

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 20/2015

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

In the matter of :-

**M/s Punjab Expo Breweries Pvt. Ltd.
356, Patparganj Industrial Estate,
Delhi-110092.**

...Appellant

VERSUS

**The Excise Commissioner Delhi,
L-Block, Vikas Bhavan, I.P. Estate
New Delhi.**

...Respondent

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Order dated 21st January, 2016

1. This order shall dispose of the Appeal under section 72 (3) of the Delhi Excise Act, 2009, filed against the impugned order dated 13.01.2014 in Appeal No. 11/2014 M/s Punjab Expo Breweries Pvt. Ltd. Vs. Dy. Commissioner (Excise), passed by Commissioner (Excise) whereby the Excise (Commissioner) held that "in the impugned order of the Deputy Commissioner (Excise) as the appellant as well as preceding L-1 licensees never followed the due procedure given under Rule 56 of Delhi Excise Rules, 2009 and even then, DC (Excise) allowed, the transfer of stock to the appellant vide order dt. 26.04.2013 and appellant not only failed to transfer the stock within stipulated time and but also failed to intimate the same to the DC (Excise) after expiry of 15 days as required under Rules 56 (b) of Delhi Excise Rules, 2010. Further, the appellant was not even licensee from 01.06.2013 to 10.02.2014. Therefore there appears no merit in the appeal and same is dismissed as devoid of merit".

2. The appeal, reply, rejoinder, impugned order and written submissions were perused and read over during the hearing. The appellant has submitted the following:

2(a) That earlier licences were granted for the year 2011-12 to the holding concern of the Appellant, namely, M/s Tilak Nagar Industries Ltd., wherein the left over stock of Courier Napoleon Brandy and Savoy Club Gin & Fresh Lime was lying. The Appellant, being licensee from

the year 2013-14 applied vide letter dated 07.02.14 to the Assistant Commissioner (IMFL) to transfer the said stock to the Appellant. Similarly another company, namely Patiala Distilleries & Manufacturers Ltd., wherein the Appellant's holding company i.e. M/s Tilaknagar Industries Ltd. had tie up operations with, was also granted licences for Courier Napoleon Brandy for the years 2010-11 and brand of the Appellant's holding company M/s Tilaknagar Industries Ltd., namely Courier Napoleon Brandy, Savoy Club Gin & Fresh Lime was granted licence for the year 2011-12 were also lying for which also the same application dated 07.02.14 for its transfer to the Appellant was moved. Therefore, the part of the approved licensed stock belonged to M/s Patiala Distilleries and Manufacturers Ltd., being the Licensee for the year 2010-11 and the Appellant holding company, M/s Tilaknagar Industries Ltd., being the licensee for the year 2011-12.

2(b) That instead of grant of permission for transfer of the said stock to the Appellant, the Deputy Commissioner (Excise) passed order F No. L-1/82/Ex/IMFL/13-14/229 dated 07.03.14 rejected the application for transferring the stock to the Appellant and directed it to deposit a sum of Rs. 39,02845.91 so that stock of liquor could be destroyed.

2(c) "That the stock of CMB and Savoy Club Gin already lying with previous source, in possession of Delhi Excise Bonded warehouses be allowed to be transferred as appellant could not transfer the same to new source in pursuance of order No. L-1/82/Ex/IMGL/12-13/501 dated 26/04/2013 of Dy. Commissioner, out of which we could transfer one part lying at bonded warehouse of Patiala Distillery Pvt. Ltd. Balance stocks are yet to be transferred. The permission be granted on the basis of earlier precedent wherein permission has been given vide order dt. 26.04.2013 referred above. The decision for destruction of stock will cause great prejudice and loss to the appellant and is against the principal of natural justice. The permission to transfer of the stock will earn revenue to Excise Department as per new excise price structure. The case was heard on 12.11.2014."

2(d) That the Respondent erred in appreciating the correct facts of the matter which is evident from the fact that vide the said order dated 26.04.2013 permission for the transfer of Courier Napoleon Brandy

only was granted and this fact was also mentioned in para 4 in the Ground of Appeal by the Respondent mentioned 'Savoy Club Gin' also which was neither in the order dated 26.04.2013 nor in the grounds of appeal.

Secondly in para (iii) of the order dated 23.12.2014 from serial No. 1 to 5 name of the licensee has been mentioned as 'Punjab Expo' instead of 'Patiala Distilleries and Manufactures Ltd'.

