

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CWP No. 16382 of 2025

Judgment Reserved on: March 18, 2026Date of Decision: April 02, 2026

M/s Tiloksons Brewery & Distillery, Kala Amb
District Sirmour, H.P.

...Petitioner

Versus

State of Himachal Pradesh & Ors.

...Respondents

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge¹*Whether approved for reporting? Yes.*For the petitioner : Sh. Sunil Mohan Goel, Senior Advocate with
Mr. Paras Dhaulta, Advocate.For the respondents : Mr. Y.P.S. Dhaulta & Mr. L.N. Sharma,
Additional Advocates General and Ms. Seema
Sharma, Deputy Advocate General for the
respondents/State.

Jyotsna Rewal Dua, Judge

Petitioner had been licensed to manufacture Indian Made Foreign Spirit & Country Liquor in the Distillery at Mainthappal, Kala Amb, District Sirmour, H.P. Petitioner held various licenses under Himachal Pradesh Excise Act, 2011 in Forms D-2, L-11, L-1A,

¹*Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

L-1C, L-13C, L-15 & L-16 for the year 2025-26. Its grievance is against the order dated 02.06.2025 (Annexure P-11) passed by Collector (Excise)-cum-Additional Commissioner State Taxes & Excise, South Zone, Shimla – respondent No. 3, recommending to Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) Himachal Pradesh – respondent No. 2 cancellation of petitioner's licenses in Forms D-2 & L-11; and also against the order dated 04.07.2025 passed by the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise), H.P.-respondent No. 2 cancelling the petitioner's licenses in Forms D-2 and L-11 (Annexure P-15).

2. Facts necessary for adjudication of the present writ petition are as under:-

(i) Based upon an information, respondent No. 2 – Commissioner State Taxes & Excise on 30.04.2025 constituted the following team under the leadership of Additional Commissioner (IT, EIU & Enforcement) for conducting a surprise inspection of petitioner's unit:-

- “1) Sh. Himanshu Panwar, Dy. Commissioner Excise Sirmour.
- 2) Sh. Aman Sophat, ACSTE o/o JCSTE Central Zone Una.
- 3) Sh. Sachin, ACSTE Nalagarh-II.
- 4) Sh. Anurag Garg, ACSTE Bilaspur.
- 5) Sh. Kuldeep Singh, ACSTE Nalagarh-III.

- 6) Sh. Rupinder Singh, STEO, BBN Baddi.
- 7) Sh. Manoj Kumar, STEO o/o JCSTE Central Zone Una
- 8) Sh. Manoj Sacdeva, ASTEO, SZ, Parwanoo.”

Petitioner's premises were inspected by the team on 04.05.2025. Inspection report (Annexure P-2) was submitted by respondent No. 4 - the Deputy Commissioner State Taxes & Excise, District Sirmour regarding surprise inspection of petitioner's premises on 04.05.2025 at about 2.00 a.m. conducted as per orders of respondent No. 2 under the leadership of Sh. U.S. Rana, Additional Commissioner State Taxes & Excise (Enforcement) HQ Shimla by a team consisting of following officers:-

1. Sh. Himanshu R. Panwar, DC, STE, Sirmour, HP.
2. Sh. Sachin, AC, STE, Nalagarh-II.
3. Sh. Anurag Garg, AC, STE, Bilaspur.
4. Sh. Aman Sophat, AC, STE, CZ, Una.
5. Sh. Kuldeep Singh, AC, STE, Nalagarh-III.
6. Sh. Manoj Kumar, STEO, CZ, Una.
7. Sh. Rupender Singh, STEO, BBN.
8. Sh. Manoj Sacdeva, ASTEO, SZ, Parwanoo.”

The report *inter alia* mentions that the team reached the licensed premises at about 2:00 a.m. on 04.05.2025 and found unauthorized manufacturing of liquor with labels of different brands namey 'Royal Blue' meant for sale in Utrakhand; Labour force of around 20 people working on bottling chain; Labels of country liquor

brand namely 'Santra' for sale in Uttarakhand, Artisian Dry Zin blended and bottled by Plot No. 124 Rudrapur, Uttarakhand were found; PP caps embossed with 'Shivalik Beverages Pvt. Ltd. Chandigarh Excise' were also found; A truck was found stationed in the premises loaded with PET bottles. During inspection, the team telephonically contacted State Taxes & Excise Officer (STEO) Incharge and was directed to reach the premises. The STEO reached the premises at about 4:20 a.m. and was associated during inspection. The inspecting team found the licensee to have contravened the provisions of Sections 39(1)(a), 39(2)(i) and 39(2)(iii) of the H.P. Excise Act, 2011 as also Punjab Distillery Rules 1932 by indulging in:-

