

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

Excise Case No.: 15 of 2021-22

Date of Institution: 10-02-2022

Date of Order: 18-02-2022

In the matter of:-

State

Versus

M/s Yamuna Beverages Pvt. Ltd.
(D-2A and B.W.H.2 Licensee, Year 2021-22)
14, Nariwala, Rajban Road, Paonta Sahib,
District Sirmour Himachal Pradesh 173 025

Parties Represented by:

1. S/Shri Rakesh Rana, Ld. Deputy Director (Legal) and Sandeep Mandyal, Ld. Law Officer for the State.
2. Shri Abhishek Sharma, Ld. Advocate for the Noticee/Licensee.

ORDER

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

1. This order shall dispose of the Proceedings initiated in pursuance to the issuance of Notice under **section 29 (b) and (c)** of the HP Excise Act, 2011, to above said M/s Yamuna Beverages, 14, Nariwala, Paonta Sahib, District Sirmour, Himachal Pradesh (D-2A, B.W.H.2 Licensee) (herein after referred to as noticee/licensee).
2. The brief facts giving rise to the initiation of the present proceedings are that the Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ) Shimla was directed to conduct an inquiry of M/s Yamuna Beverages, 14, Nariwala, Paonta Sahib, District Sirmour, Himachal Pradesh after the registration of an FIR No. 06/2021 dated 16.10.2021 under Sections 420, 467, 468, 471, 120 IPC and Section 39(1)(a) of the HP Excise Act registered by PSV and ACB Una. As a matter of fact, the vigilance team intercepted one truck bearing No. HP-17E 1679 at Hoshiarpur road Lalsinghi which was found to be transporting 900 cases of country Liquor Himachal No.1, Santra. During interrogation the driver of the truck



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produced one permit no. 11310213243834 dated 13.10.2021 of M/s Yamuna Beverages Pvt Ltd. and also one pass bearing no. 11410213482502 dated 14.10.2021 which was later upon inquiry, found to be illegal. The Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ) Shimla vide letter no. EXN-(SZ)-Report-2021-22-461 dated 10.02.2022 submitted detailed inquiry report with respect to the above said bottling plant.

3. The Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ) Shimla has found the contravention of the provisions of Sections 43 and 44 of Himachal Pradesh Excise Act, 2011, Punjab Distillery Rules 1932 (as applicable in Himachal Pradesh), H.P. Liquor License Rules, 1986 and also the contravention of the Condition of the Form D-2A and B.W.H.2 licenses. Thereafter, Collector (Excise)-cum-Addl. Commissioner State Taxes and Excise (SZ) Shimla recommended for suspension/cancellation of noticee's licenses under Section 29 (b) and (c) of the Himachal Pradesh Excise Act.
4. The notice dated 10.02.2022 under Section 29 (b) &(c) of HP Excise Act was issued to the noticee/licensee for filing reply in the matter on 14.02.2022. The said notice was duly served upon the noticee/licensee. The noticee/licensee submitted the reply to the aforesaid show cause notice wherein it was averred that the inquiry has not been conducted in accordance with law and the same is only based on the contents of FIR which is not a substantive piece of law and the truth and veracity of the FIR is yet to be adjudicated upon by the Competent Court of law. The counsel appearing on behalf of the State filed rejoinder to the said reply wherein it was averred that the proceedings initiated under Section 29(b) and (c) are separate and independent.
5. It was argued on behalf of the noticee/licensee that the inquiry has not been conducted in accordance with law and is based only upon the contents of the F.I.R which is not a substantive piece of evidence and same cannot be used for initiating present proceeding against the noticee/licensee. The Ld. Advocate on behalf of noticee/licensee further submitted that the matter is still under investigation and the truth and veracity of the contents of F.I.R are still in the nature of allegations and the same are yet to be adjudicated upon by the competent court of law and therefore the contents of F.I.R or the statement made



to the Police during investigation are not admissible and accordingly the same cannot be made basis for initiating any inquiry or taking any action on the basis thereof, for it is a settled principle of law that every person named in the F.I.R is to be presumed innocent unless his guilt is proved beyond reasonable doubt. It was further argued that the company or any of its directors is not directly or indirectly involved in the commission of alleged offences mentioned in the F.I.R in as much as no parallel proceedings on the basis of F.I.R can be initiated in the name of inquiry based upon the contents of the F.I.R and statement made by the accused person to the Police. The initiation of the inquiry under reference is per se unsustainable and contrary to law and therefore the present proceedings deserves to be dropped.

