

IN THE HIGH COURT OF MADHYA PRADESH**AT GWALIOR****BEFORE****HON'BLE SHRI JUSTICE VIVEK RUSIA****&****HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI****ON THE 4th OF JULY, 2024****WRIT PETITION NO.12581 OF 2021***(M/S VINUM TRADERS PVT. LTD.**Vs.**STATE OF M.P. AND OTHERS)***Appearance:***(SHRI PRASHANT SHARMA – ADVOCATE FOR
THE PETITIONER)**(SHRI ANKUR MODY – ADDITIONAL ADVOCATE
GENERAL FOR THE STATE)***ORDER****Per: VIVEK RUSIA J.**

The petitioner has filed the present petition challenging the order dated 20.2.2021 passed by the Excise Commissioner, Gwalior whereby the representation of the petitioner has been rejected.

2. Facts of the case in short are as follows:

(i) The petitioner was granted a liquor license in 2020-21 for 280 days to sell the liquor in the shop within the District Shivpuri. During the COVID-19 pandemic, the District Administration, Shivpuri issued notices under Section 144 of Cr.P.C. for closure of the shops during certain periods. According to the petitioner, the exemption was granted by the District Crisis Management Committee for opening the shops to

sell essential commodities like milk, medicines, petroleum products, fertilizers, fruits, vegetables, and LPG cylinders. According to the petitioner, no permission was granted to the petitioner/licensee to keep the liquor shops open during the lockdown period. According to the petitioner, in other districts, the said period was declared as a dry day and exemption has been granted in payment of the minimum guarantee/excise duty but in district Shivpuri, the period on which the liquor shops were closed was not declared the dry days, hence, the petitioner could not get the benefit of exemption in payment of minimum guarantee/excise duty. The petitioner has filed a photocopy of orders issued by the Collector and District Magistrate Shivpuri under Section 144 of Cr. P.C, 1973 starting from 6.7.2020 to 4.8.2020 collectively as Annexure P/6. The petitioner has also filed a copy of the order dated 17.8.2020 issued by the Collector (Excise), Bhopal, whereby exemption was granted in license fee from 7.7.2020 to 16.8.2020, i.e., 14 days on which the shops were closed due to Corona Pandemic. The Petitioner has also filed other copies of orders dated 17.8.2020 issued for the period 9.8.2020 to 16.8.2020.

(ii) The petitioner filed W.P. No.10344/2020 seeking a writ that the respondent be restrained from making recovery of license fee payable during the lockdown period from 6.7.2020 to 12.7.2020 and 13.7.2020 to 19.7.2020 and for a further period of lockdown as those days are liable to treated as Dry days. Vide order dated 11.8.2020, the writ petition was disposed of in the light of the judgment passed in the case of **Maa Vaishno Enterprises and others vs. the State of M.P. and another in W.P.No.7373/2020 decided on 22.7.2020**. Thereafter, the petitioner preferred a Writ Appeal No.838/2020 which was disposed of vide order dated 5.9.2020 by directing the Commissioner (Excise) to decide the representation of the petitioner. Now vide order dated

20.2.2021 the Excise Commissioner has rejected the representation and granted exemption from minimum guarantee/excise duty only for the day 26.7.2020 Rs.13,73,571/-. Hence, this petition before this Court.

(iii) After notice, the respondents have filed a return by submitting that as per terms and conditions of liquor policy especially Clause 49 in case of non-supply of liquor to the liquor vent the Licensee would not be entitled to claim the deductions in payment of minimum guarantee/excise duty, hence the Writ Petition is devoid of merit.

3. It is further submitted by the respondents that opening and closing of the liquor vent is exclusively regulated by the orders issued by the Excise Department and not covered under the directions for lockdown issued under Section 144 of Cr.P.C. by the District Administration. No such direction was issued under Section 144 of Cr.P.C. during the lockdown period for closing the liquor shops in District Shivpuri by the Collector (Excise). In Shivpuri, only a day was declared as a dry day by the Collector (Excise) for which the petitioner has been granted benefit in the impugned order. The State Government issued a circular dated 22.7.2020 directing all the District Magistrates clarifying that it should be clearly mentioned in the prohibitory order issued under Section 144 of Cr.P.C. for closing down the liquor shops. It is further submitted that the petitioner is claiming the benefit of deduction on the ground that shops were closed during the corona period especially the period covered under the prohibitory orders issued under Section 144 of Cr.P.C. but a surprise inspection was carried out by a team of Excise in the vent/shops of the petitioner and fines were imposed. A copy of the summary sheet of fines imposed on various liquor shops of the petitioner during the said period is filed as Annexure R/3 along with the return. Hence Writ Petition be dismissed.

