

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE)**

**HIMACHAL PRADESH**

Appeal No. : 03/2022-23  
Date of Institution : 13-07-2022  
Date of Order : 01-05-2023

**In the matter of:**

M/s Carlsberg India Private Limited, Village Tokian,  
Paonta Sahib, Distt. Sirmour .....Appellant

**VERSUS**

Collector (Excise)-cum- Addl. Commissioner  
State Taxes & Excise, (SZ), Shimla .....Respondent

**Parties represented by:-**

1. Shri Vishal Mohan, Senior Advocate along with Shri Sushant Keprate, Advocate for the respondent.
2. Shri Sandeep Mandyal, Senior Law Officer for the Respondent.

**ORDER**

1. The present appeal has been filed by M/s Carlsberg India Private Limited, Village Tokian, Paonta Sahib, District Sirmour (HP), (hereinafter referred to as "the Appellant"), against the orders dated 31-05-2022, passed in Case No. 25/2022-23, by the Collector Excise (South Zone), whereby, on account of late submission of Six Hundred and Six L-38 Forms, the Appellant has been directed to deposit a sum of ₹87, 40, 000/-, before discharging of Six Hundred Six L-37 Forms under Rule 10 of the Himachal Pradesh Excise Powers and Appeal Orders, 1932.
2. The brief facts of the case are that the Appellant who is engaged in the business of manufacturing and sale of alcoholic beverages for human consumption, i.e. Beer is a B-1, L-1C, L-11 Licensee under the provisions of the Himachal Pradesh Excise Act, 2011 (hereinafter referred to as 'the Act'). During the course of business in export/transport of intoxicant consignments, in the year 2017-18, the Appellant submitted before the competent authority L-38 Forms for the release of bonds in Form L-37 relating to export/transport in-



bond transactions in Form L-36 issued in favour of the Appellant from time to time for the year 2017-18. District In Charge Sirmour reported to the Collector (Excise), South Zone (Respondent) that the Appellant has failed to tender L-38 Forms (receipt of under bond consignment from the destination authority) and consequently the Bonds filed in Form L-37 could not be got discharged within the stipulated time period for the same were submitted after the expiry of prescribed time limit under the Rules. The above violation was, thus, reported to the Collector Excise (South Zone), who after hearing the Appellant found that the delayed submission of Six Hundred and Six L-38 Forms are contraventions of the provisions of Rule 15 of the Punjab Liquor Permit and Pass Rules, 1932, as applicable to Himachal Pradesh, read with clause (d) of Section 43 of the Act. The respondent, exercising powers of discharging L-37 forms given under Rule 10 of the Himachal Pradesh Excise Powers and Appeal Orders, 1932, ordered the discharge of Bonds in Form L-37 for a compounding sum of ₹87, 40, 000/- and subject to deposition of sum, compounded the case, of late submission of Forms, under sub-section (1) of Section 66 of the Act. Felt aggrieved by the orders of the Collector Excise (South Zone), the Appellant has filed the present appeal.

3. Shri Vishal Mohan, Learned Senior Advocate who pleaded the matter for the Appellant along with Shri Sushant Keprate, Learned Advocate, initiating the arguments on behalf of the Appellant submitted that:

3.1 The Respondent issued a Notice, dated 10.09.2021, to the Appellant with the observation that some L-38 Forms have not been submitted within the prescribed time. The Appellant was directed to appear before the Respondent on 11.10.2021. Accordingly, the Appellant appeared before the Respondent and explained the reasons for delay in submissions of over 606 L-38 Forms. But the Respondent, in proceedings, wrongly recorded that the Appellant admitted to the contravention of the provisions of the Act, Rules and Orders.

3.2 The impugned order is a non-speaking one, and has been passed without granting any reasonable opportunity to submit



necessary documents and without considering the submissions advanced by the Appellant.

3.3 The impugned order is passed without recording the cogent reason for imposing the penalty and further that the Respondent has even failed to discuss any provisions of law under which such an adverse order has been passed and even without clarifying whether the sum imposed is penalty or compounding fees. Learned Senior Counsel submitted that the Respondent has treated the sum of amount as a **composition fee** for compounding the violations under Section 66 of the Act and later has directed the Appellant to deposit the same amount as penalty. Ld Senior Counsel also submitted that the Hon'ble Supreme Court in plethora of cases has held that reasons are the soul of the order and in the absence of specific recorded reasons the impugned orders deserve to be set aside. Ld Senior Counsel, in support of this assertion cited the case of *Kranti Associates Private Limited vs. Masood Ahmed Khan 2011 (273) ELT. 345 S.C.*

