

BEFORE THE FINANCIAL COMMISSIONER (EXCISE)

HIMACHAL PRADESH

(Block No. 30, SDA Complex Shimla- 171009)

Excise Case No. 10/2021-22

Date of Order: 29-12-2021

In the matter of:

M/s K. M. Distillery Pvt. Ltd., Parwanoo,
District Solan, Himachal Pradesh
(D-2 Licensee)

**(Proceedings Pursuant to Notice under Section 29 (b) and (c) of the HP
Excise Act, 2011)**

Order

1. Proceedings below are pursuant to Notice under **section 29 (b) and (c)** of the HP Excise Act, 2011, issued to above M/s K. M. Distillery Pvt. Ltd., Parwanoo. District Solan, Himachal Pradesh (D-2 Licensee).
2. Briefs in the matter are that vide No. 33 of 2021, dated 11-04-2021, an FIR under section 39 (1) (a) of the HP Excise Act, 2011, section 13 (2) of the Prevention of Corruption Act, 1988 and sections 420, 465, 467, 468, 471 and 120 of the IPC was registered against the Noticee at Police Station Parwanoo, which also led to the arrest of the AST&EO In Charge of the Noticee distillery i.e. K. M. Distillery Pvt. Ltd. Parwanoo.
3. The Commissioner of State Taxes & Excise vide office letter No. 7-65/98-II-9551, dated 17-04-2021, directed the Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla-09 to conduct an independent and separate inquiry into the matter for negligence and, also, in connection with pilferage of liquor against Noticee, and, thereafter, send the compliance report to this office. The Collector-cum-Addl. Commissioner State Taxes and Excise (SZ) vide letter no. EXN(SZ)-Inquiry-2021-22-2398, dated 23/06/2021 submitted preliminary inquiry report on negligence and pilferage of liquor by the Noticee, and found the following irregularities and discrepancies in matter ibid:

- 1) One truck, number HP64A-3007, carrying 700 cases of country liquor quarts was dispatched by the Noticee, in an unauthorized manner, without paying any Government duties and forged/counterfeit holograms were also affixed on that stock.
- 2) Parwanoo Police impounded the above vehicle in the matter.
- 3) The Solan Police, too, seized yet another vehicle transporting liquor with changed plate number HP15B-3007. The enquiry revealed that vehicle No. HP64A-3007 was owned by Noticee and the vehicle no. HP15B-3007 was hired on rent by Noticee for above transportation of liquor.
- 4) Approval of deletion/replacement of Directors was also not obtained, by the Noticee from the competent authority, after the purchase of distillery (M/s K. M. Distillery Pvt. Ltd., Parwanoo) in the year 2020.
- 5) The CCTVs installed in the premises were not accessible to the inspecting team. Also, all the installed cameras were found non-functional. It is to be ensured by the Licensees under the HP Excise Act, Rules and Orders that every consignment dispatched from a bottling plant is mandatorily tracked through a GPS device. Though, during inspection above, it was found that a proper log of the GPS in respect of dispatches made from the bottling plant after 07-03 2021 had not been maintained.
- 6) The stock was not stacked batch-wise and the bottled stock was lying haphazardly in the BSSR and cases pertaining to different batches were kept together. The stock of the country liquor was stored in the BSSR-(IMFL). The record of the D-23 (Overtime Register) was, though, maintained and the fees were being deposited in advance, but the operational timings dated 10-04-2021 on the D-23 register did not match with that of D-9 (Inspector's Diary) register. The time on the D-23 register is from 08:30 A.M. to 05:00 P.M., whereas on the D-9 register, it is mentioned as from 09:00 A.M. to 05:30 P.M. The above anomaly is again a violation of the Excise Act, Rules and Orders therein.
- 7) Batch-wise dispatch register was also not furnished on demand to the inspecting team on 12-04-2021. The batch number and manufacturing date required to be mentioned on the labels of the