4. The petitioner has not filed any rejoinder to deny the aforesaid

fact. The liquor license was granted to the petitioner by the Excise Department to sell the liquor through various retail shops. Opening and closing of the shops are governed by the directions issued from time to time by the Excise Department. The Collector issued an order under Section 144 of Cr.P.C. only in respect of closing and opening of the shops relating to certain essential items in which there is no special prohibition for opening and closing of the liquor shops. The petitioner has not filed any documents to show that during that period, its liquor shops were closed in compliance with the order issued under Section 144 of Cr.P.C. The petitioner has failed to explain from the ledger account, stock register, and sale and purchase record of the shops to show that no liquor was sold during the said period. On the basis of a presumption that during the period when the orders under Section 144 of Cr.P.C. were issued, the petitioner shops were closed the claim of the petitioner cannot be allowed. The petitioner cannot claim parity with that licensee of other Districts because the petitioner had a license in Shivpuri District and whether the petitioner kept his vents/shops closed during the corona period is liable to be established by the cogent evidence as stated above that no such material has been produced by the petitioner to show that the shops were closed and there was no sale of liquor was made.

5. Besides the above reasoning to dismiss the Writ Petition it is also important to take note that the liquor policy notified for the year 2020-2021 (From 1st April 2020 till 31st March 2021), on 25.05.2020, was amended vide notification dated 23.05.2020 for compensating the losses to the licensees due to the closure of liquor shops due to Corona Covid-19 Pandemic. Clause 70 has been inserted for giving relaxation in payment of Minimum Guaranteed Excise Duty payable at the rate of 10%, which is reproduced below:-

70.वर्ष 2020-21 अनुज्ञप्तिधारियों को उनकी ठेका अवधि दिनांक 31.05. 2021 तक बढ़ायी जाने का विकल्प:-

कोविड-19 के कारण उद्भूत परिस्थितियों को दृष्टिगत रखते हुए वर्ष 2020-21 के अनुज्ञप्तिधारियों को उनकी ठेका अवधि दिनांक 31.05.2021 तक बढ़ाये जाने का विकल्प दिया जाता है। यदि इस विकल्प के चयन हेतु कोई अनुज्ञप्तिधारी आबकारी आयुक्त द्वारा निर्धारित प्रारूप में अपना सहमति आवेदन, वांछित दस्तावेजों के साथ संबंधित जिला कलेक्टर को प्रस्तुत करता है, तो ठेका संचालन की अवधि दिनांक 31.05.2021 तक जिला कलेक्टर द्वारा बढ़ायी जा सकेगी। जो अनुज्ञप्तिधारी इस विकल्प का लाभ न लेना चाहे, वे मूल आबकारी नीति वर्ष 2020-21 के अनुसार ठेका संचालित करते रहेंगे। जिन अनुज्ञप्तिधारियों के आवेदन स्वीकार किये जाते हैं, मात्र उनके लिए इस कंडिका की निम्नलिखित उप कंडिकाएँ लागू होंगी।

70.1 अनुबंध के लिए वार्षिक मूल्य की गणना निम्नानुसार होगी :-

(क.) नवीन वार्षिक लायसेंस फीस = वर्तमान वार्षिक लायसेंस फीस - लॉकडाउन अवधि के लिए लायसेंस फीस में दी गई छूट + वर्ष 2021-22 के माह अप्रैल एवं मई हेतु प्रत्येक अतिरिक्त दिवस के आधार पर परिगणित लायसेंस फीस।

(ख.) नवीन न्यूनतम प्रत्याभूत की राशि = वर्तमान न्यूनतम प्रत्याभूत की राशि - लॉकडाउन अवधि के लिए न्यूनतम प्रत्याभूत की राशि में दी गई छूट + वर्ष 2021-22 के माह अप्रैल एवं मई हेतु वर्ष 2020-21 के माह अप्रैल एवं मई के लिए निर्धारित न्यूनतम प्रत्याभूत की राशि।