6. It was further argued by the Ld. Advocate that the Inquiry Officer has mainly relied upon the statements of the accused persons made by them during the course of the investigation to the police officials which under law are not admissible and cannot be used against the company as such drawing any conclusion on the basis of such statement has the effect of vitiating the inquiry report as submitted to this Ld. Court. He further pleaded that the Ld. Inquiry Officer has proceeded on the basis of pre conceived notion that the F.I.R has been registered against the company which is evident from the notice dated 19-01-2022, inquiry report as well as the present notice where a specific mention of lodging of the F.I.R and the seizure of articles have been mentioned to be belonging to the company and further reference has been made to the statement of the driver of the truck to the effect that he has given the statement to the police authorities that the consignment belongs to the company which facts are also evident from Para 3(a) to (c) of the show cause notice under reply which shows that at first instance the enquiry officer has taken it to be an established fact that the F.I.R has been lodged against the company which is legally and factually incorrect and therefore the inquiry as conducted is not based upon independent evaluation of the facts. The Ld. Counsel for the noticee/licensee further argued that Sh. Ajay Grover was not the authorized signatory of the company at the time of registration of FIR as his authorization has been withdrawn by the board resolution of the company dated 12.10.2021.



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7. Per contra, S/Shri Rakesh Rana, Ld. Deputy Director, Legal Cell, and Sandeep Mandyal, Law Officer for the Department argued that the registration of FIR against the noticee/licensee clearly shows that the noticee/licensee violated the terms and conditions of license. It was further argued that the inquiry conducted by the Collector-cum-Addl. Commissioner (SZ), itself shows that the pass no. 11410213482502 dated 14.10.2021 has not been issued by the concerned ASTEO and this fact is further fortified from the fact that it has not been found mention on the departmental portal. It was further argued that the permit No. 11310213243834 dated 13.10.2021 and pass No. 114102138482502 dated 14.10.2021 have not been issued by the department as the last permit no. 11210213243834 and pass no. 11310213482502 issued in favour of M/s Yamuna Beverages against which the consignment was dispatched consisting of 900 cases of county liquor to L-13 belonging to one M/s Durga Enterprises and the said consignment was duly received by said licensee at Una and thereafter the said permit has already been cancelled as it is also evident from the endorsement made on the said permit, itself. It was further argued that keeping in view the aforesaid facts, the arguments made by the noticee/licensee that the inquiry is only based on the contents of the FIR is contrary to the factual position and is therefore legally unsustainable.

8. It was further argued that the proceedings initiated under Section 29 (b) and (c) are 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 titled as Deepak Hooda Vs. Excise Commissioner & Anr. It was further argued that the standard of proof in both the proceedings are totally different in as much as the burden of proving the contents of the FIR is always on the prosecution whereas in the present proceedings the burden of proof is on the noticee/licensee and onus lies upon the noticee/licensee to prove that he has not violated the terms and conditions of the license(s) in any manner and the factum of the seizure of 900 cases of country liquor without any valid document is sufficient to hold that the licensee/noticee has violated the terms and conditions of the license.

9. It was further vehemently argued by the counsel for the state that the notice/licensee did not show or pleaded even a single fact to show as to why the



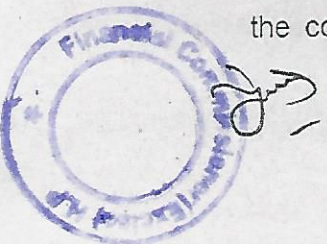
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FIR has been registered against the licensee/noticee or the police authorities are either carrying any ill will or inimical to the noticee/licensee. It was further argued that the noticee/licensee is a habitual offender in as much as the department earlier also detected three cases of serious violations committed by the licensee/noticee and hefty amount in shape of penalty/levies have been imposed upon the noticee/licensee and even the Collector (Excise) specifically directed (vide his order dated 02.09.2021) that the operation of the noticee/licensee bottling plant will not be started/operational till the corrections of all fitting of pipes and all other deficiency such as there was no provision for revenue lock (as observed by the detection team), get corrected. It was argued that even till today the noticee/licensee did not rectify those defects and therefore, the licenses issued in favour of the noticee/licensee are liable to be cancelled.

10. I have heard both the parties in the matter. I have carefully gone through the entire record file of the case and history of the noticee/licensee.