1. *Carrying out bottling operations after designated hours in un-authorized manner;*
2. *Bottling of illegal brands without approval of the designated authorities;*
3. *Illegal transportation, storage and possession of ENA for manufacturing of liquor un-authorizedly;*
4. *Illegal storage of labels, PP caps and pet bottles; and*
5. *Operating the manufacturing facility without prior permission of the STEO in charge.'*

(ii) Another report regarding same inspection was prepared by Sh. U.S. Rana, Additional Commissioner State Taxes & Excise (Enforcement) HQ Shimla on 04.05.2025 (Annexure P-3). As per

this report, petitioner's premises were inspected on 04.05.2025 at about 02:00 a.m. by the team under the leadership of Additional Commissioner State Taxes & Excise (Enforcement); During inspection a Special Investigating Team of District Police Sirmour also remained present; Sh. Himashu Panwar, Deputy Commissioner State Taxes & Excise, District Sirmour was telephonically directed to join the inspection, he joined after about half an hour. The Additional Commissioner State Taxes & Excise (Enforcement) HQ Shimla in his report found the petitioner running the unit in breach of Sections 39(1)(a), 39(2)(i) and 39(2)(iii) of the Himachal Pradesh Excise Act, 2011. The Officer also recorded statements of Sh. Ankit Singh, STEO, Incharge of petitioner's Distillery & Sh. Gaurav Walia, representative of the Company.

(iii) Based on the report, FIR No. 67 of 2025 was lodged at the instance of respondent No. 4 at Police Station Kala Amb, District Sirmour under Sections 318(4), 331(4), 305 & 61(2) of the Bharatiya Nyaya Sanhita (BNS), 2023 and Sections 39(1)(i) & 39(2)(i) of the Himachal Pradesh Excise Act, 2011.

(iv) On 05.05.2025 respondent No. 2 directed respondent No. 3 (Annexure R-2/2) to *'enquire into the matter keeping in view all the relevant factors and specifically on the administrative side on the functioning of plant as a whole. The report must be exhaustive w.r.t.*

roles and responsibilities of all the officials associated with the functioning of the plant in the district vis-à-vis regulatory measures as per HP Excise act & relevant rules. The report must reach this office within 01 day positively'.

(v) In furtherance to respondent No. 2's direction, respondent No. 3 furnished his inquiry report on 07.05.2025 (Annexure P-5). The report gave in-depth analysis of surprise inspection of petitioner's premises on 04.05.2025 by a team under the leadership of Sh. U.S. Rana, Additional Commissioner State Taxes & Excise (Enforcement) HQ Shimla alongwith police personnel. As per the report, respondent No. 3 in compliance to the directions issued to it by respondent No. 2 to inquire into the matter, visited the premises of the licensee on 06.05.2025 in presence of Additional Superintendent of Police, District Sirmour alongwith other officials including Sh. Himanshu Panwar, the Deputy Commissioner State Taxes & Excise, Sirmour – respondent No. 4. Statements of Sh. Himanshu Panwar as also Sh. Naval Chander, Assistant Commissioner Excise, District Sirmour and Sh. Ankit Singh, STEO, Incharge of petitioner's Brewery and Distillery were also recorded.

The Inquiry Officer i.e. Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ Shimla – respondent No.3 framed following points for determination:-

- “(i) Whether, there was production of illegal liquor on the day of inspection dated 04.05.2025?
- (ii) Whether, the violation reported by the inspection team on dated 04.05.2025, are accepted by the concerned officer STEO Incharge of the plant?
- (iii) Whether, the keys of revenue box/locks are in possession of STEO Incharge of the plant on the day of inspection dated 04.05.2025?
- (iv) Whether, any alteration were detected by the inspection team on dated 04.05.2025, with revenue box/revenue locks?
- (v) Whether, the CCTV Camera’s were functioning on the day of inspection on dated 04.05.2025?
- (vi) Whether, any inspection by the District Officers have been conducted prior to the inspection dated 04.05.2025?
- (vii) Whether, any complaints/Input with regard to the illegal practices were received either to the District Officer or to the STEO Incharge of the plant?
- (viii) Whether, the STEO Incharge of the plant has submitted/approved any casual leave/station leave before leaving the station, Kala–Amb, as it was reported that he was at Panchkula on the day of inspection?”