70.2 कंडिका 31.1 के अनुसार माह मई 2020 एवं जून 2020 के लिए न्यूनतम प्रत्याभूत राशि, वार्षिक न्यूनतम प्रत्याभूत की राशि के 10 प्रतिशत प्रतिमाह परिगणित होती है। विकल्प चुनने वाले अनुज्ञप्तिधारियों के लिए माह मई 2020 एवं जून 2020 के लिये यह राशि 7.5 प्रतिशत प्रति माह नियत की जाती है। इस प्रकार शेष रही 5 प्रतिशत न्यूनतम प्रत्याभूत की राशि की वसूली माह जनवरी 2021 से मई 2021 की अवधि में प्रतिमाह 1 प्रतिशत अतिरिक्त रूप से की जाएगी।

70.3 नवीन परिगणित वार्षिक लायसेंस फीस तथा वर्तमान वार्षिक लायसेंस फीस के अंतर की राशि दिनांक 31 मार्च 2021 तक अनिवार्य रूप से जमा की जाये।

70.4 नवीन परिगणित प्रतिभूति राशि का न्यूनतम 20 प्रतिशत विकल्प प्रस्तुत करने के साथ जमा करना अनिवार्य है। विकल्प प्रस्तुत करने के अंतिम दिवस से 7 कार्य दिवस के भीतर 20 प्रतिशत तथा 21 कार्य दिवस के भीतर शेष 60 प्रतिशत जमा की जाये।

70.5 विकल्प के साथ निर्धारित शपथ पत्र, डेटेड चैक एवं

प्रतिरूप करार प्रस्तुत करना अनिवार्य होगा। कुल 22 पोस्ट डेटेड चैक (= 18 पूर्व निर्धारित + 4 बढी हुई अवधि के लिए) जमा करना अनिवार्य होगा।

70.6 इस अधिसूचना के राजपत्र में जारी होने के दिनांक से 05 दिवस की अवधि (अथवा ऐसी अवधि जैसा राज्य शासन नियम करे) में वर्तमान अनुज्ञप्तिधारियों को उपरोक्त विकल्प, यदि वे उचित समझे, चुनना आवश्यक होगा, अन्यथा यह माना जायेगा कि वे पूर्व अनुबंध पर कायम हैं तथा वर्ष 2020-21 के लिए प्रावधानित आबकारी व्यवस्था (राजपत्र दिनांक 25.02.2020) के अनुरूप मदिरा दुकानों का संचालन करना उनके लिए बंधनकारी होगा।

70.7 मूल आबकारी नीति वर्ष 2020-21 के समस्त सुसंगत प्रावधान, विकल्प चुनने वाले अनुज्ञप्तिधारियों के लिए बढी हुई अवधि (01 अप्रैल, 2021 से 31 मई, 2021) में युक्तियुक्त रूप से लागू होंगे।

70.8 यदि संशोधित नीति के क्रियान्वयन में कोई कठिनाई उत्पन्न होती है, अथवा आबकारी व्यवस्था के सुचारु रूप से संचालन के लिए ऐसा करना आवश्यक प्रतीत हो, तो आबकारी आयुक्त तदनुसार समुचित निर्देश जारी कर सकेंगे।

वर्षिक मूल्य, वर्षिक लायसेंस फीस एवं न्यूनतम प्रत्याभूत ड्यूटी का निर्धारण

6. By way of the first relaxation, the license period was enhanced for an additional two months i.e. up to 31.05.2021 and the option to the licensee was given that if it is acceptable to them then they would submit an application/representation to the Collector and if applications are accepted then for those licenses clause 70.1 to 70.8 would apply.

7. The writ Court has rightly observed that this issue has been decided by the Division Bench of this Court in the case of **Maa Vaishno Enterprises (supra)**. In the aforesaid case, the Division Bench held that because of the pandemic, no loss has been caused to the licensee and thereafter the State Government has granted various relaxations and extensions of the license period to compensate the loss to the licensee during the corona period, therefore, no case for interference with the impugned order is made out.

8. Accordingly, the petition sans merit is **dismissed**. No order as to cost.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE

(alok)