

**BEFORE THE FINANCIAL COMMISSIONER (EXCISE),
HIMACHAL PRADESH**

Appeal No:-17/2021-22

Date of Institution: 18-02-2022

Date of Order: 22-02-2022

In the Matter of:-

M/s Vishal Thakur Harish Kumar, Licensee (L-2, L-14) Unit No. 30 Sulgwan comprise of two vends namely L-14 Sulgwan, L-14 Mundkhar alongwith Sub-Vend Chhab, District Hamirpur through its partner Shri Vishal Thakur S/o Shri Kushal Singh Thakur, R/o Village Bohni, PO Bohni, Tehsil Hamirpur, District Hamirpur.

...Appellant

Versus

1. Collector Excise (Central Zone) Mandi, District Mandi, Camp at Hamirpur.
2. Deputy Commissioner State Taxes and Excise, Hamirpur, District Hamirpur (HP).

...Respondents

Parties Represented by:

1. S/Shri Ashok Kumar Chaudhary and M.A. Safee, Ld. Advocates for the appellant.
2. Shri Sandeep Mandyal, Law Officer for the State.

ORDER

Under Section 68(2) of the Himachal Pradesh Excise Act,
2011

This appeal has been preferred by the Appellant M/s Vishal Thakur Harish Kumar Licensee (L-14) Unit No-30 Sulgwan,



Hamirpur through its partner Sh. Vishal Thakur against the order dated 14-02-2022 passed by the Collector (Excise) Central Zone Mandi, Camp at Hamirpur whereby Licenses in Form L-14, for the year 2021-22, issued in favour of the Appellant-firm has been cancelled by the Collector under section 29 of the HP Excise Act, 2011. Feeling aggrieved by the said order dated 14.02.2022, the Appellant is in appeal before this Court.

The parties were initially issued notice of appearance for 23-02-2022 in the matter, but, on application from the appellant for an early hearing, this case was preponed and taken up for hearing on 21-02-2022 and is also heard today on 22.02.2022.

It was argued on behalf of the Appellant that the impugned order has been passed merely on the basis of an FIR No. 10/2022 dated 24.01.2022 registered against one Sh. Harish Kumar who is one of the partners of licensee/firm/Appellant. It was further argued that no presumption of truth attached to the FIR which is not a substantive piece of evidence and its truthfulness required to be ascertained during the course of the trial. The Ld. Counsel for the Appellant relied upon the judgment delivered by the Hon'ble Supreme Court: (2021) 5 SCC 543 (Achhar Singh Vs. State of Himachal Pradesh) and



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(2021) 6-SCC 116 (Guru Dutt Pathak Vs. State of Uttar Pradesh). It is further argued that the impugned order has been passed without affording the Appellant the opportunity of being properly heard. It was further argued that the Appellant has submitted before the Ld. Collector that the name of the Harish Kumar, who is one of the partners of the Appellant firm be deleted in view of the Clause 25 of the Excise Policy and the present Appellant who is another partner of the licensee/firm be allowed to operate the unit. It is further argued that the Appellant is ready and willing to deposit fee as per the policy for that purpose.

Per contra, it is argued on behalf of the State that the Appellant firm has violated the terms and conditions of the license in as much as the FIR has been registered against one of the partners of the firm. The mere seizure of unlawfully manufactured liquor as well as the factum of selling/storing the class of liquor other than permitted by the license issued in favour of the Appellant-firm is sufficient to hold that the Appellant firm has violated the terms and conditions of license.

It was further argued that since, an FIR has been registered against one of the partners of the firm, therefore as far as the proceedings before the Collector (Excise) as well as the



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disposal of present appeal are concerned, all the partners are jointly and severally liable for all the acts of the firm done during the subsistence of the partnership. It was further argued that the proceedings initiated by the Collector under Section 29 (b) and (c) which culminated into filing of the present appeal is independent and separate from the registration of FIR and its subsequent adjudication by the Court of law. The Ld. Counsel for the State relied upon the judgment delivered by the Hon'ble High Court of Delhi in W.P.(C) 4760/2014 & CM APPL. No.9475/2014 titled as Deepak Hooda Vs. Excise Commissioner & Anr.

I have heard both the parties & 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 dt. 14.02.2022 passed by the Collector (Excise) Central Zone, Mandi, camp at Hamipur is sustainable under Law?

ii. Final order.

6. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-



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Point No. (i) Yes

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

REASONS FOR FINDINGS.