The Inquiry Officer i.e. respondent No. 3 recorded his findings & conclusions on all the points formulated above and furnished the report to respondent No. 2 - the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. on 07.05.2025. On the basis of this report, the STEO concerned was

placed under suspension by respondent No. 2 on 13.05.2025. He is statedly facing a departmental inquiry.

(vi) The Inquiry Officer-respondent No. 3-Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla initiated proceedings against the petitioner under Sections 29 and 43 of the Himachal Pradesh Excise Act, 2011, Rule 9.93 of Punjab Distillery Rules 1932, Rule 37(16) of the Himachal Pradesh Liquor Rules, 1986 and Condition No. 10.48 of the Excise Policy, 2025-26. Notice was issued to the petitioner on 09.05.2025, though, according to the petitioner, it did not receive this notice. A further similar notice was affixed at petitioner's premises on 19.05.2025. This was responded to by the petitioner on 23.05.2025 *inter alia* seeking more time to reply effectively citing petitioner having been summoned by the police in connection with FIR No. 67 of 2025 registered on the same issue at the instance of the respondents. Respondent No. 3 issued another notice to the petitioner on 24.05.2025 calling for presence of its authorized persons before the Authority on the given date. Another notice followed on 26.05.2025 (Annexure P-7) directing the petitioner/authorized person to remain present before the Authority on 30.05.2025 alongwith detailed reply vis-à-vis violations fastened upon him in the notice and to show cause as to why penalty/cancellation/suspension of its licenses be not imposed for

contraventions mentioned in the notice. A copy of notice was also endorsed to respondent No. 2 - the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P.

It seems the same day i.e. 26.05.2025, respondent No. 2 – the Commissioner State Taxes & Excise also initiated its own proceedings and issued notice to the petitioner under Section 29(a), 29(b) & 29(c) of the H.P. Excise Act, 2011 in case No. 06/2025. Petitioner was directed to remain present for hearing on 28.05.2025.

(vii) Facing two separate notices from two different Authorities i.e. respondent No.3 – the Collector (Excise)-cum-Additional Commissioner State Taxes & Excise, SZ, Shimla and respondent No. 2 – the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. issued on the same date i.e. 26.05.2025 qua the same subject matter, petitioner sent an e-mail to the Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla on 30.05.2025 (Annexure P-9) informing him about the proceedings on the same subject matter initiated by respondent No. 2 with a request to review and withdraw the notice. Further request was made to grant 15 days time for preparing response in case notice was to be proceeded further.

In view of the matter pending before respondent No. 3 – the Collector (Excise)-cum-Addl. Commissioner State Taxes &

Excise, SZ, Shimla, respondent No. 2 – the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. on 28.05.2025 (Annexure P-12) ordered to keep proceedings in case No. 06/2025 in abeyance. The case was ordered to be listed on 04.06.2025.

Respondent No. 3 – the Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla followed its notice dated 26.05.2025 with another notice issued on 30.05.2025 (Annexure P-10) directing the petitioner/its representative to appear before it on 02.06.2025. The notice also mentioned about similar proceedings having been kept in abeyance by respondent No. 2.

(viii) Petitioner filed detailed response to the notice issued by respondent No. 3 – the Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla. The Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla passed an order on 02.06.2025 on the notice issued to the petitioner. While passing the order the Collector (Excise)-cum-Addl. Commissioner State Taxes & Excise, SZ, Shimla *inter alia* referred to the administrative inquiry previously conducted by him in the matter and the inquiry report furnished on 07.05.2025. Statements of Sh. Himanshu Panwar, Deputy Commissioner, State Taxes & Excise, District Sirmour, Sh. Naval Chander, Assistant Commissioner, State Taxes

& Excise, District Sirmour and Sh. Ankit Singh, State Taxes & Excise Officer of petitioner's Brewery & Distillery recorded during aforesaid inquiry were also relied upon. Respondent No. 3 in his order issued on 02.06.2025 (Annexure P-11) made recommendations to respondent No. 2 for cancellation/suspension of petitioner's parent licenses D-2 & L-11.

