

IN THE COURT OF THE FINANCIAL COMMISSIONER,
DELHI

Case No. 66/2014

**Appeal under Section
72 of Delhi Excise Act,
2009**

In the matter of :-

**M/s Colours N Spice Restaurant
A unit of KIC Food Products Pvt. Ltd.
Restaurant Complex,
Asian Games Village, Siri Fort Road,
New Delhi-110049**

Also at:

**29, Hanuman Road,
New Delhi-110001.**

...Appellant

Vs

**1. Deputy Commissioner (Excise)
L & N Block, Vikas Bhawan, I.P. Estate,
New Delhi- 110002.**

**2. Commissioner (Excise)
L-Block, Vikas Bhawan, I.P. Estate,
New Delhi- 110002. ... Respondents**

NAINI JAYASEELAN, FINANCIAL COMMISSIONER

Order dated 31st JULY, 2015

1. This order shall dispose of the Appeal under section 72 of the Delhi Excise Act, 2009, filed against the impugned order dated 10.3.2014 in Appeal No. 02/2014 in the matter of M/s Colours N Spice Restaurant Vs Dy. Commissioner (Excise) passed by Commissioner (Excise).

2. Brief facts of the case:-

(1) That Appellant initially got one license from the Respondent issued to KIC Food Products Pvt. Ltd. Thereafter the Appellant decided to have three segments for offering variety of cuisines to its customers and started cuisines "Tonic" for Continental Food, Collor N Spice for Mughlai and Angithi for

Tandoori items "Tonic" had 87 seat covers, Colours N Spice" had 84 seat covers while "Angithi" had 36 seat covers. Therefore appellant started to pay the separate licence fees for the three units and continued to pay license fee separately for three restaurants till 31.03.2009.

(2) Thereafter, from April 2009 the appellant started to pay the licence fees for one restaurant with 207 seat covers for considering its restaurant as one unit/restaurant. For this, the appellant wrote to the Commissioner (Excise) through letter dated 02.04.2009 requesting the commissioner to allow the appellant to deposit the fees of Rs. 11,34,375/- towards one unit/restaurant with 207 seat covers. The appellant further through letter dated 13.04.2009 also submitted the layout plan for the restaurant. Thereafter the appellant has been paying the licence fees for one unit/restaurant with 207 seat covers through a single T.R.

(3) That the Respondent issued a show cause notice dated 22.11.2013 bearing No. F.1(18)/7/88-99/Ex/L-17/EX/R/733 to the appellant, stating that since the appellant had submitted the health Trade Licence of three different units, along with separate eating house licence and approval of Department of Tourism, hence there were three separate restaurants running, therefore the appellant required to obtain three separate licences instead of single one.

(4) That the appellant in response to said Show cause notice, vide letter dated 20.12.2013 informed the respondent that although the Health Trade Licences and Eating House Licences were issued for three different units, a single excise licence was taken since there was only a single restaurant running and not three independent restaurants. This was established from that fact that:

(a) All the three units are in the form of 3 segments of a sole restaurant and which are in the same boundary wall, and

(b) The units/segments were named differently merely on account of cuisine being served, as Tonic for Continental food, Color N Spice for Mughlai and Angithi for Tandoori items.

5. Subsequently the Dy. Commissioner (Excise) passed the order dated 22.01.2014 bearing No. F.1(18)/7/88-89/Ex/L-17/EX/R/22 which found the reply of the appellant unsatisfactory on three counts :-

1. No explanation has been offered for obtaining three different licences from MCD and Delhi Police.

2. All three Restaurants are three separate entities owned by a single parent company M/s K.I.C. Food Products Pvt. Ltd. and hence single VAT/IT returns is being filed.

3. Excise licence is granted on the basis of Health Trade Licence from MCD and Eating House Licence from Delhi Police and in the event of 3 different licences from MCD and Delhi Police, three different Excise licences need to be issued.

6. That thereafter the appellant filed an appeal before the Commissioner (Excise) on 21.02.2014. The appellant stated that the excise licence was granted on the basis of number of seats and not the number of licences obtained from the MCD or the police department. It was submitted that the restaurant was a single entity and was segregated only for convenience of the customers. However, even after the segregation, the restaurant maintained a common kitchen and liquor storage and bar and that the three units were running from the same premises and they had a single rent agreement. It was submitted that the fact of

filling of single income tax returns and VAT further established that there was a single "independent restaurant" and hence only one licence was required under the Delhi Excise Act.

7. The Commissioner (Excise) vide impugned order dated 10.03.2014 dismissed the appeal on the grounds that there were three entities and not one entity and all three entities should hold valid excise license in order to serve liquor as per the Delhi Excise Act, 2009.

8. Aggrieved by the said impugned order dated 10.3.2014, the Appellant has filed present appeal before this court under Section 72 of the Delhi Excise Act, 2009.

9. I have heard the submission of both sides at length and have also gone through the case file. The only point to be considered is whether the appellant is to be treated as single entity or three separate entities in the terms of the payment of license fee under the Excise Act.

10. I find that the appellant was earlier paying license fee for three separate restaurants and thereafter decided to pay unilaterally consolidated license fee for his three restaurants as one unit. Though the Appellant had wrote a letter dated 02.04.2009 and 13.04.2009 to allow it to deposit the fee as one single unit/restaurant with 207 seat covers to the respondent. But the appellant has not placed on record any document granting or treating the appellant as single unit by the competent authority.

11. I further observed that in the instant case the appellant had obtained three separate health and trade licences from MCD and three separate eating house licence from Delhi Police, in respect of three separate units i.e. Tonic, Color N Spice and Angithi, and not a single licence from MCD and Delhi Police. Therefore, the Commissioner (Excise) has rightly treated three separate entities in terms of Rule 51(10) of the Delhi Excise Rules, 2010 , which

mandates/prescribes the appellant to have Health Trade Licence, Eating House Licence, certificates by Tourism Department for obtaining a licence under the Excise Act.

12. In view of the above, I find no merit in the appeal and dismiss the same.

13. Pronounce in open court on 31.07.2015.

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**NAINI JAYASEELAN,
FINANCIAL COMMISSIONER, DELHI
31st JULY, 2015**