

\$~9

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

Date of Decision: 13th January, 2023

+ **W.P.(C) 17126/2022 & CM APPL. 54419/2022**

M/S INDO SPIRITS

..... Petitioner

Through: Mr. Sameer Rohatgi and Mr. Kartikey
Singh, Advocates. (M:9479397843)

versus

COMMISSIONER OF EXCISE, GOVT. OF NCT OF DELHI &
ORS.

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Mr.
Arun Panwar, Mr. Pradyuman Rao,
Mr. Tapes Raghav, Mr. Utkarsh
Singh and Mr. Mehak Rankawat,
Advocates. (M:9818112250)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - M/s Indo Spirits seeking permission to transfer the Petitioner's stock of IMFL from its present warehouse at E-32, Okhla Phase-II, New Delhi (*hereinafter 'E-32 premises'*) to an alternate premises. The Petitioner impugns the order dated 5th December, 2022 passed by the Commissioner of Excise dismissing the representations of the Petitioner seeking permission to transfer the said stock.
3. The Petitioner held L-1 wholesale license under the Delhi Excise Policy 2021-22 and was engaged in the business of wholesale supply of liquor in Delhi from 17th September, 2021 to 31st August, 2022. In

accordance with the terms and conditions of L-1 license, the Petitioner took three warehouses on lease basis including the one located at E-32, Okhla Phase-II, New Delhi. The case of the Petitioner is that with the new excise policy, which was introduced in September, 2022, the Petitioner no longer is a licence holder for sale of liquor in Delhi. In fact, the said premises has been sealed by the department. For the E-32 premises, the Petitioner is stated to be incurring huge rent to the tune of Rs.33,48,000/- per month including GST, which it wishes to avoid as it already has another licensed premises, where the stock can be stored.

4. It is submitted by Mr. Sameer Rohatgi, Id. Counsel appearing for the Petitioner that the new warehouse where the Petitioner intends to shift some of the stock is at B-230, Okhla Industrial Area, Pocket A, New Delhi-110020 (*hereinafter 'B-230 premises'*). He further submits that a substantial portion of the stock is also due to expire in January, 2023. Accordingly, the Petitioner wishes to destroy stock of 79,127 cases and shift only 25,374 cases.

5. Ld. counsel for the Respondents submits that such transfer has not been permitted as the stock is always tied to the premises which is entered in the portal of the excise department. He further submits that such transfer is not permissible under the Act and Rules.

6. Heard. The facts of this case show that the Petitioner no longer enjoys a valid liquor license in terms of the Act and Rules, and it has to deal with the leftover stock. The manner in which the leftover stock can be dealt with is prescribed in Rule 56 of the Delhi Excise Rules, 2010 where the Petitioner has to find an alternate licensed buyer. If there is no alternate licensed buyer which the Petitioner can identify, the stock continues to remain with the

Petitioner. Recently, this Court in *Anheuser Busch Inbev India Ltd. v. Govt. of NCT of Delhi* [W.P.(C) 16485/2022, 7th December, 2022] examined the governing scheme in respect of the manner in which leftover stock is to be dealt with and observed as under:

“16. A number of writ petitions are being filed before this Court in respect of issues, which arise qua the new excise policy, which has been introduced by the GNCTD.

17. The Delhi Excise Act, 2009 along with Delhi Excise Rules, 2010, clearly provide for the manner, in which the left-over stock is to be dealt with. The relevant rule, i.e., Rule 56 of the Delhi Excise Rules, 2010 reads as under:

“56. Procedure dealing with left over stock.- If any person, who has held a licence under these rules, has in his possession, on the expiry, or determination of his licence, any intoxicant, he shall take action for its disposal in the following manner:-

(a) he shall submit to the Deputy Commissioner the list of such intoxicants within fifteen days from the expiry of the licence indicating therein the sale price of each brand. The Deputy Commissioner may allow him time, not exceeding 15 days for the disposal of such stocks to the existing licensees:

Provided that if duty has not been paid on such stocks and the purchaser does not hold a licence permitting him to possess them in bond, the duty on such stocks at the rates in force on the date of sale shall be recovered from the purchaser before the possession thereof is taken;

