

## BEFORE THE COMMISSIONER OF STATE TAXES &amp; EXCISE, H.P.,

SHIMLA-09

(Block No.30, SDA Complex, Shimla-09)

Claim No. 02/2023

Date of Institution 06.04.2023

Date of Decision 19.04.2023

## In the matter of :

Sh. Ramesh Chauhan, S/o Rangila Ram, Toll Lessee Garamoura Toll Units, Distt. Bilaspur, Himachal Pradesh, Resident of D-6, Pandav Nagar, Meerut, U.P.

...Claimant

Vs.

State of HP &amp; Ors.

....Respondents

**Claim to refund the amount as eligible in accordance with Condition No. 2.8.1 of the Announcements of Allotments for Lease of Right to Collect Toll by Auction-cum-Tender under H.P. Tolls Act, 1975 in respect of Garamoura Toll Units.**

Present: Sh. Rakesh Sharma, Advocate for the Claimant.

Sh. Sandeep Mandyal, Sr. Law Officer alongwith Sh. Kamal Thakur, ACST&E, Bilaspur, Distt. Bilaspur.

ORDER

1. This order shall dispose of the present claim for refund in respect of Garamoura Toll Units, Distt. Bilaspur. In fact, Sh. Ramesh Chauhan (hereinafter referred to as "Claimant") filed Civil Writ Petition No.977/2023 titled as "Ramesh Chauhan Vs. State of HP & Ors." before the Hon'ble High Court wherein the Claimant has sought the following substantive reliefs:-

*"1. To direct the Respondents 2 to 4 to consider the loss suffered by the petitioner on account of non-movements of trucks and dumpers across toll barriers due to suspension of operations in respect of ACC Cement Plant at Gagaj in Bilaspur district and the Ambuja Cement Plant at Darlaghat in Solan district under Condition Number 2.8.1 of the Announcement of the Allotments for Lease to Right to Collect under H.P. Toll Acts, 1975.*

*b. The respondents be directed to re-compute the liability of the petitioner afresh after considering the losses under Condition Number 2.8.1 of the Toll Announcements.*





*c. That the respondents be directed not to resort corrosive actions under condition No. 2.3.16 of Toll Announcements of 2022-23 for cancellation of toll lease."*

2. The Hon'ble High Court vide its order dated 01.04.2023 was pleased to dispose of the above said CWP No. 977/2023 with the following directions:-

*"3. In the given circumstances, we deem it appropriate to dispose of the instant petition by directing respondent No.2 to treat the instant petition as a claim/appeal and thereafter decide the same in accordance with law, by passing a speaking order, within a period of two weeks from today. Ordered accordingly. Pending application(s), if any, also stands disposed of."*

3. Thereafter, in compliance to the directions issued by the Hon'ble High Court, the present writ petition is treated as claim and accordingly notices (of the present claim) were issued to the Claimant as well as the Respondents. The Ld. Counsel appearing on behalf of the Claimant stated at bar that he does not want to file any additional documents in support of the claim.
4. The Ld. Counsel appearing on behalf of the Claimant contended that the Garamoura Toll Unit consisted of four toll barriers i.e. Garamoura, Kaulanwala Toba, Goalthai and Shailaghora on Bassi-Shri Naina Devi Road was reallocated for the period from 01.12.2022 to 31.03.2023 for the year 2022-23 as the previous lessee has defaulted in the Toll Lease. It was further argued by the Ld. Counsel that dispute arose between the truck operators and manufacturers of the Ambuja and ACC cement companies regarding the transportation charges which resulted into the suspension of the operation in respect of the ACC Cement Plant at Gagaj in Bilaspur District and the Ambuja Cement Plant at Darlaghat in Solan Distt. It was further argued that the aforesaid suspension of the operations resulted into non-movement of trucks and dumpers across toll barriers which resulted into huge loss in toll collections. Thus, the Claimant is claiming refund under





Condition No. 2.8.1 of the Announcements of the Allotment for Lease of Right to Collect Toll under HP Tolls Act, 1975.