(ix) On receipt of respondent No. 3's recommendatory order of 02.06.2025, respondent No. 2 resumed the proceedings kept in abeyance. Petitioner was called upon to file its reply to the notice dated 26.05.2025. Respondent No. 3 – the Collector (Excise)-cum-Addl. Commissioner, State Taxes & Excise, SZ, Shimla filed rejoinder to the reply filed by the petitioner before the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. and prayed for taking stringent action against the petitioner. Respondent No. 2 – the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. on 04.07.2025 passed the order cancelling petitioner's licenses in Forms D-2 & L-11. The Authorities were directed to ensure compliance with all consequential steps in the matter, more particularly of the provisions of Sections 30(2), 31 & 71 of the Himachal Pradesh Excise Act, 2011.

(x) It is in the above background that petitioner has instituted this writ petition seeking following substantive reliefs:-

- i) That this Hon'ble Court may kindly issue a writ of certiorari quashing the order dated 04.07.2025 passed by Respondent No. 2 i.e. Commissioner of State Taxes & Excise-cum-Financial Commissioner Excise, Himachal Pradesh, Department of Excise & Taxation, Himachal Pradesh whereby the licenses in Form D-2 and L-11 issued in favour of the petitioner have been ordered to be cancelled.
- ii) That this Hon'ble Court may be pleased to issue writ of certiorari quashing the impugned order dated 02.06.2025 (Annexure P-11) passed by Additional Commissioner of State Taxes & Excise, South Zone, Shimla recommending cancellation of licenses in form D-2 and L-11 of the petitioner.
- iii) That this Hon'ble Court may be pleased to declare that the surprise inspection carried out by the respondent department is in violation of the Himachal Pradesh Excise Act, 2011 and Himachal Pradesh Excise (Amendment) Act, 2024 and further may be pleased to hold that under the leadership of Sh. Ujjal Singh Rana, Additional Commissioner of State Taxes & Excise, Gr-II (IT & Enforcement) Headquarter, Shimla was neither competent nor was having jurisdiction to carry out the surprise inspection.
- iv) That this Hon'ble Court may be further pleased to issue writ of mandamus directing the respondents to permit the petitioner to run their manufacturing unit of Indian Made Foreign Liquor and Country Liquor."

3. Heard learned counsel for the parties & considered the case file.

4. In order to maintain brevity, submissions advanced by the learned counsel for the parties and the **discussion** thereupon has been elaborated hereinafter.

4(i) The first submission of learned Senior Counsel for the petitioner centers around the constitution of the Committee by the respondents for inspecting the premises of the petitioner's Brewery & Distillery on 04.05.2025. According to the petitioner the Committee so constituted, the team that inspected petitioner's premises was not in accordance with the mandate of the Himachal Pradesh Excise Act, 2011 and the Notifications issued thereunder.

4(i)(a) Before proceeding further, it would be in place to first quote the provisions of the Himachal Pradesh Excise Act, 2011 referred to by the learned counsel. The provisions read as under:-

"5. Financial Commissioner and Collector.-

(1) The State Government may, by notification, appoint an Excise and Taxation Commissioner who shall exercise all the powers of Financial Commissioner, and subject to the control of the State Government, the general superintendence and administration of all matters relating to excise shall vest in him.

(2) The State Government may, by notification, appoint as many Collectors as it may deem fit, to discharge in any specified area the functions of the Collector under this Act and the Collector shall, subject to the control of the Financial Commissioner, control all other Excise Officers within his jurisdiction.

(3) The jurisdiction of the Financial Commissioner shall extend to the whole State and the jurisdiction of Collectors shall extend to the areas of the State in which they are for the time being employed.

6. Other classes of Excise Officers and their powers and jurisdiction.-

(1) There shall be such other classes of Excise Officers as the State Government may, by notification, declare and it may appoint as many persons as it deems fit to be the Excise Officers of these classes.

(2) The State Government may, by notification, invest in any person, not being an Excise Officer, with powers to perform all or any of the functions of an Excise Officer, under this Act, and such person shall in the exercise of these functions be deemed to be an Excise Officer.

(3) The State Government shall, by notification, declare the powers to be exercised under this Act by the Excise Officer of each class.

(4) The jurisdiction of the Excise Officers shall, unless the State Government otherwise directs, extend to the districts in which they are for the time being employed.

