise) Revenue District BBN that the firm M/s Raman Kumar, in which the applicant above is a



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partner, is still in arrears by ₹ 48, 85, 622/- as on 28-01-2021. Vide his office letter dated 28-01-2021 the Deputy Commissioner (State Taxes & Excise), Revenue District BBN has also recommended that an amount of ₹ 12, 05, 633/- deposited by Shri Azad Singh, the applicant, towards renewal fee of vends in respect of BBN District for the year 2015-16, may not be refunded to the applicant on account of above pending arrears. So, the plea of the applicant that he is not a defaulter is also not true. It is still on records that the firm M/s Raman Kumar is under the arrears of toll revenue for the year 2011-12, which the firm is not paying for the last nine years. No person can be allowed to be in arrears of the Govt. dues as the non-payment of such dues adversely affects financial position of the State which ultimately affects the growth of the State. As such the applicant being partner of the defaulter firm was always to pay the amount due, being partner in the aforesaid firm and as such cannot have escape from thereto. Since, the applicant had also entered into a commercial contract, so, he cannot, now, back out and contend not to abide by the terms and conditions and provisions of the Toll Act and Toll Announcements for the year 2011-12. An amount of ₹ 48, 85, 622/- is still payable by the firm as on today. The applicant jointly and severally is liable to pay the above pending demand. So, the plea of the applicant that nothing is due from him is rejected in view of pending liability.

8. Though no notice was required to be given to him, yet, the applicant was issued notices dated 01-11-2011 and 04-08-2012, regarding non-payment of toll fees. The contention of the applicant that no notice was given to him is, therefore, wrong and is contrary to the facts on record.
9. Similarly, Deputy Commissioner (State Taxes & Excise), Sirmour has reported that a sum of ₹ 8, 52, 100/- deposited by the applicant for renewal of vends for the year 2015-16 has not been refunded to the applicant for being defaulter under HP Tolls Act, 1975 in the Revenue District of BBN and has requested for forfeiture of same into government account to set off the pending arrears.
10. As per report, dated 26 October, 2018 by the Deputy Commissioner (State Taxes & Excise), District Solan, the applicant Shri Azad Singh is liable to pay a sum of ₹ 16, 47, 244/- on account of audit objections raised by the audit party in respect of Kumarhatti Liquor Unit (year 2014-15). He has also informed that a sum of ₹ 18, 58,250/- has been deposited by Shri Azad

Singh as renewal fee etc. for the year 2015-16, but the vends could not be renewed in his favour, as he was declared a defaulter under the HP Tolls Act by the In-Charge Revenue District BBN. It has also been informed that the licensee above was issued notices on dated 30-09-2014, 29-12-2015, 30-12-2015, 29-06-2016, 02-07-2016 05-10-2018, and 02-08-2018 to reply to the objections raised by the audit, but for the want of compliance by the applicant, the matter is still pending for disposal. So, in view of above pending clearance by the Deputy Commissioner (State Taxes & Excise), District Solan, the applicant is not only a defaulter under the HP Tolls Act, but, also under the HP Excise Act, 2011 and clearance certificate should be procured by the applicant to get the amount refunded to him.

11. Since the applicant is still a defaulter and has to pay toll arrears (₹ 45, 88, 522/-) to the department, therefore, the applicant was rightly debarred from taking part in the Liquor retail license allotment processes and the amounts deposited by him as securities cannot be refunded to him lest the dues pending against his firm are cleared and a clearance certificate from the concerned Deputy Commissioner (State Taxes & Excise) of the Districts is not produced in the matter by the firm M/s Raman Kumar.

12. In the instant matter, the applicant has entered into a commercial contract and cannot back out and contend not to abide by the terms and conditions and provisions of the Act and Rules. The Appellant is liable to pay the amount due being partner in the aforesaid firm as per provision of *LIABILITY OF A PARTNER FOR ACTS OF THE FIRM* given under Section 25 of the Indian Partnership Act, 1932.

'Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.'

Therefore, the appellant, as such, has no grievance whatsoever to agitate before this Forum. Therefore, as long as "No Dues Certificate" is not produced vis-à-vis liabilities above, the representation is not maintainable at this stage and deserves to be dismissed on this score alone.


VII. Conclusion:

In view of the discussion hereinabove, the reports of pending arrears under the HP Tolls Act, 1975 for the year 2011-12, pending audit objections against the applicant under the HP Excise Act for the year 2014-



15 in respect of Kumarhatti vends, non-appearance of the applicant before the District authorities for the disposal of pendency on account of arrears under the Tolls Act, pending Audit paras in District Solan and absence of "No Dues Certificate" from the competent authorities below, the claim of refund by the applicant is rejected. He is directed to obtain "No Dues Certificate" from the Deputy Commissioner (State Taxes & Excise) of District Solan and Revenue District BBN, respectively, before his representations for refund of amounts is considered. The representation above, of the applicant, seeking refund of money is also dismissed for lack of initiation to settle his accounts to finality and for the want of requisite response from the applicant to liquidate the liabilities towards government. The applicant is directed to associate himself with the Deputy Commissioner (State Taxes & Excise), District Solan and Revenue District BBN to settle his accounts to finality.

Representation above is, accordingly, disposed off. All concerned be informed accordingly. File be consigned to records.


(Yunus, I.A.S.)

**Commissioner of State Taxes & Excise
Himachal Pradesh**



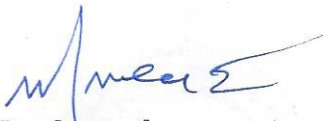
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Endorsement No. STE-Reader/CoST&E/2021-22-

Dated: 13-09-2021

1. Addl. Commissioner (ST&E), South Zone, Shimla-09.
2. Sh. Azad Singh S/o Sh. Lekh Ram, R/o Hose No. 251, Sector 21-A Chandigarh (UT).
3. Assistant Excise & Taxation Commissioner, District Solan (HP).
4. Assistant Excise & Taxation Commissioner, BBN Baddi, District Solan (HP).
5. Assistant Excise & Taxation Commissioner, Nahan, District Sirmour (HP).
6. Shri Rakesh Rana, Deputy Director (Legal), Legal Cell, O/o Commissioner (ST&E), HQ.

Spare - copy
IT-cell


Reader to the
Commissioner of State Taxes & Excise
Himachal Pradesh