5. The Claimant has also mentioned the comparative tabulation of claims and liabilities as under:

- a) Liability & Recommended Claims as per CWP 760/2020-Govindghat Toll Barrier.

Year	Liability (Rs.)	Refund as per 2.8.1 Condition (Rs.)
2019-2020	0	13,71,220
2021-2022	0	23,85,765
December, 2022	62,32,000	1,08,65,520
January, 2022	62,32,000	14,03,463
Total	1,24,64,000/-	1,60,25,968
Excess Deposit		35,61,968/-

- b) Liability and claims Garamoura Toll Barrier as on 31.01.2023 due on 16.02.2023

Year	Liability (Rs.)	Claims as per 2.8.1 Condition (Rs.)
December, 22	23,93,966	44,95,000
January, 23	36,32,000	44,95,000
Total	66,25,966	89,90,000
Excess Claim		23,64,034

6. As far as the liability and recommended claim as per CWP No. 760/2023-Govindghat Toll barrier is concerned, the Hon'ble High Court vide its order dated 01.04.2023 was pleased to direct this Forum to treat the said writ petition as claim/appeal with the further direction to decide the said appeal/claim in accordance with law. This Forum has already decided the claim in respect of Govindghat barrier vide order dated 19.04.2023.

7. In this background, the liability and claim with respect to Garamoura as on 31.01.2023 due on 16.02.2023, only are required to be adjudicated in the present claim. It is evident from the claim submitted as above in tabular form that the claimant himself is admitting a liability amounting to Rs. 66,25,966/- and is claiming refund as per Condition No. 2.8.1 amounting to Rs. 89,90,000/- with respect to Garamoura Toll Barrier.





8. Thus, it is crystal clear from the claim submitted by the Claimant that under the garb of refund he is seeking adjustment by claiming deduction of the liability amounting to Rs. 66,25,966/- from the amount which in fact is sought to be claimed as refund by invoking Condition No. 2.8.1 of the Announcements. Thus, it is crystal clear from the claim submitted by the claimant itself that he has not paid any amount rather the claimant is claiming adjustment of the amount from the liability he has already incurred after making the deduction with respect of the amount which is claimed by him by invoking Condition No. 2.8.1.
9. At the very outset, the claim put forth by the claimant is totally in contravention of Section 10 of the HP Tolls Act, 1975 which provides that:

***"10. Refund.-The Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer in charge of the district either suo-moto or on an application shall, in the prescribed manner, refund to the lessee or any other person, with the prior approval of the Commissioner, any amount of lease money paid by such lessee or person under this Act, if the amount of lease money so paid is in excess of the amount due from him under this Act: Provided that refund shall only be allowed to the lessee in the event of any loss sustained on account of law and order situation, natural calamity or by acts of God or force majeure: Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of one year from the date on which such claim accrues."***

10. The collateral reading of the relief claimed by the claimant vis-a-vis provisions envisaged under Section 10 of the HP Tolls Act shows that the refund so claimed can only be made if the claimant has paid the lease money in excess of the amount due from him under the provisions of the Act. Further, in the present case, the claimant has not paid any amount in excess of the lease amount which the claimant is under obligation to pay under the provisions of the HP Tolls Act vis-a-vis Toll Announcements.





11. The claimant is asking for refund by invoking Condition No. 2.8.1 of the Announcements which provides that:

*"2.8.1 In the event of any loss sustained by the toll lessee on account of law and order situation, natural calamity or by acts of God, and force majeure the Dy. Commissioner of State Taxes & Excise or the Asstt. Commissioner of State Taxes & Excise I/C of the district either suo-moto or on an application made to him, with the prior approval of the Commissioner of State Taxes & Excise, Himachal Pradesh may refund any amount of lease money paid by such lessee."*

Thus, the perusal of the Condition No. 2.8.1 also stipulates refund of any amount of lease money paid by such lessee.