3.4 The impugned order travels beyond the scope of penalty prescribed under section 43 of the Act. The impugned order mentions that it has been passed under Section 43(d) of the Act which provides for a penalty for willfully doing or omitting to do anything in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act. The Learned Senior Counsel, moreover added that it is evident that the maximum penalty prescribed for 'breach of any of the conditions of the license, permit or pass' or for miscellaneous offences is Rs. 50,000/-. However, the Respondent, travelling beyond the powers vested upon him under the provisions of the Act, has directed the Appellant to deposit a sum of Rs. 87,40,000/-, which is a much higher amount compared to the maximum amount of penalty prescribed under Section 43 of the Act, that too for a venial breach in the form of delay in submission of Forms which was owing to departmental delays.

3.5 It is evident from the perusal of provisions of Section 43 that the maximum amount of penalty that can be imposed under this section of the Act is 50,000/-; and Section 66 of the Act,



empowers the Collector to compound the offence for a maximum compounding fee of Rs. 25,000/- only. Further, it is a well established law that no penalty can be imposed that is higher than the amount prescribed under the statute. Doing the same is a violation of rule of law and equality before law. A penalty, much higher than the maximum prescribed amount, has been imposed and directed to be deposited despite the fact that there being no revenue loss to the State Government at all as the consignment arrived at the destination safely and the alleged delay was only a venial breach, if at all, an admitted fact in the impugned orders itself.

3.6 Rule 15 of the Punjab Liquor Permit and Pass Rules, 1932 as applicable to Himachal Pradesh on non-submission of L-38 Forms provides for recovery of full duty which would have been levied in ordinary circumstances on spirit removal. Therefore, levying the penalty/ composition fee equal to the duty amount is prima facie arbitrary and beyond the scope of power vested to the Collector under Section 43 read with Rule 14 and 15 of the Rules, argued Ld Senior Counsel. Rule 15 does not prescribe any fixed time limit but has only prescribed a reasonable time limit. Therefore, 'the reasonable time' was required to be determined keeping in mind that the delays was on account of commercial difficulties and late signing of forms by the respective State authorities. The purpose to submit L-38 Forms, in reasonable time, is only to ensure that the goods in question reach the proper destination and there is no evasion of duty. The Respondent, in the impugned orders, himself, has admitted this fact that there is no revenue loss to the State Exchequer on account of late submission of L-38 Forms.

4. Shri Sandeep Mandyal, Sr. Law Officer on behalf of the Respondent, replying to the arguments of the Appellant submitted that:

4.1 Though the consignments were received in the destination States and there was no excess wastage of liquor during transport/transaction of the intoxicant consignments; however, it is an equally admitted fact that the licensee failed to produce the L-38 Forms within the prescribed period and thus there was contravention of Rule 7.15 of the Punjab Liquor Permit and Pass



Rules, 1932 as applicable to the Himachal Pradesh read with Section 43(d) of the Himachal Pradesh Excise Act, 2011, therefore, the Appellant-licensee was liable for payment of full excise duty on each of the Six Hundred and Six consignments, immediately after the expiry of the stipulated time period of two months as per provisions of the Rule 10. (e) (i) of the Himachal Pradesh Liquor Import, Export, Transport and Possession Orders, 1965 read with section 43 (d) of the Act. However, the Respondent, in view of the admitted fact that, though late, all the consignments reached their destinations, accordingly on request of the Appellant, took a lenient view and preferred to compound the matter.

- 4.2 The composition fee as required under Section 66 of H.P. Excise Act, 2011 has rightly been imposed as in view of the violation of the provisions of Rule 15 of the Punjab Permit and Pass Rules, 1932. The Appellant had contravened provisions contained under Section 43 (d) of the Act and had rendered his license liable to be cancelled. Instead of cancelling the license, Collector (Excise), on written request of the Appellant, has compounded Six Hundred and Six instances of violation of the provisions of the Act in the matter and charged the composition fee proportionate to number of days by which the Appellant delayed the Form submission.

X X X X X X X X X

5. I have heard both the parties and have perused the case record minutely and in detail. Below are the main issues to be adjudicated upon in the present appeal:

- A. Impugned order is a non-speaking order passed without considering the submissions advanced by the Appellant or granting any reasonable opportunity to submit necessary documents.
- B. The impugned order is passed without assigning the cogent reason for imposing the penalty. The Respondent has treated the sum of amount as a composition fee for compounding the violations under Section 66 of the Act and later directs the Appellant to deposit the same amount as penalty.