7. Persons appointed under this Act to be public servants.- All persons appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

8. Power to enter and inspect.- Any Excise Officer, not below such rank as the State Government may, by notification specify,-

- (a) enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of or stores any liquor;
- (b) enter and inspect, at any time, any place in which any liquor is kept for sale by any person holding a license under this Act;
- (c) examine any accounts and registers, test, measure or weigh any materials, stills, utensils, implements, apparatus or testing instruments or liquor found in that place;
- (d) seize any accounts, register, measure, weights or testing instruments which he has reason to believe to be false or incorrect; and
- (e) seize any liquor which he has reasons to believe to be unaccounted for in the accounts and registers maintained by the licensee.

9. Power to investigate.-

- (1) The State Government may, by notification, invest any Excise Officer, with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.
- (2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer-in-charge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure, 1973.

10. Powers of Excise Officer to search, seize etc.-

- (1) Whenever any Excise Officer not below such rank as the State Government may, by notification, specify has

reason to believe that an offence punishable under this Act, has been, is being, or is likely to be, committed by any person, in any place, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time, by day or night, enter and search such place.

(2) Any Excise Officer specified in sub-section (1) may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.”

Section 6 of the Himachal Pradesh Excise Act, 2011 was amended as under by the Himachal Pradesh Excise (Amendment) Act, 2024:-

“6. Other classes of Excise Officers and their powers and jurisdiction. – (1) There shall be the following classes of officers within their respective jurisdictions:-

(i) an officer not below the rank of Assistant State Taxes and Excise Officer in the State Taxes and Excise Department;

(ii) Executive Magistrate not below the rank of Tehsildar; and

(iii) Police Officer not below the rank of Assistant Sub-Inspector in the Police Department.

(2) The aforesaid Excise Officers shall exercise the powers to enter, inspect, investigate, search and seize and obtain information under sections 8, 9, 10, 12 and 54 of this Act.

(3) The State Government shall, by notification appoint Police Officer or Official, on secondment basis from the Himachal Pradesh Police, for carrying out the purposes of this Act.”

In exercise of powers conferred by Section 8 of the H.P. Excise Act, following notification was issued by the State on 26.04.2025 (Annexure P-17):-

“GOVERNMENT OF HIMACHAL PRADESH
DEPARTMENT OF STATE TAXES & EXCISE

File No. EXN-F(1)-3/2024 Dated Shimla-171002, 26th April, 2025

In supersession of Notification No. EXN-F(4)-1/2009-loose dated 22nd July, 2013 and in exercise of the powers conferred by Section 8 of the Himachal Pradesh Excise Act, 2011, the Governor of Himachal Pradesh is pleased to notify that the power under Section 8 of the ibid Act shall be exercised by the Officers defined under Section 6(1)(ii) who shall be accompanied by an Officer of the Department of State Taxes & Excise not below the rank of Assistant State Taxes & Excise Officer having jurisdiction and by a Police Officer defined under Section 6(1)(iii) not below the rank of Deputy Superintendent of Police having jurisdiction.

Sd/-
Principal Secretary (ST&E) to the
Government of Himachal Pradesh”

4(i)(b) Learned Senior Counsel for the petitioner submitted that inspection under section 8 of the Excise Act is to be conducted in accordance with the Notification dated 26.04.2025. Power under Section 8 is to be exercised by the Officer defined under section 6(1)(ii) who is to be accompanied by:

- (i) an Officer of the Department of State Taxes & Excise not below the rank of Assistant State Taxes & Excise Officer having jurisdiction; and
- (ii) a Police Officer defined under Section 6(1)(iii) not below the rank of Deputy Superintendent of Police having jurisdiction.

According to learned Senior Counsel use of expression 'shall be accompanied' in the Notification suggests presence of accompanying Officers is intended to form part of procedural framework governing such inspection. It was highlighted that even according to the respondents, inspection was carried out under Section 8 of the Excise Act. But absence of Police Officer in the inspection would vitiate the inspection as constitution of the team was not in consonance with the Notification. Placing reliance upon *Nazir Ahmad vs. King Emperor*² it was argued that principle laid therein is being consistently followed till date that where a power has been given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. It, therefore, has to be held that the team constituted by the respondents, the team that carried out inspection of petitioner's premises on 04.05.2025 was not in consonance with the mandatory provisions of the Himachal Pradesh Excise Act, 2011

² AIR 1936 PC 253

as amended in the year 2024 and the Notification issued there under. The entire edifice on the basis of which the impugned order cancelling petitioner's licenses has been issued, therefore, is bad in the eyes of law.

