IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26745 of 2014 (O & M)
Date of Decision:- 21.05.2015

Raj Kapoor ......Appellant(s)

vs.

Excise and Taxation Commissioner (Excise), Haryana and another

......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Vijay Kumar Sheoran, Advocate, for the petitioner.

Ms. Mamta Singla Talwar, AAG, Haryana.

S.J. VAZIFDAR, A.C.J. (Oral)

The petitioner has challenged an order dated 26.09.2014 (Annexure P-14) passed by the Excise and Taxation Commissioner rejecting the petitioner's application for refund of the permit fee to the extent of ₹3,93,150/-.

The petitioner's bid for a L-1 liquor licence had been accepted. In respect thereof, he paid permit fee of ₹3,93,150/- for the year 2012-13. Permits were admittedly issued.

The petitioner, however, was unable to exploit the benefit of the permit. In other words, he did not lift/deal in liquor to the extent permissible under the license. The petitioner sought a refund of the said amount of ₹3,93,150/- on account of him not having been able to exploit the license. The petitioner had earlier filed CWP No. 17811 of 2014, which was disposed of by an order of the Division Bench of this Court dated 01.09.2014 directing the respondents to consider his representation. It is pursuant to this order that the order impugned in the present writ petition was passed.

The respondents have rightly rejected the application for refund. The permits had admittedly been issued by the respondents to the petitioner. The fee was paid in consideration of the permits being issued. Our attention has not been drawn to any provision that entitles the licensee to a refund of the permit fees merely because the licensee is unable to exploit the benefit thereof. We, therefore, agree with the finding that once the licence is issued, it is immaterial whether the sales are actually made or not.

In the absence of any rule or provision of law to the contrary, a view to the contrary would in fact prejudice the respondents. The respondents are not responsible for the licensee being unable to exploit or avail the benefit of the licence. Had the licensee not accepted the licence, it would have been granted to some other party. To grant a refund merely because a licensee is unable to exploit the license issued in his favour would cause financial loss to the respondents for no fault of theirs.

Reliance was placed on certain orders of refund at Annexures P-15 and P-16. The orders, however, do not state the circumstances in which the refund was granted. For instance the petitioner himself was granted a refund of an amount of ₹1,94,400/- paid as permit fees on account of the permits not having been issued. Even assuming that the said orders at Annexures P-15 and P-16 were passed in such circumstances, it would make no difference.

The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.05.2015 **(G.S. SANDHAWALIA)**
JUDGE

shivani