Thirdly in para (ii) at page 2 of the order at two places 'M/s Punjab Agro Industries has been mentioned instead of 'M/s Punjab Expo Breweries Pvt. Ltd'.

Instead of transfer of the said stock to the Appellant, the Dy. Commissioner (Excise) passed order F No. L-1/82/Ex/IMFL/13-14/229 dated 07.03.2014 rejecting the application for transferring the stock to the Appellant and directed it to deposit a sum of Rs. 39,02,845.91/- so that stock of liquor could be destroyed.

2(e) The excise duty has been levied on the liquor which was not fit for human consumption. In para (viii) of the impugned order, the Respondent has himself admitted that the Bond Excise Inspector, in his report dated 12.05.2013, had stated that the stock of liquor lying in the bonded warehouse was unsalable which means that the liquor was unfit for human consumption and so could not be subjected to levy of excise duty because of the following reasons:

"Under rule 152 of the Delhi Excise Rules, 2010 ("the Rules") duty can be levied only on 'excisable articles' and 'excisable article' has been defined in sub-section (24) of section 2 of the Delhi Excise Act, 2009 as any alcoholic liquor for human consumption or any other similar article which the Government may declare to be excisable article"

Rule 60 of the Rules is very emphatic that duty cannot be levied on liquor which becomes unfit for human consumption at the time of import, manufacture or subsequently and it goes to the extent that if duty on such stock had been levied, it would be refunded. Rule 60 if reproduced below :

"60. Refund of duty when liquor is unfit for human consumption :- If the Excise Commissioner is satisfied that any liquor manufactured or imported was not excisable article, being unfit for human consumption at the time of such manufacture, import or subsequently and that duty on such liquor has been paid by the licensee, he shall order the refund of such duty. In case the duty has not been paid, no duty shall be charged on such liquor."

2(f) During the hearing, the counsel for appellant submitted that the impugned order has been passed without application of mind, against the wrong entity, who is neither the owner nor purchaser of the stock, which partly belonged to its parent/holding Company, an independent Corporate entity, when its application for the transfer of stock to the Appellant was rejected, without application of mind and the past precedents and a demand of Rs. 39,02,845.91/- was raised in the form of Excise duty on the un-potable left over stock, without authority of law by the Deputy Commissioner (Excise) and not considered by the Respondent through explained by the Appellant at the time of hearing.

2(g) The demand was raised by the Deputy Commissioner Excise without affording an opportunity of hearing the Appellant since the application was made for transfer of the left over stock of liquor from the holding concern of the appellant to the appellant but the order was passed for the deposit of excise duty that too without issuing the show case notice, which was especially necessary when the order was passed not rejection simpliciter but different than what was asked for.

3. Further Respondent amongst other things has submitted the following:

3(a) That the stock originally belongs to the licensees M/s Patiala Distilleries (had license for the year 2010-11) and M/s Tilak Nagar industries (had licence for the year 2011-12) respectively. Both the companies are holding of M/s Punjab Expo Breweries Pvt. Ltd. as per admission of the appellant.

3(b) The fact that M/s Patiala Industries had sought permission for sale of stock for the brands other than in question and permission was allowed vide order dated 08.12.2011. Similarly, M/s Tilak Nagar

industries Ltd. (2011-12) had sought permission to sell shot whisky & classic whisky and the same was granted permission on 28.10.2011, but he could not sell the same and intimated this on 14.11.2011.

3(c) M/s Punjab Expo Breweries Pvt. Ltd. has got license for 2012-13 and sought permission for transfer of the stock in question on 13.03.2013 from M/s Patiala Distilleries & Manufacturer Ltd m/s Tilak Nagar Industries and the licensee was allowed the same. The brand "Courier Napolian Brandy" was the only approved brand under L-1 License to M/s Punjab Expo Breweries Pvt. Ltd. during the year 2012-13, hence the permission was granted for transfer of only "Courier Napolian Brandy" vide this office order no. F.L1/85/Ex/IMFL/2012-13/501 dated 26.04.2013 under rule 56 (a).

3(d) The appellant did not intimate about the disposal of stocks within 15 days as required under the Rule 56(b) of Delhi Excise Rules, 2010.

3(e) The appellant again sought permission to transfer the stock lying with M/s Patiala Distilleries & Manufacturer Ltd (L-1 Licensee for the year 2010-11) and M/s Tilak Nagar Industries (License for the year 2011-12) on 07.02.2014 which was denied by the Dy. Commissioner (Excise) as the applicant has already been given permission on 26.04.2013 but neither he transferred the stock nor intimated after expiry of 15 days as required under rule 56 (a) & (b) but came after approximately 8 months.