4(i)(c) Learned Deputy General endeavoured to take a detour from the pleaded defence and submitted that being a surprise inspection, the same was covered by Section 10 and not Section 8 of the Excise Act, therefore, presence of police officer was not essential during inspection.

4(i)(d) As per Section 8, any Excise Officer (of the rank specified by the State Government by a Notification) can conduct inspection. Section 10 also empowers the specified Excise Officer to conduct inspection. As per amended Section 6, apart from Assistant State Taxes & Excise Officer in the department [Section 6(i)], the Executive Magistrate not below the rank of Tehsildar [Section 6(ii)] and Police Officer not below the rank of Assistant Sub-Inspector [Section 6(iii)] have been authorized & empowered to enter, inspect, investigate, search, seize and obtain information under Sections 8, 9, 10, 12 and 54 of the Excise Act.

Further as per Notification dated 26.04.2025 power under Section 6(1)(ii) of the Act shall be exercised by the Officers who shall be accompanied by an Officer of the Department of State

Taxes & Excise not below the rank of Assistant State Taxes & Excise Officer and a Police Officer under Section 6(1)(iii) not below the rank of Deputy Superintendent of Police.

Literal reading of above provisions may lead to the interpretation that though under Sections 8 & 10 of the Excise Act any Excise Officer can inspect the premises and Executive Magistrates not below the rank of Tehsildar [under Section 6(1)(ii)] as also the Police Officer not below the rank of Assistant Sub-Inspector [Section 6(1)(iii)] are also the Excise Officers, however the Officer falling under Section 6(ii) i.e. Tehsildar (or higher in rank to him) would not be able to exercise powers under Sections 8 & 10 by himself. He will necessarily have to be accompanied by an Officer not below the rank of Deputy Superintendent of Police & by Assistant State Taxes & Excise Officer.

The above literal interpretation however suffers from fallacy. It would mean AST&EO can independently inspect the premises; an Assistant Sub-Inspector of Police can also inspect the premises on his own but a Tehsildar can do so only in company of AST&EO & a Deputy Superintendent of Police. This interpretation would defeat the logic behind the amendment of Section 6 and also the possible object intended to be achieved by the Notification dated 26.04.2025 i.e. inclusivity of all wings during inspection in

order to accord some protection to the license holder, to safeguard his interests.

Harmonious interpretation of provisions therefore would lead to logical conclusion that power under Section 8 of the Excise Act can be exercised by the Executive Magistrate of First Class who is to be accompanied by an Excise Officer and a Police Officer as specified by the State Government. The team constituted by the respondents for inspecting petitioner's premises did not have Executive Magistrate of First Class. Apparently, this team did not even have Police Officer of the rank specified in the Excise Act & the Notification. The inspection report prepared by respondent No. 3 though mentions participation of a 'Special Investigation Cell' of District Police but does not give names of specific Police Officers or their ranks. The inspection report furnished by respondent No. 4 does not even state about association of any Police Officer during inspection. The reply filed by the respondents does not dispute inspection having been carried out under Section 8 of the Excise Act or the requirement of associating Executive Officer as also the Police Officer during inspection but tries to downplay it by pleading that procedural lapses would not vitiate the inspection. It has to be held that constitution of the team that inspected the premises was not in consonance with the Act & the applicable Notification.

4(ii) Yet another contention raised for the petitioner is that it has been denied the opportunity of filing an appeal against the order passed by the Collector (Excise)-cum-Additional Commissioner ST&E, SZ, Shimla; that the Commissioner State Taxes & Excise was greatly influenced by the Collector (Excise) in passing the impugned order.

