

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

Appeal No.: 26 of 2021-22  
Date of Institution: 28-03-2022  
Date of Order: 29-03-2022

**In the matter of: -**

1. M/s Neeraj Singh & Co. Licensee L-14, Unit No. 127, Naretu, Tehsil Shahpur, Distt. Kangra, H.P.
2. M/s Manoj Thakur, Licensee (L-14) Unit No.35 (Dadiyara), District Chamba (HP).
3. M/s Neeraj Singh & Co. Licensee (L-14) Unit No.-39, Kalhel, District Chamba (HP).
4. M/s Manoj Thakur (L-14) Unit No.-40, Nakror, District Chamba (HP).
5. M/s Virender Singh (L-14) Unit No.-47, Surgani, District Chamba (HP).

Through Partners Neeraj Singh, Varinder Singh and Manoj Thakur.

..... **Appellants**

**Versus**

1. Collector (Excise), North Zone, Palampur, District Kangra (HP).
2. Deputy Commissioner State Taxes & Excise, Kangra at Dharamshala.

.....**Respondents**

**Present:** 1. Ms Kiran Kanwar, Advocate vice Ms Kiran Dhiman, Advocate for the Appellants.

2. Shri Sandeep Mandyal, Law Officer for the Respondents.

**ORDER**

1. This order shall dispose off an Appeal filed under section 68(2) of the Himachal Pradesh Excise Act, 2011 against the order dated



26.03.2022 passed by the Collector (Excise) North Zone, Palampur whereby the Collector (Excise) North Zone, Palampur has cancelled the L-2/L-14 licenses of Unit No.127 (Rait-Shahpur) M/s Neeraj Singh & Co. of Kangra District, 35 (Dadiyara) M/s Manoj Kumar Thakur, 39 (Kalhel) M/s Neeraj Singh & Co., 40 (Nakror) M/s Manoj Thakur and 47 (Surgani) M/s Virender Singh of Chamba, with immediate effect.

2. The brief facts giving rise to the present Appeal are that the Dy. Commissioner of State Taxes & Excise, Distt. Kangra at Dharamshala submitted his report dated 10.02.2022 to Respondent No.1 regarding the sealing of L-14 Nerti, Circle-II, Kangra on 09.02.2022. The Dy. Commissioner of State Taxes & Excise, Distt. Kangra has also reported that on 21.01.2022, one case of the suspected liquor brand VRV Santra bearing batch No. 62, manufactured by VRV Fools Ltd. was seized by the police team Shahpur and an FIR registered against the offending licensee under Section 39 of the HP Excise Act, 2011. Thereafter, a liquor vend L-14 Nerti was sealed by the ASTEO on 09.02.2022 and notice dated 10.02.2022 was issued to the licensee as well as to the concerned Circle ASTEO by the Respondent No.1. Finally, the Respondent No.1 vide his order dated 18.02.2022 suspended the license of the Appellant firm. The Appellant thereafter filed an appeal before this Court. This Court thereafter vide order dated 24.03.2022 set aside the said order dated 18.02.2022 with the directions to the Respondent No.2 to decide the matter afresh.
3. Meanwhile, during the pendency of the present Appeal, the Appellant also filed one Civil Writ Petition No. 1768/2022 titled as M/s Neeraj Singh & Co. Vs. State of HP & Ors. The Hon'ble High Court vide order dated 28.03.2022 was pleased to direct the Respondent State to decide this statutory Appeal against the order dated 26.03.2022 on or before 02.04.2022.

4. It was argued on behalf of the Appellant that as per notification dated 22.07.2013 only the police officer not below the rank of Assistant Sub-Inspector in the police department shall have the power to investigation/enquire, search and seizure under the Excise act. Whereas in the present case the investigation, search and seizure has been made by the Head Constable, thus the alleged seizure is not seizure in the eyes of law. It was further argued on behalf the Appellant that mere registration of FIR does not prove the guilt of the accused and shall be presumed to be innocent unless proven guilty by the competent Court of Law. It was also argued on behalf of the Appellant that the order of the Collector is null and void as he has no jurisdiction to pass any order with respect to the vends situated at District Chamba.
5. Per contra, the Ld. Counsel for the Respondent stated that the proceedings before the Hon'ble Court is required to be adjudicated on the basis of preponderance of probabilities and the Respondents are not required to prove the violation beyond reasonable doubt. It was also argued on the behalf of the Respondent that even investigation, search and seizure even if carried out by the Head constable does not affect the proceeding of the present case as this Ld. Court has only to decide about the factum of violations of the terms and conditions of the licenses.
6. I have heard both the parties and 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 26.03.2022 passed by the Collector (Excise)-cum-Jt. Commissioner of State Taxes & Excise, North Zone, Palampur is sustainable under Law.
  - ii. Final order
7. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-



Point No. (i) Yes

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

REASONS FOR FINDINGS.