12. Furthermore, "**Refund**" even in common parlance means the act of returning money received previously, therefore, the previous payment of money is a condition precedent for claiming "Refund". Admittedly, in the present case, the claimant is putting forth his case for adjustment of amount by setting of liability already incurred from the amount purported to have been calculated as refund in terms of Condition No. 2.8.1 which is otherwise legally impermissible as per Section 10 of the HP Tolls Act vis-à-vis Condition No. 2.8.1 of the Announcements.
13. As far as the sustainability of the claim on the basis of the suspension of operation by the manufactures of cement companies are concerned, it is admitted fact that the Claimant has participated in the bid for allotment of lease right to collect toll by auction-cum-tender after fully understanding the terms and conditions of the Announcements voluntarily and out of his own free will and volition.
14. Significantly, the Claimant under the garb of the suspension of operations by the manufactures of the cement companies etc. is projecting as if the Toll lease of Garamoura Toll Unit was allotted in favour of the Claimant only in respect of Trucks and dumpers passing through the said barrier(s). However, the terms and





conditions envisaged in the Announcements is also with respect to the Goods vehicles mentioned in the Schedule-II of the Announcements which also includes Small Goods Vehicles, Passenger Vehicles, Small Passenger Vehicles, Private Vehicles, Tractor as well as Motor Rickshaw etc. There is not even a single averment in the present claim qua the quantum of movement of vehicles crossed/passed through Garamoura Toll Unit other than the trucks and dumpers. Furthermore, no comparative data of pervious year(s)/month(s) qua the passing off the vehicles from Garamoura Toll Unit has been submitted by the Claimant.

15. As far as Force Majeure is concerned, Clause 2.8.1 of the Announcements deals with the situation where a loss is sustained by the Claimant on account of law and order situation, natural calamity or by acts of God and Force majeure. In fact, Force Majeure Clause triggers when extraordinary circumstances exist. Significantly, it is evident from the record that the Claimant himself out of his own free will and volition offer to run the Garamoura Toll Unit on Actual Collection basis. Thus, mere suspension of operations by the cement companies on account of some dispute between the truck operators and the manufactures does not warrants the invocation of the force majeure especially when the claim for refund so submitted is silent about the movement of other vehicles passing through the aforesaid toll unit and more significantly the willingness of the claimant to run the aforesaid toll unit on actual collection basis.

16. Furthermore, it is settled law that the Force majeure cannot be invoked just because the contract allegedly became financially and commercially onerous or difficult to perform. Therefore, the Force Majeure clause is not applicable in the present case.



17. The Claimant is asking for refund by invoking Condition No. 2.8.1 of the Announcements which provides that:-



***“2.8.1 In the event of any loss sustained by the toll lessee on account of law and order situation, natural calamity or by acts of God, and force majeure the Dy. Commissioner of State Taxes & Excise or the Asstt. Commissioner of State Taxes & Excise I/C of the district either suo-moto or on an application made to him, with the prior approval of the Commissioner of State Taxes & Excise, Himachal Pradesh may refund any amount of lease money paid by such lessee.”***

Thus, it is crystal clear from the above said Condition no. 2.8.1 that the Claimant must have sustained loss on account of any of the circumstances mentioned in the said condition for claiming any refund of any amount of lease money. Therefore, sustaining of loss is co-related and has to be read in conjunction with the claim of refund of any amount of lease money.

In other words, sustaining of loss (on account of any of the circumstances specified in Condition No. 2.8.1) is a condition precedent for claiming of refund of any amount of lease money and for invoking condition no. 2.8.1; the loss must have been sustained by the lessee (Claimant).

18. This fact is further fortified from the Condition No. 2.8.2 of the Announcements which provides that the Dy.CST&E after making appropriate inquiry in the matter (on the basis of claim as well as all the papers filed by the Claimant) and if it is concluded that the Toll Lessee has really sustained some loss on account of circumstances mentioned in the Condition No. 2.8.1 send the case along with his recommendations to the Commissioner, State Taxes & Excise through Zonal Head for prior approval of refund.
19. Thus, in the present case, the Claimant is simply claiming adjustment under the garb of Condition No. 2.8.1 without computing any loss, whatsoever and unless and until the business income/revenue is not determined, no loss can be computed.