1. As far as the contention of the Ld. Counsel for the Appellant that the contents of the FIR cannot be treated as substantive evidence and law relied upon to that effect is concerned, no doubt that the contents mentioned in the FIR cannot be construed to be substantive 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. However, the Collector (Excise) has issued notice to the Appellant/firm under Section 29 (b) and (c) of the HP Excise Act, 2011. In fact, the Appellant-firm is possessing L-14 license (Unit No.30) which was issued to him by the Collector (Excise).



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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

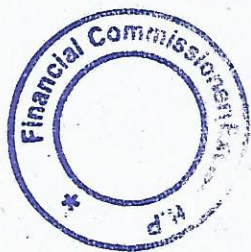
(c) in the event of any breach by the holder of such lease, license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass”
or

2. It is evident from Section 29 that the license can be cancelled by the authority empowered to grant it on the breach of the conditions of the said license. The registration of the FIR against the one of the partners of the Appellant-firm and the possession and seizure of unlawfully manufactured liquor from one of the partners of the Appellant-firm and the fact that the said partner was also found selling/storing class of liquor other than permitted by the license issued in favour of the Appellant is sufficient to hold that the



Appellant-firm has violated the terms and conditions of the license.

3. The Appellant-firm is under statutory obligation to take proper care and caution and act in accordance with the terms and conditions of the license. The Appellant has neither shown any circumstance nor incidence, whatsoever as to why the police is having an ill-will or enmity so as to falsely implicate one of the partners of the Appellant-firm.
4. The proceedings before the Collector (Excise) under Section 29(b) and (c) are independent and separate 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 seizure of unaccounted liquor from one of the partners of the firm is sufficient to hold that the Appellant-firm has violated the terms and conditions of the license.
5. As far as the contention of the Appellant qua the deletion of the name of the partner who was one of the accused in the FIR in view of Clause 25 of the Excise Policy and the present Appellant be continued to operate the unit is concerned, in my opinion the same is nothing but an abuse of process of law in as



much as it cannot be allowed in a partnership firm wherein a FIR has been registered against one of the partners of the firm which also led to the breach of the terms and conditions of the license and other partner is allowed to run/operate the same unit at the same time.

6. As far as the disposal of proceedings initiated under Section 29(b) and (c) vis-a-vis the present appeal are concerned, it is settled law that the relationship of Partnership arises from a contract and not from status and every partner is liable jointly with all the other partners and also severally, for all the acts done while he is a partner. The Clause 25 of the Excise Announcements cannot be invoked in the present facts and circumstances of the case especially when the Appellant-firm has violated the terms and conditions of the license and an FIR has been registered against one of its partner.
7. As far as the contention of the Appellant regarding non affording of opportunity of being heard is concerned, the perusal of the record shows that a reply has been submitted by the Appellant before the Collector (Excise), before the passing of the



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impugned order which itself falsifies the contention of the Appellant.

Point / Final order

8. For the aforesaid reasons recorded here-in-above, while discussing the point no (i) and the peculiar facts and circumstances of the case especially the fact that the proceedings initiated under Section 29 (b) and (c) of the HP Excise Act are separate and independent from the proceedings initiated after the registration of the FIR vis-a-vis the standard of proof required, there is no merit in the appeal and the same is liable to be dismissed and is accordingly dismissed.
9. Let the copy of this order be supplied to all concerned. In view of the disposal of the appeal, the application for stay is dismissed. The file after due completion be consigned to record room.

Announced on 22th February, 2022.



**Financial Commissioner (Excise)
Himachal Pradesh**

Endst. No. DoSTE/FC (Excise)-Reader/2021-22/4895⁴⁹⁰⁰ Dated: 22.02.2022

Copy for information to:

1. M/s Vishal Thakur Harish Kumar Licensee (L-2, L-14) Unit No-30, Sulgwan, Hamirpur, 176 044.
2. The Collector (Excise)-cum- Jt. Commissioner, State Taxes & Excise, (Central Zone), Mandi, Himachal Pradesh, 175 001.
3. The Addl. CST&E (D), HQ, Shimla-09.
4. Dy. Commissioner (ST&E), District Hamirpur, (HP), 177 001.
5. S/Shri Ashok Chaudhary and M.A. Safee, Advocates for the Appellant.
6. Shri Sandeep Mandyal. Law Officer (Legal Cell) (HQ).


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