

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 189/2014

**Appeal under section
72 (3) of 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 12.09.2014 passed by Commissioner (Excise) in the matter of M/s Sanco's Restaurants Vs Dy. Commissioner (Excise)
2. Brief facts of the case are that 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. Appellant was issued a show cause notice dated 23.6.2014 by the Dy. Commissioner (Excise) on the following violations:-
 - (i) During surprise inspection conducted by the Assistant Commissioner (Restaurant), on 25.4.2014, additional area was being used at the 2nd Floor for store of the liquor which is not part of the site plan/seating plan/licence.

(ii) Area Excise inspector in her report dated 22.05.2014 has stated that on inspecting it was found that stock of liquor was also shifted/stored at the 2nd Floor in the area of approximate 9x10 Sq. ft. without any permission of the department.

3. In reply to said Show Cause Notice appellant pleaded that store was shifted at second floor only for three days i.e. 20.05.2014, 21.05.2014 and 22.05.2014, due to summer vacation, the requirement of liquor was increased. Appellant further pleaded that the appellant restaurant had already imposed a penalty of Rs. 4,70,000/-.

4. After considering the Dy. Commissioner (Excise) vide order dated 30.7.2014 held that as per Rule 66(11) read with Rule 154 (2) (42) of Delhi Excise Rules, 2010 fee for additional area is 75% of regular fee for the corresponding license and penalty for using the additional area without the prior permission of the Excise Department. Therefore vide said order dated 30.7.2014, a total penalty of Rs. 4,01,875/-.

5. Appellant filed an appeal before the Commissioner (Excise) against the said order dated 30.7.2014. The Commissioner (Excise) after hearing the matter, vide impugned order dated 8.9.2014 upheld the order dated 30.07.2014 passed by Deputy Commissioner.

6. Aggrieved by the said impugned order dated 8.9.2014, the Appellant filed the present appeal under section 72 (3) of the Delhi Excise Act, 2009, before this court.

7. I have heard the submissions of both the parties at length and have also examined the documents placed on record. The appellant's main ground is that the Respondent/Department has not brought on record any material evidence to show that the

Appellant used the additional premises and shifted the liquor at 2nd Floor. In this regard the respondent has submitted that the Appellant himself has admitted that due to receiving of excess stock of liquor stock was shifted at 2nd floor, which means rule 66 (11) read with rule 154 (2) has been violated, for which the penalty of Rs. 10,000/- and additional fee of Rs. 3,91,875/- have been imposed. As regards providing of opportunity of hearing, it appears from record that the appellant had filed his reply before the Commissioner (Excise) and hearing was also done before the Commissioner (Excise) before passing the impugned order. No other justified ground for his appeal has been given by the appellant in his appeal.

8. In view of above, I find no merit in the appeal, hence dismiss the same

9. Pronounced in open court on 30.07.2015.

-SD-

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