7. Learned Advocate further submitted that the officials of the Notice issuing Department, later on, had inspected the premises, wherein the managing directors of the distillery were summoned for participation. In the submitted arguments Ld. Advocate affirmed that pursuant to directed inquiry, nothing incriminating was found in the factory premises and, merely compoundable discrepancies were found in the premises. Learned Advocate alleged that the said discrepancies were not at the end of the directors or his agents rather the same occurred due the negligence of the Excise Inspector appointed by the Department.
8. Learned Advocate also argued that, though, the matter, as far as relating to the FIR, the same is pending before the competent court of law; and guilt, if any, is yet to be established in accordance with law. Despite the above fact and record, argued the learned Advocate, the Noticee Distillery is closed for the last eight months without any effective order on record. Ld. Advocate requested that, in view of above, discrepancies, if found any, may be compounded and the factory in question may be ordered to resume its operation. Ld. Advocate also pleaded that, otherwise also, this Hon'ble Court has the ample jurisdiction to compound such matters in the interest of justice, especially keeping in view of the Hon'ble Apex court judgment **Karnal Distillery Co. Ltd vs State Of Haryana And Ors on 16 October, 1969**. Pointing towards the provision of section 29(d) of the HP Excise Act, 2011, the learned Counsel argued that it is the conviction and not mere pendency of the matter that entails the penalty of cancellation of license.
9. Learned Counsel for the Noticee also pleaded that there is no involvement of the directors in the pilferage of liquor. Since, the matter is pending before the competent court of law and, guilt, if any, is yet to be established in accordance with law, therefore, it is premature at this stage to comment anything, otherwise, it would seriously hamper the pending proceedings. As far as discrepancies, if any, are concerned, the same are not of such a nature where penalty of such harassing nature can be imposed, otherwise, also, the applicant has already faced suspension for more than eight months till date.
10. Arguing on the contentions vis-à-vis the selling/purchasing of the Distillery, learned Advocate contended that it was in accordance with law

bottles kept in the stock was not legible and the same is against the provisions of the Rules and Orders.

4. The Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ) also recommended in the report submitted to this office that as per conditions of the D-2 License, the offences of bottling/pilferage of liquor, affixing of forged holograms and, thus, causing loss of Government revenue by the Noticee is a fit case under section 29 (b) and (c) of the Himachal Pradesh Excise Act, 2011 for suspension/cancellation of licenses granted to the Noticee under the HP Excise Act, 2011/HP Liquor License Rules 1986. Noticee was, therefore, directed to show cause as to why he should not be proceeded, accordingly, under section 29 (b) and (c) of the Himachal Pradesh Excise Act, 2011.
5. **In reply to Notice above, Shri Kulwant Singh Gill, Advocate Noticee firm submitted** that applicant along with its three Directors are managing the affairs of Excise & Liquor factory in the name and style of K.M. Distillery Pvt. Ltd., Parwanoo, since 2020, and that Excise Inspector is duly appointed by the Excise Department to supervise and maintain the factory up-to the standards and norms of the Excise Act, 2011, HP Liquor License Rules, 1986 and Punjab Distillery Rules, 1932, as applicable to Himachal Pradesh, and the Noticee is managing the affairs of the Company in view of the statutory provisions and guidelines issued in that behalf by the department.
6. He further submitted that this Department has served a notice upon the Noticee firm under section 29(b) and (c) of the H.P, Excise Act, 2011, for either to cancel or suspend license of the Distillery, in view of the fact that on 11.04.2021, an F.I.R, No. 33/2021, u/s 39(1) (a) H.P Excise Act, 2011, Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 465, 467, 468, 471 and 120 of the IPC, came to be lodged against the Noticee and directors of the firm along with others before the Police Station Parwanoo. Pursuant to the lodging of the said FIR, Excise Inspector, appointed in the Noticee factory, also, got arrested. He submitted that, the incident is based upon the interception of a vehicle by the Solan Police, the vehicle carrying country liquor outside of the factory premises.

and prior approval of the concerned Department. Whereas, the issue related to the approval for deletion/replacement of the directors was concerned, documents qua the same had been submitted before the Excise Inspector of the said distillery and if the same are not on record, the Noticee, even at this juncture, is ready and willing to produce the same on record. Moreover, changing of directors is not changing of the company and till date it is in name and style of K. M. Distillery Pvt. Ltd., Parwanoo, and even as per the company rules, changing of directors can be ratified by the registrar of the companies, submitted the Advocate for the Noticee.

