

OFFICE OF THE COMMISSIONER EXCISE, ENTERTAINMENT & LUXURY TAX,
L AND N BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI
GOVT. OF NCT OF DELHI

No. F.1(1)/IMFL/Ex./2016-17/ 999

Dated: 18/10/16

ORDER

Rule 62 of the Delhi Excise Rules, 2010 states that:

"In all matters not expressly provided for in these rules, the same shall be referred to the Excise Commissioner, whose decision shall be binding on the licensee."

A peculiar case of fixation of pricing of liquor has come up. Chandigarh has reduced the Export Pass fee for the year 2016-17 as compared to 2015-16. This reduction in levy was not reported by any licensee earlier. As per clause 7.4 (b) of the terms and conditions for grant of L-1 licence for the year 2015-16 (effective till 15 10 2016), the differential amount due to any reduction in the duties levied will be recovered from the date of such reduction in other states. Accordingly, this differential amount must be recovered from the defaulting licensees. Therefore, grant of any license this year is subject to the actions taken against such licensees by the Deputy Commissioner (Excise) being Licensing authority after following due process.

As per Rule 54 of the Delhi Excise Rules, Excise Commissioner fixes the price of liquor in wholesale or in retail or in both. This price is fixed based on the EDP declared by the licensees. Terms and Condition for grant of L-1, states that EDP shall be based on the premise of minimum EDP. Export Pass fee is one of the components for fixing of MRP. Now, reduced Export Pass fee should be factored in while fixing MRP. This means that either MRP should be reduced which will reduce the Excise revenue disproportionately or the EDP should be increased to protect the excise revenue. The sub-section 4 of the Excise Act, 2009 lays down powers and functions of Excise Commissioner and sub section (c) of this section 4 states that:

"To protect excise revenue and ensure prompt recovery"

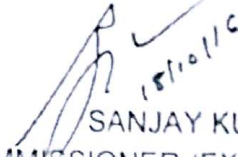
Price fixation under Rule 54 of the Delhi Excise Rules is quasi-judicial function. Excise Commissioner has to fix the price after hearing the party concerned. In this regard, I am of the view that reduction of MRP or EDP resulting in decrease of excise duty is totally against the interest of the government revenue. It will be better to add this differential amount on account of reduction of levies imposed by exporting state, in the EDP of last year of all such licensees and fix the price of the liquor at resultant higher slab. This will not only protect excise duty amount of last year but will also result in much more duty collection.

There is also a question of whether this will be the minimum EDP. Fixing EDP is not a responsibility of the department. As per rule 54 of Delhi Excise Rules, Department has to fix the retail or wholesale price. As per Terms and conditions, principle of minimum EDP is to be taken as a premise. It does not bind the department to effect no change in the EDP and bear revenue loss due to possible reduction of EDP.



However, as these licensees have not informed the department about the reduction of Export pass fee after the change was effected by exporting state, they deserve some penalty. The benefit of decrease of export pass fee in the past is to be recovered immediately. Also, they have to give an undertaking to pay the penalty in the form of recovery of differential amount of export pass fee per case imported in Delhi after the said reduction, till next price fixation. This will ensure no gain is accrued to them due to reduction of export pass fee or fixation of price.

Accordingly, proceeding and hearing for price fixation will be carried out only after concerned licensee accepts the above condition, agrees without any condition or reservation to pay due penalty amount as specified above. This penalty shall not bind the Deputy Commissioner (Licencing Authority) for passing any appropriate order at his level for breach of terms and condition in the past. This principle will be followed in all similar cases for this year or till further order. Deputy Commissioner (Licencing Authority) shall initiate mechanism for prompt recovery of penalty. This direction shall be binding on the all licensees as per rule 62 of the Delhi Excise Act, 2010.


SANJAY KUMAR
COMMISSIONER (EXCISE)

Copy to:

1. Deputy Commissioner (Excise)
2. Assistant Commissioner (IMFL)
3. Sr. System Analyst with the direction to upload the order on official website
4. TCS
5. Notice Board