- C. The impugned order travels beyond the scope of penalty prescribed under section 43 of the Act.
- D. There is no loss to the state government revenue, and accordingly, the exorbitant penalty has been imposed upon the Appellant for venial breach in the form of delay in submission of Forms which was owing to departmental delays.
- E. Rule 15 does not prescribe any fixed time but only a reasonable time and not any fixed time.
6. The first submission of the Appellant is that the impugned order is a non-speaking order, passed without considering the submissions advanced by the Appellant or granting any reasonable opportunity to submit necessary documents. Perusal of the case record, however, reveals that the Appellant was issued a notice dated 10-09-2021 to appear before the Respondent on 11-10-2021. The Appellant, through authorised signatory, recorded a statement on 18-10-2021 before the Respondent to the effect of late submission of L-38 Forms, no revenue loss accrual to the Government on late submission of Forms and acceptance of any lenient order passed in the matter by the Department. The impugned order dated 31-05-2022 is a detailed order wherein the relevant provisions of the Act, Rules and Orders have been quoted and contravention of law has been discussed in sufficient details. Therefore, argument of the Appellant that he has not been given reasonable opportunity of being heard and the order is not speaking one is contrary to facts on record.
7. Appellant has alleged that that the impugned order has been passed without according cogent reason for imposing penalty. However it is clearly mentioned in the impugned orders that:

"As per the detail given above, the licensee failed to produce the L-38 within prescribed time limit and as such the licensee has contravened the provision of above-mentioned Rules as applicable to Himachal Pradesh which attract the penal provision and with compliance of direction given in the Financial Commissioner-cum-Commissioner of State Taxes & Excise Himachal Pradesh office order No:27/2018-19 dated 29-03-2019. Therefore, I, Pankaj Sharma, Collector (Excise), South Zone, HP, in exercise of powers vested in me under Section 43(d) of H.P. Excise Act, 2011, hereby impose a sum of 87,40,000/- (Rs. Eighty Seven Lakh Forty Thousand Only) for 606 cases of violation is accepted as a composition fee for compounding these



violations and as provided under Sub-Section (1) of Section 66 of H.P. Excise Act, 2011."

From the perusal of the case record and impugned order it is evident that as many as Six Hundred and Thirty-Two L-38 Forms were submitted before the Respondent Authority for discharge of corresponding L-37 Forms, but it was found that out of these Six Hundred and Thirty-Two L-38 Forms, as many as Six Hundred and Six L-38 Forms were not submitted within the maximum prescribed time limit of two months and the consignments vide these Forms, as per provisions of Rule 15 of the Punjab Liquor Pass and Permit Rules, 1932, were liable to be charged Excise Duty which would in ordinary circumstances have been levied on removal of spirit.

*Rule 7.15: If such certificate is not produced within a reasonable time after the expiry of the period of the currency of any pass, as noted thereon, the Collector of the district in which the distillery is situated, or the Collector of the district of destination in the case of an approved manufacturer shall recover from the said manager or approved manufacturer as the case may be, the duty which would in ordinary circumstances have been levied on the spirit removed under the pass."*

Read with

Order 10 (b) and 10 (e) (iii) of the Himachal Pradesh Liquor Import, Export, Transport and Possession Orders, 1965:

*"10. (b) The manager of the brewery shall execute a bond binding himself in respect of the consignment to be despatched to produce a certificate before the Collector of the District of issue, and to pay such duties in respect of the consignment as may be demanded from him by the Collector."*

*10. (e) (iii) "If the certificate is not produced within the specified period, the Collector shall unless the omission is satisfactorily explained call upon the manager to deposit the amount specified in the bond executed by him in respect of the consignment."*

The Appellant, thus, by not submitting the Forms within the prescribed time limit of two months was liable to pay the duty which would in ordinary circumstances have been levied on the spirit removed under the pass, to pay such duties in respect of the consignment as may be demanded from him by the Collector, and liable to deposit the amount specified in the bond executed by him in respect of the consignment. (Rule 15, Order 10 (b) and Order 10 (e) (iii) above. Also, the Appellant, by not submitting with



the competent authority the L-38 Forms within prescribed maximum time limit had violated the provisions contained under section 43 (d) of the Act for the added reason that there is neither any request from the Appellant to the authorities to grant him time to extend the date of submission of L-38 Forms, nor, is there any plausible explanation for delayed submission of L-38 Forms. By willful omission above, the Appellant license, in Form B-1, was liable to be cancelled. It is sufficiently elaborated in the orders that for late submission of L-38 Forms a sum of ₹87, 40, 000/- is imposed upon the Appellant as compounding fee (i.e. penalty) under section 66 (1) of the Act, for 606 cases of violation of the provisions under Section 43 (d) of the Act *ibid*. The above reasons given in the order falsify the grievance of the Appellant that the impugned order has been passed without according cogent reason for imposing compounding fee i.e. penalty. In view of discussion in this para and para 6 above, the judgment cited in the case of *Kranti Associates Private Limited vs. Masood Ahmed Khan*, 2011 (273) ELT. 345 S.C. is not applicable in the context of present case.