11. Putting his defence qua CCTVs, learned Advocate argued that cameras were duly established and the same is admitted by the department. However, as far as accessibility of the same is concerned, it was submitted that during the investigation, held in FIR, the IO, has taken away the DVDR of CCTV cameras, factum qua the same is reflected in the copy of challan, same can be produced, if directed. Therefore, in view of the same, said aspect cannot be a ground to cancel the license. Learned Advocate added that the installed CCTVc are regulated from the office of the Excise Inspector and same was under the lock and key of the said officer.
12. Learned Advocate, for the Noticee, though, admitted that consignment dispatch is mandatorily tracked through GPS and the Noticee used to maintain the said record and same is also supplied to the Excise Inspector, though, if same is not further forwarded or maintained for the relevant period, according to the norms, applicant is ready to pay the penalty for said period and further undertakes to not to repeat the same.
13. Replying to the query vis-à-vis stock stacking, it was argued on behalf of the Noticee that the same was prepared in continuity, and, if the same was not staked batch-wise, it is due to the negligence of the Excise Inspector for the reason that it is the said Inspector who has lock and key of the unit and nothing can be done at the applicant end. Therefore, penalty of license cancellation for such a reason cannot be imposed, pleaded the Advocate.
14. Learned Advocate, further, submitted that the record of the D-23 (overtime register) was maintained and fees also stood deposited. For the operational timing on 10.04.2021, a separate application for extension of

time along with fees was filed before the Excise Inspector. Otherwise, also without the participation/presence of the Inspector, it was not possible to operate the unit, since, keys of the plant remained with the Excise Inspector,

15. It was emphasized by the Advocate that batch-wise register was maintained and the same can be submitted for perusal, if directed. That batch number and manufacturing date as required was mentioned and the same was to be checked/ cleared by the Excise Inspector. The directors of the distillery have a very limited role in the said aspect. Notwithstanding the same, this anomaly may be compounded, pleaded the Advocate

16. Concluding his arguments, the learned Counsel for the Noticee vehemently prayed that the instant notice of the suspension or cancellation may be dropped for the added fact that the applicant has already faced suspension for the last eight months.

17. **Replying to above arguments of the Notice, Shri Rakesh Rana, Deputy Director, Legal Cell, submitted for the Department** that the contentions of the Noticee are not maintainable in as much as the same have been filed with an ulterior motive to nullify the proceeding initiated against the Noticee under section 29(b) and (c) of the Himachal Pradesh Excise Act, 2011 Furthermore, the Noticee is not entitled for any discretionary relief of interim direction, as prayed for especially when the Noticee himself has acted in contravention of terms and conditions of the license. Furthermore, it is submitted that one who seeks equity must do "equity". Since, the Noticee himself violated the terms and conditions of license and an FIR to this effect has been registered by the vigilance department, therefore, the Noticee is not entitled to any interim direction. Replying to the arguments put forth by the Advocate for the Noticee, the Counsel for the Department also submitted:

1) That the Noticee is estopped by his own acts, deeds, conduct, omission and acquiescence to file the present application especially, when the Noticee himself and voluntarily made a statement before the Collector (Excise), South Zone, during the course of inquiry that the terms and conditions of the license have been violated by the Noticee.

2) That the Noticee is estopped by its own act and conduct as the directors of the Noticee have admitted in the statements given by

them that the liquor, involved in the case, has been managed by them for the purpose of selling the same without any payment of excise levies etc. Also that the holograms fixed on the liquor bottles were also fake and further that they admitted their mistake. Therefore, the Noticee is not entitled to any relief as prayed for in his pleadings.