(b) in case the licensee is unable to dispose of such stocks, in part or in full, within the stipulated time, he shall immediately surrender the same to the Deputy Commissioner along-with a list

mentioning the quantity and brand of undisposed stock on the following day. It shall be open to the licensee to reduce subsequently the sale price earlier intimated by him. If no sale price is intimated to the Deputy Commissioner at the time of surrendering the stocks, it shall be lawful for the Deputy Commissioner to dispose of such stocks to the existing licensees on a price determined by him;

(c) the Deputy Commissioner shall arrange to dispose of the surrendered stock at the price intimated by the outgoing licensee or determined by him. Whenever such price is reduced by the out-going licensee, the Deputy Commissioner shall dispose of the remaining stocks at such reduced price, as may be intimated to him by the former licensee from time to time or as determined by him. In case the stocks remain unsold for a period of two months from the date of the determination of the licence, it shall be lawful for the Deputy Commissioner to destroy the stocks, after obtaining the approval of the Excise Commissioner. No compensation shall be payable for such destruction to the outgoing licensee. No refund of duty, if paid, shall be allowed on stocks of liquor which ultimately remained unsold and are destroyed:

Provided that if duty has not been paid on such stock, the Deputy Commissioner shall not order its destruction but may require in writing any person holding a licence to acquire the stock, or any part thereof, by purchase from the former licensee within six weeks of service of the requisition after payment of duty at the rates in force on the date of the requisition, at such price as may have been indicated by the former licensee or

such price as the Excise Commissioner may fix after hearing the parties;

(d) in case the out-going licensee fails to surrender the stock of liquor as provided in clause (b) to the Deputy Commissioner it shall be lawful for the Deputy Commissioner to destroy the same”

18. A perusal of the above Rule would show that the following steps are to be followed by the license holder for disposal of the existing stock as on the date when the license expired i.e. in this case, on 31st August, 2022.

STEP 1 - The details of the entire stock is to be given to the Deputy Commissioner - This has been done by M/s. Indo Spirit vide its letter dated 31st August, 2022.

STEP 2 - The Deputy Commissioner is to allow the said license holder time of 15 days for disposal of the stock to an existing licensee, which in this case would be the Petitioner who is a license holder as per the new Policy.

STEP 3 - If the disposal of the stock does not take place within 15 days, further 15 days' time can be permitted upon the additional payment of 10% of excise duty.

STEP 4 - If even in the additional 15 days, the stock is not disposed of, further 15 days' additional time can be allowed for disposing of the stock subject to payment of 10% of the additional excise duty.

STEP 5 - If the licensee is unable to dispose of the said stock within the time provided in steps 2 to 4 above, the licensee would be permitted to surrender the stock in part or in full to the Deputy Commissioner, who is then to deal in accordance with Rule 56(c) & 56(c).

19. Whenever a new policy is announced in this manner, there cannot be any void in respect of left-over stock. The entire purpose of enacting Rule 56 is, therefore, to provide a properly supervised mechanism for disposal of the existing stock, which is lying in the licensee's premises.

20. Considering the framework prescribed in Rule 56 as also the fact that the Petitioner is now duly licensed for selling the liquor

in terms of the license issued under the new regime to the Petitioner, this Court is of the opinion that the left-over stock ought to be permitted to be disposed of by M/s. Indo Spirit as per the prescribed procedure as per the Rule 56.”

7. In the opinion of the Court, in the facts and circumstances of the present case, the Petitioner cannot be saddled with the liability of also paying rent for a premises which it does not wish to retain due to the change in the policy. The stock is also reaching its expiring date, accordingly, no useful purpose would be served in taking a technical and pedantic approach. Accordingly, in the facts of this case, the following directions are being issued:

- a) 79,127 cases of IMFL lying in E-32 premises is permitted to be destroyed in the presence of excise inspectors in terms of the Act and Rules. No excise duty would be liable to be paid in respect of the expired stock.
- b) The stock of 25,374 cases is permitted to be shifted to B-230 premises under the supervision of the excise department, without payment of any further duties. However, at the time of sale of these products, excise duty in accordance with law would be liable to be paid.

8. The writ petition, is disposed of in the above terms. All pending applications, are disposed of.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 13, 2023/dk/sk