4(ii)(a) I have heard learned counsel on both sides on the above issues. In terms of Section 29 of the Himachal Pradesh Excise Act, subject to restrictions which the State Government may prescribe, the authority granting any lease, license, permit or pass under the Act may cancel or suspend it. The provision reads as under:-

“29. Power to cancel or suspend licenses etc.- Subject to such restrictions as the State Government may prescribe, the authority granting any lease, license, permit or pass under this Act, may cancel or suspend it-

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or
- (b) if any excise duty or countervailing duty or, other fee payable by the holder thereof is not duly paid; or
- (c) in the event of any breach by the holder of such lease, license, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or the Himachal Pradesh

Value Added Tax Act, 2005, the Central Sales Tax Act, 1956 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or of any cognizable and non-bailable offence, or any offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, or under the Trade and Merchandise Marks Act, 1958 or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, 1860 or any offence referred to in section 135 of the Customs Act, 1962; or

- (e) where a license, permit or pass has been granted on the application of the grantee of a lease under this Act, on the request in writing of such grantee; or
- (f) at will, if the conditions of the license, permit or pass provides for such cancellation or suspension.”

Section 68 of the Excise Act gives right to appeal to a person aggrieved by an order passed by any Excise Officer under this Act as under:-

“68. Appeal.- (1) Any person aggrieved by an order passed by any Excise Officer under this Act may, within thirty days from the date of communication of such order, appeal to the Collector in the manner prescribed.

(2) Any person aggrieved by an order passed by the Collector, under sub-section (1) may, within thirty days from the communication of such order, appeal to the Financial Commissioner.”

Remedy of revision is available before the Financial Commissioner under Section 69 that goes as under:-

“69. Revision.- (1) The Financial Commissioner may, of his own at any time, call for the record of any proceedings which are pending before, or have been disposed of, by any Collector or Excise Officer, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) No order shall be passed under this section, which adversely affects any person, unless such person has been given a reasonable opportunity of being heard.”

4(ii)(b) According to the respondents, but for license in Form D-2, all other licenses were issued to the petitioner by the Collector (Excise)-cum-Additional Commissioner ST&E, SZ, Shimla. In the so called recommendatory order dated 02.06.2025 passed by the Collector (Excise) ST&E, SZ, Shimla he has formed an opinion that petitioner had committed breach of mandatory provisions of the Excise Act and, therefore, its parent licenses in Forms D-2 & L-11 were liable to be cancelled. Licenses in Forms L-11, L-1A, L-1C, L-13C, L-15 & L-16 were issued by the Collector (Excise) ST&E, SZ, Shimla. The order was passed pursuant to proceedings initiated by the Collector (Excise) under a separate notice issued to the petitioner. Instead of himself cancelling these licenses the Collector (Excise) ST&E, SZ, Shimla recommended cancellation of licenses to the Commissioner State Taxes & Excise and it is the

Commissioner State Taxes & Excise who actually cancelled the licenses on 04.07.2025. There is no provision for respondent No. 3 to have issued recommendatory order for cancelling petitioner's licenses. Yet the fact remains that respondent No. 3 did issue an order on 02.06.2025 under the nomenclature of 'recommendations'. Petitioner, certainly has been deprived of the remedy of appeal against the order passed by the Collector (Excise) ST&E, SZ, Shimla. The Collector (Excise) after recording the finding that petitioner had violated the terms & conditions of the licenses including the ones issued by the Collector (Excise) instead of himself passing order in that regard recommended the cancellation thereof to the Commissioner State Taxes & Excise. The procedure mandated in law has certainly been breached.

4(ii)(c) There is force in the submission made by the learned Senior Counsel for the petitioner that in passing the impugned order on 04.07.2025 the Commissioner State Taxes & Excise appears to have been greatly swayed by the recommendations made by the Collector (Excise) on 02.06.2025 and further that there was no jurisdiction in the Collector (Excise) to have made the recommendations which he did. Since the parent licenses had been issued by the Commissioner State Taxes & Excise, jurisdiction to adjudicate upon allegations about petitioner having

committed breach of terms & conditions of the licenses lay with the Commissioner. The record shows that parallel proceedings against the petitioner were initiated by the Collector (Excise) as also by the Commissioner (Excise) on the same subject matter with respect to same set of violation of statutory provisions. The record also shows that petitioner had requested the Collector (Excise) not to proceed with the notice issued by him in view of notice having already been issued to the petitioner by the Commissioner (Excise) who had issued the parent licenses. This was also brought to the notice of the Commissioner (Excise). Instead of himself proceeding further in the matter in accordance with law, the Commissioner (Excise) ordered to keep the proceedings pending before him in abeyance awaiting the result of proceedings initiated by the Collector (Excise). The Collector (Excise) vide a detailed order passed on 02.06.2025 recommended cancellation of the petitioner's licenses to the Commissioner (Excise). The procedure followed is neither contemplated under the applicable Statute nor is in furtherance of justice.