- 3) That the Noticee has breached the terms and conditions of the license and also the provisions of HP Excise Act, 2011, the Rules made and Orders issued there under which the Noticee was bound to comply with and therefore, is not entitled to any relief of compounding the offences, as prayed for. The directors of the Noticee are under anticipatory bail with certain condition in terms of order dated 15/09/2021 (**Annexure A-1**) passed by the Hon'ble High Court of HP and the proceeding are already pending before the Hon'ble Court and as such, also, the Noticee is not entitled to any relief and the present arguments of the Noticee to compound the matter, being devoid any merit are liable to be dismissed.
- 4) That the registration of an FIR against the Noticee itself shows that the Noticee has contravened the terms and conditions of the license which in turn justified the issuance of show cause notice under section 29(b) and (c) of the H.P. Excise Act, 2021. It is further submitted that pursuant to lodging of FIR on 11/04/2021, the police party, involved in the operation, locked factory premises and the operation of the distillery was closed on 11/04/2021 itself. Subsequently, vide notice dated 17.04.2021 the Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla directed the Noticee to be present on 19.04.2021 and to show cause as to why action warranted under law may not be taken against it. Thereafter, vide letter no. EXN-(SZ)-Excise-2020-21-1810 dated 06/05/2021 (**Annexure R-2**), the Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla requested the District In Charge not to allow any kind of operation in the distillery till further orders. Subsequently on 28/05/2021, vide notice dated 22/05/2021, (**Annexure R-3**), Collector (Excise), South Zone directed the

concerned parties mentioned in the notice to be present in person or through representatives on 28/05/2021. Thereafter statements of the directors of the distillery i.e. Mr. Dheeraj Khanna, Mr. Karan Vij and Mr. Neeraj Khanna (**Annexure R-4 colly**) were recorded. It is evident from the aforesaid statements of the directors of the Noticee that the liquor involved in the case has been managed by them for the purpose of selling the same without any payment of excise levies etc. and further that the holograms fixed on the liquor bottles were also fake. Therefore, the contention of the Noticee that nothing incriminating has been found against the Noticee is baseless and not tenable.

- 5) That the pending investigation/inquiry will not benefit the Noticee since the Noticee has indulged in illegal activities. Therefore, till the outcome of the proceedings pending in the Court, the Noticee is not entitled to any relief.
- 6) That the communication demanding salary of Excise Inspector and other staff has rightly been issued in accordance with the provisions of Excise Act and Rules made there under.
- 7) That the Noticee chose to file an application with the prayer to allow the Noticee to resume the operation of the distillery despite the fact that the directors of the Noticee have, admittedly, indulged in illegal transportation of liquor and, therefore, the Noticee is not entitled to any relief.
- 8) That the impugned notice has been issued in accordance with provisions of law and therefore, is legal and valid and not against the principle of natural justice as alleged. The contention that the Excise Department has already declared the verdict and has held everybody guilty for the offences enumerated in the impugned notice is unfounded. It is reiterated that the directors of the Noticee have already admitted vide their statements that the liquor involved in this case has been managed by them for the purpose of selling the same without any payment of excise levies and also that the holograms fixed on the liquor bottles were also fake and further that they have admitted their mistake.

- 9) That the Noticee has infringed the terms and conditions of the license and also the provisions of Excise Act, Rules made and Orders issued thereunder and therefore, the operation of the distillery has rightly been closed. It is further submitted that there is no fundamental right to trade in liquor and the State has exclusive privilege to trade in liquor. Liquor trade cannot be claimed as a matter of right.
- 10) That the offences of the Noticee are not compoundable under the relevant provisions and, therefore, the Show Cause Notice has rightly been issued to the effect as to why the Noticee should not be proceeded under Section 29(b) and (c) of the HP Excise Act, 2011.
- 11) That the contention of the Noticee that any finding based upon FIR is contempt of Court is misplaced. Pursuant to lodging of FIR on 11/04/2021, the police party, involved in the operation, locked factory premises and the operation of the distillery was closed on 11/04/2021 itself. However vide letter no. EXN-(SZ)-Excise-2020-21-1810 dated 06/05/2021 (**Annexure R-2**), the Collector-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla requested the concerned District In Charge to not to allow any kind of operation in the distillery till further orders. Therefore, the Noticee was well aware of the proceedings and as such the contention that no opportunity was afforded to the Noticee is not tenable. The entire proceedings initiated by the Non-Noticees/Respondents in accordance with the statutory provisions are liable to be upheld.
- 12) That the case of the Noticee is not compoundable under the relevant provisions of the Act and Rules made there under.