11. It is admitted case of the respective parties that an FIR No. 06/2021 dated 16.10.2021 under Sections 420, 467, 468, 471, 120 IPC, and Section 39(1) of the Excise Act has been registered against M/s Yamuna Beverages at the Police Station SV and ACB Una. It is also admitted case of the parties that Ajay Grover the authorized signatory and Sh. Jai Singh ASTEO posted at M/s Yamuna Beverages were arrested after the statement of the driver of the truck who was earlier arrested at the spot.

12. As far as the contention of the Ld. Counsel for the noticee/licensee that the inquiry report has been conducted on the basis of contents of the FIR only, is totally contrary to the factual position emerging from the record in as much as it has come only in the inquiry report that the pass no. 114102138482502 dated 14.10.2021 and permit no. 113102132433834 dated 13.10.2021 which were produced by the driver of the truck at the time of seizure of 900 cases has not been issued by the department which is further fortified from the fact that the last permit no. 11210213243834 dated 12.10.2021 and pass no. 11310213482502 dated 13.10.2021 issued in the name of M/s Yamuna Beverages against which the consignment of 900 case of country liquor L-13 belonging to one Durga



Enterprises were dispatched and same was duly been received by the said licensee and thereafter the said permit already stood cancelled.

13. 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.

14. As far as the present proceedings are concerned, the notice is issued to the noticee/licensee under Section 29 (b) and (c) of the HP Excise Act, 2011. In fact, the licensee/noticee is possessing two licenses. One is D-2A (license for establishment and working of Pot-Still for re-distillation of spirit) and the another is B.W.H.2 (Bonded Ware House).

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

The license D-2A issued in favour of licensee/noticee is governed by the Punjab Distillery Rules (as applicable to the Himachal Pradesh). Rule 9.7(1) which deals with the period of license provides that:

“9.7(1) A license granted under these rules shall be valid for a period of one year from the date of issue unless it is cancelled, determined or surrendered earlier and shall be renewable annually by the Financial Commissioner on the application of



the licensee on payment of an amount of Rs. 75,000 specified in clause (i) of Sub-rule (6) of rule 9.5

Provided that such a license may be cancelled for breach of terms thereof or may be determined by the Financial Commissioner after giving a notice to the licensee."

The Condition No.7 of D-2A license has been incorporated and akin to the aforesaid Rule 9.7(1) provides that:

"If the licensee infringes or causes or permits any person to infringe, any of the conditions of this license, the Financial Commissioner may forthwith revoke and determine this license."

15. However, the license B.W.H.2 issued in favour of the licensee/noticee is governed by Himachal Pradesh Bonded Ware House Rules, 1987. Rule 26 of the said Rule provides that:

"26. If the licensee infringes or abets the infringement of any of the conditions his license, the Joint Excise and Taxation Commissioner/ Deputy Excise and Taxation Commissioner may revoke and determine the license and forfeit the Government the whole or any part of the security deposit;

Provided that if the infringement is of a minor nature, the license may be resorted and the order forfeiting the security may be set aside on payment of a sum not exceeding Rs. 500/-."

The Condition No.8 in BWH-2 license which is akin to the above said Rule 26 provides that:

"8. If the licensee infringe, or causes or permits any person to infringe, any of the conditions of this license, the Joint/Deputy Excise and Taxation Commissioner may forthwith revoke, and determine the license and forfeit the Government the whole or any part of deposit made by the licensee under the Himachal Pradesh Excise Bonded Warehouse Rules."

16. The collateral reading of Section 29(b) and (c) viz-a-viz proviso to Sub-rule (1) of Rule 9.7 of Punjab Distillery Rules as well as the Rule 26 of the HP Bonded Ware House Rules coupled with the conditions envisaged in the respective licenses, itself shows that the license can be cancelled merely on the breach of the conditions of the license.

Though, the inquiry was conducted after the registration of FIR but it is evident from the record that the facts have separately and independently been



inquired by the Collector (Excise) in as much as the Permit No. 11210213243834 and Pass No. 11310213482502 respectively issued in favour of the M/s Yamuna Beverages with respect to 900 cases of country liquor were already received by one M/s Durga Enterprises and the permit and pass produced by the driver at the interception of truck and seizure of 900 cases was found to be illegal especially when the ASTEO specifically stated during the course of inquiry that the said permit and pass have not been issued by the department. Even, the same was not reflecting in the portal.

17. The licensee/noticee is under statutory obligation to take proper care and caution and maintain proper record qua the receipt and supply of the liquor in his distillery. The licensee/noticee nowhere specifically denied that 900 cases of country liquor seized by the police does not belong to him. The noticee/licensee has neither shown any circumstance nor incidence, whatsoever as to why the police is having an ill-will or enmity against him so as to falsely implicate the noticee/licensee.
18. The present proceedings under Section 29(b) and (c) 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.