As a matter of fact, for computing loss, the following points/steps ought to have been taken into consideration:-





**Firstly**, the addition of all the income of the month(s)/year(s), as the case may be;

**Secondly**, the addition of all the expenses of the month(s)/year(s) as the case may be;

**Lastly**, the calculation of the difference by subtracting total expenses away from the total income. Thereafter, the net result would be profit or loss.

Thus, the manner in which the Claimant is seeking refund is not only in contravention of Section 10 of the HP Tolls Act, Condition No. 2.8.1 as well as 2.8.2 of the Announcements but also contrary to the general principles for determining/computing loss; hence the same is not legally sustainable.

21. Furthermore, the Claimant is also seeking the following relief:-

***“b. The respondents be directed to re-compute the liability of the petitioner afresh after considering the losses under Condition Number 2.8.1 of the Toll Announcements.”***

The Condition No. 2.8.2 also provides that :

***“2.8.2 For obtaining the above relief the affected toll lessee will file a claim before the Dy. Commissioner of State Taxes & Excise/ Asstt. Commissioner of State Taxes & Excise I/C. of the district along with all papers as may be necessary to project his cause, within a period of one year from the date on which such claim accrues. The Dy. Commissioner of State Taxes & Excise, In-charge/ Asstt. Commissioner of State Taxes & Excise I/C will make appropriate inquiry in the matter and if it is concluded that the toll lessee has really sustained some loss on account of circumstances mentioned in condition 2.8.1 above, he will send the case along with his recommendations to the Commissioner of State Taxes & Excise, Himachal Pradesh through the Addl./Joint Commissioner of State Taxes & Excise of the zone concerned for prior approval of refund.”***

Thus, it is crystal clear from the above said Condition No. 2.8.2 that the onus lies upon the Claimant to project his case and file all the papers as may be necessary in support of the claim. In other words, the burden of proof lies upon the Claimant to prove





his claim for refund. Thus, the manner in which the Claimant has asked for the relief clearly shows that the Claimant has failed to discharge the onus lies upon him and wants the other side to prove his case which is against the spirit of aforesaid Condition No. 2.8.2.

22. As far as the decision rendered in CWP No. 803/2010 (Annexure P-9) is concerned, no benefit of the same can be extended to the Claimant as the aforesaid decision rendered by the Hon'ble High Court was not conclusive in as much as only directions have been issued to the Respondents to decide the representation of the Petitioner therein on merits, in accordance with Announcements.
23. In view of the discussions made hereinabove and after going through the facts and circumstances brought to my notice in each case (as required under Condition No. 2.8.3 of the Announcements), I am of the considered opinion that it is not necessary to give approval to refund the amount and the same is liable to declined and is accordingly declined and the claim filed by the Claimant is hereby rejected. In view of the decline of the approval and rejection of the claim, the Jt. CST&E-cum-Collector (CZ), Mandi is directed to proceed against the Claimant in accordance with law. Let the copy of this order be supplied to all concerned. File after completion be consigned on record room.

Announced on 19<sup>th</sup> Day of April, 2023



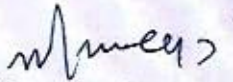
A handwritten signature in black ink, appearing to be "Yunus".

**Yunus, I.A.S.**  
**Commissioner of State Taxes & Excise**  
**Himachal Pradesh**



Indst. No: STE-Reader/CST&E/2023/1117-21 dated: 19-04-2023  
Copy is forwarded to:-

- 1) Jt. CST&E (CZ), Mandi, H.P. .
- 2) Dy.CST&E, Distt. Bilaspur, H.P.
- 3) Sr. Law Officer, Legal Cell.
- 4) Sh. Ramesh Chauhan, S/o Rangila Ram, Toll Lessee Garamoura Toll Unit, Distt. Bilaspur, Himachal Pradesh, Resident of D-6, Pandav Nagar, Meerut, U.P.
- ✓ 5) IT Cell, O/o CST&E, H.P., Shimla-09.



Reader to

Commissioner of State Taxes & Excise  
Himachal Pradesh