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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3557/2016

SANCO ENTERPRISE PRIVATE LIMITED, HAVING ITS UNIT NAMELY, M/S SANCO RESTAURANTS

..... Petitioner

Through Mr. Judy James, Mr. B.K. V. Subrahamanyam, Adv.

versus

DEPARTMENT OF EXCISE, ENTERTAINMENT & LUXURY TAX, GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through Mr. Anuj Aggarwal, ASC with Ms. Debashree Mukherjee, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 21.02.2017

1. It is the petitioner's grievance that the impugned order dated 13.06.2014 made by the Assistant Commissioner which was upheld by the Financial Commissioner on 30.07.2015 is untenable in law.

2. Undisputed facts of the case are that the petitioner was the holder of the licence issued under Delhi Excise Act, 2009. It contains that in December 2013 and on several occasions subsequently, i.e., in January, February, March and April, 2014 – last being on 24.04.2014,

the Excise Inspector inspected its premises and was satisfied that it function in accordance with its licence capacity, i.e., 48 seats. In evidence, the petitioner relies upon the observations made in L-24 Register maintained by it. While so, on the basis of subsequent inspection conducted on 25.04.2014, a show cause notice was issued under Section 29(3) of the Delhi Excise Act, 2009 requiring the petitioner to show cause why actions should not be taken. The petitioner resisted these proceedings both on facts as well as determinability of the notice. Eventually, this led to the impugned order withdrawing/cancelling the licence given to him on 05.05.2014. The petitioner unsuccessfully appealed and also approached the Financial Commissioner in revisional proceedings, but without securing any benefit. Therefore, it has approached this Court.

3. Mr. James**,** the learned counsel for the petitioner contends that the provision requires both quantification of the short levy/non-levy a further order. In the present case, the show cause notice was unspecific and vague as well as the amount that was to be recovered. In the circumstances, the impugned orders are not sustainable.

4. The show cause notice in the present case read as follows:

> *"Whereas, M/s. Sanco's (A unit of Sanco's Enterprises) lst Floor, D Block, Aditya Mall, Plot No. 9D, CBD Shahdara, Delhi is having L-17/L-17F license w.e.f. 20/12/2013 for 48 seat covers.*
>
> *Whereas, during the surprise inspection conducted by the Assistant Commissioner (Restaurants) on 25.04.2014 the following violations were observed.*
>
> *(i)The seat covers were found 71 instead of 48*

granted to the license.

(ii) The licensee has transparent glasses and hence full/ public view from road. Even 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 liceQsee as liquor was found at the bar counter but the scanner was showing at store room.

AND WHEREAS, by doing the above acts the licensee has violated the terms and conditions of the Delhi Excise Act, 2009 and rules framed thereunder.

Now therefore, I Indu Sekhar Mishra, Dy. Commissioner (Excise)/ Licensing Authority hereby direct you to show cause as to why L-17/L-17F license granted to you be not cancelled I revoked for the lapses committed for violation of the Delhi Excise Act, 2009 and rules framed there under. Further it is also directed to explain why the duty prescribed for more than 50 seat covers alongwith penalty for not getting number of seat covers and above mentioned other violations should not be charged. Your reply should reach this office within 7 days of receipt of this Notice failing which it will be presumed that you have nothing to say in this regard and appropriate action as deemed fit according to the Delhi Excise Act, 2009 and rules framed there under will be taken without any further intimation."

5. Section 29 provides for recovery of duty and other levies and lien on the property of defaulter. Section 29(1) provides that all excise revenue, payable to Delhi Government can be recovered first from the person liable to pay or from his legal successors. Section 29(2) arms the excise authority that in the event of default, coercive action can be taken in respect of manufacturing facilities as such warehouse

including shop etc. Section 29(3) reads as follows:

"(3) Where duty due is not levied or not paid or short-levied or short paid or erroneously refunded.,-

(a) the Assistant Commissioner may, within four years from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

Explanation –I.- Where the service of the notice is stayed by an order of the court , the period of such stay shall be excluded in computing the aforesaid period of four years;

Explanation –II.- For the purposes of this clause "relevant date" means –

(i) in the case of intoxicants on which duty has not been levied or paid or has been short-levied or short-paid, the date on which the duty is to be paid under this Act or the rules made thereunder;

(ii) in a case where duty is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(iii) in the case of intoxicants on which duty has been erroneously refunded, the date of such refund;

(b) the Assistant Commissioner shall, after considering the representation, if any, made by the person on whom notice is served under clause(a), determine the amount of duty due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined."

6. The facial reading of the notice would show that the Commissioner did not quantify the amounts that were due and payable by the petitioner.

7. Having regard to the undisputed facts that on all the previous occasions the licensee/petitioner was found to have acted within the provisions of law, the so called dubious behaviour of using the premises for a number of seats covered in excess of that licence could not per se have resulted in cancellation of the licence itself. Such a result would have to be treated excessive and disproportionate. In the circumstances, the impugned notice and the order cancelling the licence are hereby quashed. At the same time, it is open to the respondent to issue a proper notice and take appropriate remedy in accordance with the provisions of the Delhi Excise Act, 2009.

8. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 21, 2017/acm