Therefore, *firstly*, the factum of registration of an FIR and seizure of 900 cases of country liquor;

Secondly, the last permit and pass being issued in the name of noticee/licensee firm against the consignment of 900 cases of country liquor dispatched and received by one M/s Durga Enterprises which in turn, falsifies the permit and pass produced by the driver to the police at the spot ;

Lastly, the failure on the part of the licensee/noticee in the present proceedings to show any document or record whatsoever establishing the fact that the noticee/licensee has taken due care and caution in consonance with the terms and conditions of the licenses and further the factum of the arrest of Officer Incharge of the noticee/licensee's bottling plant and Ajay Grover Authorized signatory of the noticee/licensee firm clearly shows that the licensee/noticee



breached the terms and conditions of the license which in turn, invokes action under Section 29(b) and (c) of the HP Excise Act.

19. As far as the contention of the Ld. Counsel for the noticee/licensee that Ajay Grover is not an authorized signatory of the company as his authorization was purported to have been withdrawn by the board resolution of the company on 12.10.2021 is concerned, the terms and conditions of the license clearly stipulates that in case of the employees/servants of the bottling plant leaving the service of the licensee, prior notice is required to be given to the Inspector who shall in turn inform the Collector regarding the same. It is apparent from the record that the alleged withdrawal of authorization has not been intimated to the department as per the rules. Rather, vide letter dated 02.11.2021, it has specifically been replied to Sh. Ajay Grover that this office has not received any letter qua resignation prior to email dated 16th October, 2021 (wrongly typed as 16th October, 2016). It was further specifically replied that without commenting upon the veracity of the contents of the email (16th October, 2021) which appeared to be highly improbable from the fact that all the three persons have resigned on the same day i.e. 8th October, 2021 for the similar reasons i.e. personal and unavoidable circumstances and the documents returns (within original) with the direction firstly submitted the same to the appropriate authority. The mere intimation qua withdrawal of authorized signatory purported to have been given to the Registrar of Companies does not in any manner construed to be the fulfillment of the requirements provided under the HP Excise Act, Punjab Distillery Rules (as applicable to the State of Himachal Pradesh) as well as the HP Bonded Ware House Rules, 1987.

20. It is also apparent from the record that noticee/licensee is habitual offender in as much as earlier also, the department detected as many as three cases of serious violations committed by the licensee/noticee and hefty amount in shape of penalty/levies have been imposed upon the noticee/licensee.

Not only this, the Collector (Excise) specifically directed (vide his order dated 02.09.2021) that the operation of the noticee/licensee bottling plant will not be started/operational till the corrections of all fitting of pipes and all other deficiency such as provision for revenue lock (as observed by the detection team), are



made/ get corrected. The perusal of the record shows that these deficiencies have not been made good by the licensee/noticee even till today.

21. Keeping in view the facts and circumstances discussed as above especially the noticee/licensee being habitual offender, it is a fit case for cancellation of license D-2A and B.H.W.2 respectively issued in favour of noticee/licensee. Accordingly, in the exercise of powers provided under Sections 29 and 30 of the HP Excise Act, the licenses in form D-2A and B.H.W.2 are hereby cancelled with immediate effect.

22. In view of orders passed, hereinabove, the Collector (Excise), South Zone, Shimla to ensure compliance of provisions contained under Sections 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 THIS 18TH DAY OF FEB. 2022



Financial Commissioner (Excise)
Himachal Pradesh

Endst. No. DoSTE/FC (Excise)-Reader/2021-22/ 4548-4553 Dated: 19.02.2022

Copy to:

1. M/s Yamuna Beverages Pvt. Ltd. (D-2A and B.W.H.2 Licensee, Year 2021-22)
14, Nariwala, Rajban Road, Paonta Sahib, District Sirmour, Himachal Pradesh 173025
2. The Additional Commissioner, State Taxes & Excise, Gr-I-cum-Collector (South Zone), Himachal Pradesh, Block No. 29, SDA Complex, Shimla-9 for compliance and further requisite action in accordance with law.
3. The Addl. CST&E(D), HQ, Shimla-09 for information.
4. Dy. Commissioner (ST&E), District Sirmour, (HP) for information and further requisite action in accordance with law.
5. Shri Abhishek Sharma, Advocate for the Noticee.
6. Shri Rakesh Rana, Deputy Director (Legal) Legal Cell (HQ).

o/c

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