

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 158/2014

**Appeal under section 72
(3) Delhi Excise Act, 2009**

In the matter of :-

M/s Sanco Restaurants

(A unit of Sanco Enterprises Pvt. Ltd.)

Having at 1st Floor, D Block, Aditya Mall

Plot No. 9D, CBD, Shahdara,

New Delhi-110092

...Appellant

Vs

**1. Excise Commissioner, Licensing Authority,
(Restaurants) having office at N Block,
Vikas Bhawan, I.P. Estate, New Delhi.**

**2. Dy. Commissioner, Excise, Licensing
Authority, (Restaurants), Govt. NCT of Delhi
Having office at N- Block,
Vikas Bhawan, I.P. Estate,
New Delhi.**

... Respondents

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 30th JULY, 2015

1. This order shall dispose of the Appeal under Section 72 (3) of the Delhi Excise Act, 2009, filed against the impugned order dated 21.07.2014 in Appeal No. 02/2014 Sanco Restaurant Vs Dy. Commissioner (Excise) Petition No. 10/2014 passed by Commissioner (Excise).

2. Brief facts of the Case:

(1) The appellant is running a restaurant in the name of M/s Sanco's (A unit of Sanco's Enterprises) 1st floor, D-Block, Aditya Mall, Plot No. 9D, CBD Shahdara, Delhi and has taken license for 48 seats cover. A surprise inspection of M/s Sanco's (A unit of Sanco's Enterprises) was conducted by the Assistant Commissioner (Restaurant), on 25.4.2014 and found following discrepancies/deficiencies:

(i) The seat covers were found 71 instead of 48 granted to the licensee.

(ii) The Restaurant has transparent glasses and hence full public view from road. Even the bar is visible from ground floor outside which is violation of Rule 26 of Delhi Excise Rules 2010.

(iii) ESCIMS programme is not being practiced by the licensee as liquor was found at the Bar counter but the scanner was showing at store room.

(2) Thereafter, a show cause notice vide letter dated 05.05.2014 for aforesaid violations in contravention to the Delhi Excise Act, 2009, by the Dy. Commissioner (Excise).

(3) The Appellant in his defence had submitted that the inspection carried out on 25.04.2014 by the Assistant Commissioner (Excise) was only one day after the inspection carried out on 24.04.2014 by the Inspector (Excise) who found no irregularity/discrepancy.

(4) Dy. Commissioner (Excise)/Licensing Authority vide order No. F. 1(1034)/Es/R/L-17/2013-14/223 dated 13.06.2014 found that the appellant has taken license for 48 seats cover while 71 seats cover were found during the time of inspection of Assistant Commissioner (Excise) on 25.04.2014. Hence, differential license fee by making it double and now penalty has been imposed. Appellant has also been imposed fine for having transparent glasses as well as non-functioning of ESCIMS.

4. Thereafter, the Appellant filed appeal bearing No. 10/2014 against the said order of Dy. Commissioner (Excise)/Licensing Authority, before the Commissioner (Excise), where the appellant submitted various inspection memos recorded by the Excise Inspector and he pleaded that on 24.04.2014, his restaurant was inspected by the Excise Inspector and only 48 seat covers were found which had been recorded by the Excise Inspector. Appellant further mentioned that additional covered area of 200 sq. feet is not utilized by the appellant for commercial purposes. The said additional premises is behind the liquor bar and is separate from the

rest of the premises and is for personal use and not for commercial purpose.

5. The Commissioner (Excise) vide impugned order dated 21.7.2014 held that the said additional premises claimed by the appellant who he is contesting to be for personal use, is part of the licensed premises for which license has been granted. The said portion behind the counter where sofas etc. are kept, is the part of the license premises and hence it cannot be said to be for personal use. The Commissioner (Excise) in his order has observed that the inspection made by the Excise Inspector cannot be taken as base when on subsequent date inspection has been carried out by the higher authority which has found more than prescribed seats. Similarly the ground of having transparent glass having full public view from the road as well as non proper functioning of ESCIMS was also not properly contested and hence the same has been established. With this observation, Commissioner (Excise) uphold the order dated 13.06.2014 passed by the Dy. Commissioner.

6. Aggrieved by the said impugned order dated 21.7.2014, the Appellant filed the present appeal under section 72 (3) of the Delhi Excise Act, 2009, before this court. I have heard the submissions of both the parties at length and have also examined the documents placed on record.

7. The appellant's case is mainly on the following ground:

(1) That from the perusal of the Delhi Excise Act, 2010 and Delhi Excise Rules, 2010 in entirety, neither the Act nor the rules provides any Definition Clause pertaining to the "Seat Covers" or "Sofa Covers". Hence finding of the Asst. Commissioner that Sofa Covers and Bar stools are as Seat Covers is erroneous.

(2) That prior to surprise inspection dated 25.04.2014, the Excise Inspector visited the licensed premises on 26.12.2013, 09.01.2014, 19.02.2014, 11.03.2014 & 24.04.2014 and noted the remarks in the Inspection Register that the Appellant Restaurant is having 48 Seat Covers and has complied all the laws, then how is it

possible to conceive a situation where in a span of twelve hours, the seat covers have increased from 48 to 71.

(3) The Respondents have submitted that the impugned order was passed after giving opportunity of hearing to appellant. The additional covered area of 200 Sq. ft. is near the bar and is part of licence premises, therefore it cannot be held for private use.

8. I have heard the submissions of both the parties and considered the written submissions/replies placed on the record. I have found that Appellant has argued that sofas and bar stools cannot be considered as seat covers. I observe that sofas and stools are meant for seating and can very well be used for seating purpose of customers/commercial purpose. As regards the licensed premises cannot be used as office space or for the staff i.e. non commercial purpose. Therefore contention of the appellant is not correct that sofas and stools were being used for non-commercial purpose. Regarding the report given by the Inspector (Excise) prior to 25.4.2014, I am of opinion that previous conduct of appellant or non-detection of discrepancies/deficiencies by the Inspector (Excise) can be taken as ground for absolving the appellant of any present and future violations.

9. In view of above, I find no merit in the present appeal and uphold the order dated 21.07.2014 of Commissioner (Excise). Hence this appeal is dismissed.

10. Pronounced in open court on 30.07.2015.

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**NAINI JAYASEELAN,
FINANCIAL COMMISSIONER, DELHI
30th JULY, 2015**