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 18. I have heard both the parties in the matter. I have carefully gone through the record file of the case. Arguments of both the parties have been duly considered in the matter. Relying on definite information, available with the undersigned, of violations of the terms and conditions of the D-2 License granted to the Noticee under the HP Excise Act, 2011, being

License granting Authority, it had become necessary to conduct an independent inquiry in respect of the licensee firm M/s K. M. Distillery Pvt. Ltd., Parwanoo, the Noticee above. The contents of the inquiry report received, therein, reveal that there is an FIR registered against the Directors of the Noticee firm in a case of pilferage of liquor and use of fake holograms, the directors of the Noticee firm are under anticipatory bail with certain condition in terms of order dated 15/09/2021 passed by the Hon'ble High Court of HP and the proceeding are already under way in the Court. The registration of an FIR against the Noticee, itself, shows that Noticee is involved in pilferage of liquor and has contravened the terms and conditions of the license which in turn justifies the issuance of show cause notice under section 29(b) and (c) of the H.P. Excise Act, 2021. The pending investigation/inquiry will not benefit the Noticee, since, the Noticee, a D-2 License holder, has indulged in illegal activities; therefore, no relief, till the outcome of the proceedings pending in the Hon'ble HP High Court, prayed for by it, can be granted.

19. A separate and independent inquiry through Collector (Excise)-cum-Additional Commissioner (ST&E), South Zone, was also conducted in the matter view of above violations by the Noticee. The perusal of the inquiry report above reveals that pursuant to lodging of FIR on 11/04/2021, the police party involved in the operation locked the factory premises and the operation of the distillery was closed on 11/04/2021 itself. Subsequently, in compliance with directions from the Commissioner of State Taxes & Excise, HP, vide notice dated 17.04.2021, the Collector-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla, directed the Noticee to be present on 19.04.2021 and to show cause as to why action warranted under law may not be taken against it. Thereafter, vide letter no. EXN-(SZ)-Excise-2020-21-1810 dated 06/05/2021 (**Annexure R-2**), the Collector-cum-Addl. Commissioner State Taxes and Excise (SZ), Shimla, directed the District In Charge not to allow any kind of operation in the distillery till further orders. Subsequently, on 28/05/2021 vide notice dated 22/05/2021 (**Annexure R-3**), the Collector (SZ) directed the concerned parties mentioned in the notice to be present in person or through representatives on 28/05/2021. Thereafter, statements of the directors of the Distillery i.e.

Mr. Dheeraj Khanna, Mr. Karan Vij and Mr. Neeraj Khanna (**Annexure R-4colly**) were recorded. It is revealed from the aforesaid statements of the directors of the Noticee firm that the liquor involved in the case has been managed by them for the purpose of selling the same without any payment of excise levies etc. It is, further, revealed that the holograms fixed on the liquor bottles were also forged. In view of facts mentioned above, I am convinced that the Noticee, knowingly, has acted in contravention of terms and conditions of the license, and, is now, trying to shift the entire blame and responsibility on the Excise Inspector (ASTEIO)/ In Charge of the Distillery, pretending to be oblivion of the fact that being License holder under the HP Excise Act, the entire liability and responsibility to abide by the terms and conditions of the license is up on him.

20. Case record in the matter above, in pursuance to inspection of the Licensed premises of the Noticee firm M/s K. M. Distillery Pvt. Ltd., further, shows that in addition to above gross violations by the Noticee Licensee, approval of deletion/replacement of Directors was also not obtained, by the Noticee from the competent authority, after the purchase of distillery (Ms. KM Distillery Pvt. Ltd.) in the year 2020. During the spot inspection, it was also found that the CCTVs installed in the premises were not accessible to the inspecting team. Also, all the installed cameras were found non-functional, whereas it is to be ensured by the Licensees under the HP Excise Act, Rules and Orders that every consignment dispatched from a bottling plant is mandatorily tracked through a GPS device. However, during the inspection above, it was found that a proper log of the GPS in respect of dispatches made from the bottling plant after 07-03 2021 had not been maintained. Also, the stock was not stacked batch-wise and the bottled stock was lying haphazardly in the BSSR and cases pertaining to different batches were kept together. The stock of the country liquor was stored in the BSSR-(IMFL). The record of the D-23 (Overtime Register) was, though, maintained and the fees were being deposited in advance, but the operational timings dated 10-04-2021 on the D-23 register did not match with that of D-9(Inspector's Diary) register. The time on the D-23 register is from 08:30A.M. to 05:00 P.M., whereas on the D-9 register, it is mentioned as from 09:00 A.M. to 05:30 P.M. The anomalies above, again, are