8. There is yet another contention of the Appellant that the impugned order travels beyond the scope of penalty prescribed under section 43 of the Act. However, it is explicitly mentioned in the impugned orders that the Appellant has contravened provisions of Rule 15 of Punjab Liquor, Permit and Pass Rules, 1932 as applicable to Himachal Pradesh, read with clause (d) of Section 43 of the Act. The above violation rendered the Appellant license liable for cancellation, but, the Respondent, on request of the Appellant has compounded all the 606 cases of violation under section 66 (1) of the Act for violation under section 43 of the Act:

**66. Composition of offences by the Collector.—**(1) *The Collector may, on an application from any person who is reasonably suspected of having committed an offence punishable under sections 26, 43, 44, 45, 46, 47 or 59 including the attempts to commit or abet any of these offences under section 50 of this Act, accept a sum of money not exceeding twenty five thousand rupees subject to a minimum of five thousand rupees by way of composition, for each of such offences, and on payment of such sum of money to the Collector, the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.*





Thus, for Six Hundred Six detailed instances of violation of the provisions of the Rule and Act, the case of the Appellant has been compounded under section 66 (1) of the Act. The argument of the Appellant that the order travels beyond the scope of maximum prescribed penalty (fine) under section 43 of the Act is misplaced as fine under the provision of section 43 has not been imposed. The contention, above, of the Appellant, being without merit, is, therefore, rejected.

9. The Appellant and the Respondent are agreed on the contention that there is no loss to the State Government on account of late submission of L-38 Forms. But, the further contention of the Appellant that exorbitant penalty has been imposed upon the Appellant for venial breach in the form of delay in submission of Forms which was owing to departmental delays is without evidence. The Appellant has put nothing on record to prove that the delays was on account of commercial difficulties and late signing of forms by the respective State authorities. There is no request, either, on the record, from the Appellant to the Respondent Department and authorities to grant time extension in submitting Forms. Therefore, this is a clear case of willful omission on the part of the Appellant and is a proven case of contravention of 43 (d) of the Act:

*43. Penalty for certain acts by licensee or his servant.—  
Whoever, being the holder of a licence, permit or pass granted  
under this Act or being in the employ of such holder or acting on  
his behalf—*

X X X X X X X

*(d) willfully does or omits to do anything in breach of any of the  
conditions of the license, permit or pass not otherwise provided  
for in this Act;*

10. Lastly, it has also been argued on behalf of the Appellant that Rule 15 does not prescribe any fixed time but only a reasonable time. However, Order 10 (e) (i) of the Himachal Pradesh Liquor Import, Export, Transport and Possession Orders, 1965, conspicuously restricts this time lime to not exceeding two months:

Order 10 (e) (i):

*"The manager of the brewery within a reasonable time not exceeding two months shall produce before the Collector of*



*the District of the issue, a certificate of arrival of the consignment at the destination to which consigned."*

In view of above given provisions, the prayer of the Appellant that 'the reasonable time' was required to be determined keeping in mind that the delays was on account of commercial difficulties and late signing of forms by the respective State authorities, is beyond the ambit of law and is liable to be dismissed.


**FINAL ORDER:**

For the detailed discussion and reasons cited in para 6 to 10 above, there is no merit in the appeal and the same is liable to be dismissed and is accordingly dismissed.

Copy of this order be sent to the all parties concerned and the file after due completion be consigned to the record room.

Announced.  
01-05-2023



  
Financial Commissioner (Excise),  
Himachal Pradesh.

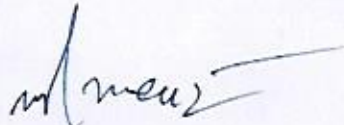
2023-12381-385

Endst.No. DoST&E/EC(Excise)-Reader/

Dated: 01-05-2023

Copy forwarded to:

1. The Collector (Excise), South Zone, Shimla-9, (HP).
2. Dy. Commissioner (ST&E), District Sirmour, HP.
3. M/s Carlsberg India Private Limited, Village Tokian, Tehsil Paonta Sahib, District Sirmour, H.P. for compliance.
4. Shri Sandeep Mandyal, Senior Law Officer, Legal Cell, HQ
5. IT Cell.

  
Reader to the  
Financial Commissioner (Excise)  
Himachal Pradesh