3(f) The then bond inspector Sh. Ravi Parkash in his report dated 12.05.2013 to Dy. Commissioner (Excise) had stated that the stock is unsalable as hologram Nos. of bottles were not matched/tallied with the holograms nos. mentioned informed D-20A with the said I.P. documents.

3(g) Accordingly, penalty of Rs. 10,000/- was imposed on M/s Tilak Nagar Industries by Dy. Commissioner (Excise) on 04.06.2013 under section 51 of Delhi Excise Act, 2009 due to discrepancies in holograms issued to the licensee and pasted on bottles.

3(h) Hence the contention of the appellant that the same is not saleable on account of 'not fit for human consumption' is wrong and as such Rule 60 is not applicable in this case.

3(j) Even in the written submission dated 11.11.20014 filed by the appellant before the Excise Commissioner, it was their case that "the stocks lying in the possession of Delhi Excise bonded warehouses are in good condition and saleable.

3(j) Further the stocks was not so huge which could not have been transferred within 5 days, if the appellant was not able to transfer the stock, then he could have sought more time under rule 56 (b) of Delhi Excise Rules, 2010.

3(k) However, he remained silent for approximately 08 months and reappeared only on 11.02.2014.

3(l) Respondent has also submitted that the appellant has suppressed the material facts from this Court and has failed to reveal the fact that the appellant has sought transfer of stock on 12/3/2013 and permission to the same was granted on 26/4/2013. But the appellant neither transferred the stock nor intimated after expiry of 15 days as required Rule 56(a) & (b) of the Delhi Excise Rules 2010. Thereafter the appellant came after lapse of 08 months, on 7/12/2014 again seeking transfer of stock lying with M/s Patiala Distilleries and Manufactures Ltd. 2010-11 and M/s Tilaknagar Industries Ltd. 2011-12, which was denied by Dy. Commissioner (Excise) as appellant has already been given permission on 26.04.2013.

3(m) Wherein the licensee has to transfer the stock within 15 days and has to intimate within 15 days, if unable to stock and if information is received there are procedure given in Rules 56 (b) (c) provisions for dealing with such stock. If the licensee failed to follow the procedure and failed to intimate the Dy. Commissioner is to order the destruction of the stock under Rule 56 (d) of Delhi Excise Rules, 2010.

3(n) Commissioner (Excise) does not find any infirmity in the impugn order of Dy. Commissioner (Excise) as the appellant as well as preceding L-1 licensees never followed the due procedure given under Rule 56 of Delhi Excise Rules, 2009 and even then, DC (Excise) allowed, the transfer of stock to the appellant vide order dt. 26.04.2013 and appellant not only failed to transfer the stock within stipulated time and but also failed to intimate the same to the DC (Excise) after expiry of 15

days as required under Rules 56 (b) of Delhi Excise Rules, 2010. Further, the appellant was not even licensee from 01.06.2013 to 10.02.2014. Therefore there appears no merit in the appeal and same is dismissed as devoid of merit.

4a. The documents were perused and also oral submissions were considered. From arguments/documents, it is clear that the appellants could not justify why the dues should not be recoverable from them specially when they fail to take due action under Section 56 within 15 days. They also failed to point out under the particular facts of the case, why they were not to be liable to pay levy as purchaser.

4b. The Court has observed that on the one hand appellant has taken plea that stock is not fit for human consumption in the light of the report dated 12.5.2014 of the then Excise Inspector Sh. Ravi Parkash and on the other hand vide his letter dated 11.11.2014 submitted before Commissioner (Excise) claiming the said stock as good condition and saleable. Further during the hearing of case, the court asked the counsel for appellant as to why they sought transfer of stock when the stock is not fit for human consumption and the counsel for appellant replied that they would take the stock back to distillery and make that fit for human consumption.

4c. The pleadings on 11.11.2014 before the Commissioner, Excise by the appellant are that the stock lying in possession of Delhi Excise Bonded Warehouse are in good condition and saleable when juxtaposed to the pleading before this Court, the plea that the stock being unfit for human consumption, therefore was not excisable under Rule 152 of Delhi Excise Rules and Rule 60, are to say the least so contrary that it is difficult to take both as true.

5. The appeal is disallowed.
6. Announce in open court on 21st January 2016.

**(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
21st January, 2016**