It is further to be noticed that all throughout in the proceedings conducted against the petitioner, the Collector (Excise) practically assumed the role of Judge in his own cause. He had initially conducted inquiry into the matter and furnished his inquiry

report to the Commissioner (Excise) on 07.05.2025. During inquiry, the Collector (Excise) had recorded statements of certain Officers. While adjudicating the notices issued to the petitioner and recommending the cancellation of petitioner's licenses to the Commissioner (Excise) under the order dated 02.06.2025, the Collector (Excise) heavily relied upon the aforesaid inquiry and also the evidence collected by him in the said inquiry including the statements of the officers recorded in that inquiry. The petitioner was definitely prejudiced by this recourse resorted to by the Collector (Excise). Further, the recommendations of the Collector (Excise) in form of order dated 02.06.2025 were before the Commissioner (Excise). The petitioner had been directed by the Commissioner (Excise) to furnish his response to the notice issued to him. In response to the reply filed by the petitioner, it is the Collector (Excise) who filed rejoinder supporting his entire case as also the inquiry conducted by him (report dated 07.05.2025) and the recommendations (order dated 02.06.2025) of cancellation of petitioner's licenses made by him. The Collector (Excise) not only became Judge in his own cause but was allowed to influence the proceedings before the Commissioner (Excise). The impugned order passed by the Financial Commissioner (Excise), therefore, cannot

be said to have been passed in exercise of an independent & unbiased mind.

5. In normal circumstances, deviation from law in constitution of the Committee that inspected petitioner's premises would have led to the conclusion of declaring entire inspection being vitiated or in other words the very foundation of issuing the notice to the petitioner and orders passed thereupon would have become illegal. But this cannot be held so in the instant case. On the basis of inspection & the inspection report of the Committee, FIR No. 67 of 2025 stands registered. Petitioner has failed to demonstrate the prejudice caused to it by non-association of specified Executive Officer & Police Official during inspection of its premises. Petitioner has taken a specific defence on merits in its reply filed to the notice issued by the Commissioner, State Taxes & Excise *inter alia* pleading that it had entered into a lease agreement for the factory in question with M/s Vinayak Enterprises; Physical possession of the factory premises was handed over to M/s Vinayak Enterprises. This was in response to respondents' one set of allegations in the notice about subletting or transfer of factory premises by the petitioner without formal permission of respondent-department. The other allegations and merits of the defence are not being commented upon here lest it causes prejudice to the case of either side on

merits. Nonetheless keeping in view that defence/facts admitted, in the given case, it will not be appropriate to quash the entire edifice on the ground of wrong constitution of the Inspection Committee. However at the same time it also cannot be ignored that the impugned order passed by Commissioner State Taxes & Excise cancelling petitioner's parent licenses does not at all reflect either the application of independent mind or that the order was passed after following proper procedure. Therefore, in the interest of justice, the petition is allowed to the extent that impugned order dated 04.07.2025 passed by the Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise), H.P. cancelling the petitioner's licenses in Form D-2 and L-11 (Annexure P-15) is quashed & set aside. However, Commissioner State Taxes & Excise-cum-Financial Commissioner (Excise) H.P. shall be at liberty to adjudicate in accordance with law, on the notice issued to petitioner on 26.05.2025, afresh without taking into consideration the recommendations made to him by the Collector (Excise) – respondent No. 3 under the order dated 02.06.2025 or the pleadings placed on record of the case by the Collector (Excise). Such recommendations/orders/pleadings of the Collector (Excise) shall be treated as non-est. Petitioner shall be given reasonable opportunity to place its case before the Commissioner State Taxes & Excise

H.P. The Commissioner shall decide the case with independent & impartial mind without being influenced by any of the orders passed previously in the matter. All objections, submissions raised by the petitioner shall be delved in & decided in accordance with law. In case, liberty as above is availed by the Commissioner, the entire exercise shall be completed within two months. Respondents are also directed to ensure that inspection team(s) are constituted in future strictly in consonance with the applicable Act, Rules & Notification(s) as deviation therefrom in given case may vitiate the entire process.

Pending miscellaneous application(s), if any, to also stand disposed of.

**Jyotsna Rewal Dua,
Judge**

April 02, 2026 (PK)