violations of the provisions of the HP Excise Act, Rules and Orders therein. Also, batch-wise dispatch register was also not furnished on demand to the inspecting team on 12-04-2021. The batch number and manufacturing date required to be mentioned on the labels of the bottles kept in the stock was not legible and the same is against the provisions of the Rules and Orders. Therefore, the contention of the Noticee that nothing incriminating has been found against it and that the Excise Department has already declared the verdict and has held everybody guilty for the offences enumerated in the impugned notice is unfounded being contrary to facts available on record.

21. The salary of Excise Inspector and other staff is payable by the Noticee in accordance with the provisions of Excise Act and applicable Rules.
22. In view of above, the impugned notice has been issued in accordance with provisions of law and therefore, is legal and valid and not against the principal of natural justice as alleged.
23. As the Noticee has infringed the terms and conditions of the license and also the provisions of Excise Act and Rules made there under; therefore, the operation of the distillery has rightly been closed by the Collector and the same is approved retrospectively. There is no fundamental right to trade in liquor and the State has exclusive privilege to trade in liquor. Liquor trade cannot be claimed as a matter of right. I fully agree with the counsel for the Department on this account as well.
24. The Noticee is estopped by its own act and conduct as the directors of the Noticee have admitted in the statements given by them before the Collector (Excise), South Zone-cum-Inquiry Officer that the liquor involved in the case has been managed by them for the purpose of selling the same without any payment of excise levies etc. and also that the holograms fixed on the liquor bottles were also fake and further that they admit their mistake. The Noticee, in view of above facts which have been mentioned by the Collector (Excise), South Zone in his report and recommendations, cannot be granted any relief of compounding the offences, as prayed for. The offences of the Noticee are grave enough to be compounded under the relevant provisions as such. The Noticee is not entitled to any relief and the present arguments of the Noticee are devoid of any merit. Therefore, it has become imperative to proceed under Section 29(b) and (c) of the HP Excise Act, 2011, in the matter, and

accordingly, in view of discussion in paras 18 to 25 above, the license, in Form D-2, of the Noticee firm M/s K. M. Distillery Pvt. Ltd., Parwanoo, District Solan, (HP), along with such other licenses as has/have been granted by authorities below, for contravention of the provisions contained under section 29 clause (b) and (c) of the HP Excise Act, 2011, in exercise of the powers contained under section 29 and 30 of the Act *ibid*, are ordered to be suspended till 31-03-2022.

25. In view of orders passed, hereinabove, the Collector (Excise), South Zone, Shimla to ensure compliance of provisions contained under section 30 (2), 31 and 71 of the HP Excise Act, 2011.

All concerned be informed accordingly. Record file and case record be consigned to respective places.

ANNOUNCED IN OPEN COURT ON 29-12-2021.


Financial Commissioner (Excise)
Himachal Pradesh

Endst. No. STE/FC (Excise)-Reader/2021-22/ 37348-352 Dated: 30-12-21

Copy to:

1. M/s K. M. Distillery Pvt. Ltd., Parwanoo, District Solan, (HP).
2. The Additional Commissioner, State Taxes & Excise, Gr-I-cum-Collector (South Zone), Himachal Pradesh, Block No. 29, SDA Complex, Shimla-9 for compliance of the directions given in the orders above.
3. Dy. Commissioner (ST&E), District Solan (HP).
4. Shri Kulwant Singh Gill, Advocate for the Noticee.
5. Shri Rakesh Rana, Deputy Director (Legal) Legal Cell (HQ).

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