8. As far as the contention of the Ld. Counsel of the notice/licensee that the contents of the FIR cannot be treated as true and correct is concerned, no doubt that the contents mentioned in the FIR cannot be construed to be conclusive evidence. Rather, the basic purpose of registration of FIR is to set the criminal law into motion and the veracity of its contents are to be tested during the course of trial before the Criminal Court after the completion of investigation and submission of police report.

9. As far as the present proceedings are concerned, the licenses of the Appellants were cancelled under Section 29 of the HP Excise Act.

Section 29 empowers the authority granting the license to cancel it. The Clause (b) and clause (c) of 29 provides that:

***“29. Power to cancel or suspend licenses etc.—Subject to such restrictions as the State Government may prescribe, the authority granting any lease, license, permit or pass under this Act, may cancel or suspend it—***

***(a) .....***

***(b) if any excise duty or countervailing duty or, other fee payable by the holder thereof is not duly paid; or***

***(c) in the event of any breach by the holder of such lease, license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass” or***

It appears from the record that all the partners namely S/Shri Neeraj Singh, Virender Singh and Manoj Thakur of the Appellants firm in question i.e. M/s Neeraj Singh & Co are arrayed as co-accused in FIR No. 08/2022 dated 21.01.2022 under Section 39(1) (a) of HP Excise Act and under Sections 308,486,420,467,468, 471 and 120B IPC and investigation of this case is still undergoing. It is also evident from the record that in continuation of the investigation

process the liquor vend L-14 Nerti locked by the ASTEO and statement of the salesman Sh. Vyom Singh was also recorded. The salesman admitted before the ASTEO that the police has taken into possession the one case of VRV Fools from L-14 Nerti belonging to the Appellant. He also admitted that the police has taken into possession the said liquor and no liquor of VRV Fools Ltd. Marka (brand) is manufactured in the State of Himachal Pradesh. The statement given by the said salesman is sufficient to corroborate the contents of the FIR for the disposal of the proceedings under Section 29 of the HP Excise Act. Furthermore, the present proceedings under Section 29(b) and (c) are independent and separate from the proceedings initiated after the registration of FIR and the same are required to be adjudicated upon the preponderance of probabilities and not on the basis of proof of facts beyond reasonable doubt, as required in criminal case.


Thus, the registration of FIR and thereafter the Appellants being arrayed as co-accused of serious offences under the provisions of Indian Penal Code which admittedly resulted into the death of as many as seven persons by consuming VRV Fools coupled with the admissions made by the salesman Shri Vyom Singh of the Appellant firm qua the recovery of VRV Fools Ltd. From the L-14 Nerti vend is sufficient to hold that the Appellants have violated the terms and conditions of the license which in turn invoke under Section 29 (b) and (c) of the HP Excise Act.

10. As far as the contention with regard to the Respondent no.1 with respect to District Chamba is concerned, the Clause 2 of the Himachal Pradesh Excise Power and Appeals Order, 1965 empowers the Respondent No.1 to discharge the functions of a Collector under the HP Excise Act in respect of Distt. Chamba amongst other Districts.



11. As far as the contention of the Appellant qua the seizure by the Officer of the rank of Constable is concerned, this argument may be relevant at the time of ascertain the genuineness and truthfulness of the very initiation of criminal proceedings before the Criminal Court. As far as the present proceedings under Section 29 are concerned, the information qua the seizure of the illicit liquor in contravention of the provision of the Excise Act is sufficient to hold that the Appellant/licensee has violated the terms and conditions of the license and further to invoke action under Section 29 of the HP Excise Act.
12. In view of the discussions made hereinabove, I find no merit in the Appeal and the same is liable to be dismissed and is accordingly dismissed. In view of the dismissal of the Appeal the pending applications are dismissed as having become infructuous. Let all the parties be informed accordingly.

Announced on 29<sup>th</sup> March, 2022.

  
**Financial Commissioner (Excise),  
Himachal Pradesh**

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

Dated: 29.03.2022

Copy for information to:

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5. M/s Virender Singh (L-14) Unit No.-47, Surgani, District Chamba (HP).

6. The Collector (Excise)-cum- Jt. Commissioner, State Taxes & Excise, (North Zone), Palampur, Kangra Himachal Pradesh, 176 061
7. The Addl. CST&E (D), HQ, Shimla-09.
8. Dy. Commissioner (ST&E), District Kangra, at Dharamshala (HP), 176 215.
9. Ms Kiran Dhiman, Advocate for the Appellant.
10. Shri Sandeep Mandyal. Law Officer (Legal Cell) (HQ).

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

Final Order