
(2014) 10 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14575 of 2014

Trishul Wood Products Pvt. Limited

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 166(2), 226, 77(2)
Customs Act, 1962 — Section 113(c), 11H, 11M

Citation : (2015) 2 RCR(Civil) 387

Hon'ble Judges : Fateh Deep Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, Sr. Advocate and Ranjit Singh Kalrao, Advocates for the Appellant; Sanjiv Ghai, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—Through the present petition filed under Article 226 of the Constitution of India, the petitioner, inter-alia, impugns the order dated 18.7.2014, Annexure P. 5 passed by respondent No. 3 - Excise and Taxation Commissioner whereby L-2 Vend with Vend Code No. 222(0) owned by the petitioner has been ordered to be closed immediately at the present location and the petitioner has been directed to open the same at a location which satisfies in common parlance, the reasonable parameters of "near to CTU Workshop". Briefly, the facts necessary for adjudication of the controversy involved as narrated in the petition may be noticed. The petitioner is a company incorporated under the Companies Act, 1956. It is carrying on the business of retail vend of liquor in Chandigarh. It has been running the liquor vend in Kajheri Village, Sector 52, Chandigarh with effect from the year 2006. There are three L-2 vends in Industrial Area, Phase 1, namely Vend Code Nos. 186, 187 and 222 with minimum reserved price of Rs. 85,73,591/-, Rs. 85,73,591 and Rs. 33,45,380/- respectively. L-2 vend with Vend Code No. 186 was allotted to respondent No. 4 - M/s. HI Wines with bid amount of Rs. 87,51,000/-. Respondent No. 4 is running the said vend at Plot No. 149, Industrial Area, Phase 1, Chandigarh. L-2. Vend with Vend Code No. 187 was also allotted to respondent No. 4 with bid amount of

1,15,51,999/- . However, respondent No. 4 defaulted on payment of requisite 30 percent bid amount and was not running this vend and diverting the sale from the said vend to L-2 vend with Code No. 186. As a result, the revenue of Rs. 1,15,51,999/- in respect of Vend Code No. 187 could not be materialized by respondent department. Respondent No. 4 also did not let any other person to give a tender in subsequent tenders. L-2 with Vend Code No. 222 with location mentioned as "Near CTU workshop, Industrial Area, Phase 1, Chandigarh" could not be allotted in the first two rounds offender as the bid was not received for this vend. In the third round of tender conducted on 19.6.2014, the petitioner was the successful bidder with bid amount of Rs. 34,71,325/-. As per site plan Annexure P. 1 of Industrial Area, Phase 1 Chandigarh, the closest location to the CTU workshop is from Plot Nos. 651 to 709. On the opposite side of the road, Plot Nos. 68 to 135 are large plots on which multiple storied buildings are constructed/are under construction. No shops are available therein. The petitioner took on rent Industrial Plot No. 653, Industrial Area, Phase 1 Chandigarh on monthly rent of Rs. 3,79,000/- including electricity and water charges. Respondent No. 4 is running its vend at Plot No. 149, Industrial Area, Phase 1 Chandigarh located at least 1.5 kms. south of the liquor vend of the petitioner. As per site plan, the shops/sheds near the CTU workshop are in the complex where the petitioner has set up its liquor vend. The vend of the petitioner was inspected by the Excise Inspector, Chandigarh and thereafter bulk passes were issued to the petitioner. Accordingly, the vend became functional and started operating with effect from 21.6.2014. According to the petitioner, respondent No. 4 wants to be the only L-2 vendee in Industrial Area, Phase 1 and with this object in mind, respondent No. 4 personally met respondent No. 2 - Secretary, Excise and Taxation department, Chandigarh Administration and submitted undated written representation, Annexure P. 3. Thereafter inspection was done by the Excise and Taxation Inspector on 23.6.2014 and map was prepared and placed on record stating that there was no specification of distance from CTU workshop in the excise policy. The matter was considered by the Excise and Taxation Officer (ETO) and Assistant Excise and Taxation Commissioned (AETC). On 3.7.2014, the AETC recorded that respondent No. 4 was defaulter and had caused loss of 1,15,51,999/-. Thereafter, the matter was considered by the Additional Excise and Taxation Commissioner and then by the Excise and Taxation Commissioner (ETC) who passed the order to file the application on 7.7.2014. A note was recorded on 17.7.2014 by AETC that the file was required to be put up to the Secretary, respondent No. 2. On the very next day, the same officers who had earlier ordered that the application of respondent No. 4 be filed, reversed their stand and ordered for the closure of the vend of the petitioner. The petitioner applied for and obtained the noting portion and the application submitted by respondent No. 4 under the Right to Information Act, 2005. Further, even the order dated 18.7.2014 was not being communicated, to it even though the liquor vend was shut down by Excise Inspector on 18.7.2014. Consequently, the petitioner was forced to move application dated 19.7.2014 for supply of copy of the order dated 18.7.2014. On 22.7.2014, the petitioner

obtained a copy of the order from the office of AETC, Chandigarh. Hence the instant writ petition by the petitioner.

2. A short written statement has been filed on behalf of respondents Nos. 1 to 3 by Shri R.C. Bhalla, AETC, UT Chandigarh wherein it has been inter alia submitted that the excise policy and the rules are silent about what the expression "near" means in terms of distance i.e., in the list of vends no distance has been prescribed to define the nearness to a particular landmark. After discussing the matter, it was concluded that the location of the disputed vend i.e. Vend No. 222 at the distance of around 900 meters away from the CTU workshop could not be said to be "near" to CTU workshop. Accordingly, due to disparity in the license fee, the licensee of L-2 vend No. 186 i.e. Respondent No. 4 will be at a great disadvantage if the disputed vend of the petitioner was allowed to operate at its present location which was very far away from CTU workshop and was quite near to L-2 vend operated by respondent No. 4. Thus, in common parlance, a distance of around 900 meters of the vend in question from the CTU workshop could not be inferred as "near" to CTU workshop as the said distance cannot be held to be reasonable distance to fall within the ambit of term "near". On these premises, prayer for dismissal of the petition has been made.

3. Written statement has also been filed on behalf of respondent No. 4, inter alia, submitting that in Clause 52 of the excise policy, word "near" has been used and the said word has been used within proximity of 50 meters. The opening of the vend by the petitioner at 900 meters from the CTU workshop is under no stretch of imagination would be termed as near. The allegation of not letting anybody else to give tender has been denied being false and incorrect. With reference to different clauses of the Excise Policy and the definition of the term "near" in various dictionaries, the action of the official respondents was sought to be justified. In the replication to the said written statement, the petitioner has denied the averments made therein and reiterated the contents of the petition.

4. Affidavit dated 12.8.2014 has also been filed by AETC Shri R.C. Bhalla to the effect that on survey of the area, it has been found that the vend opened by the petitioner is located at approximately 900 meters from the main gate of CTU workshop and 700 meters from the back wall of CTU workshop. With regard to nearest location where the vend of the petitioner can be opened is approximately 650 meters from the main gate of CTU workshop and approximately 460 meters from the back wall of CTU workshop.

5. Additional affidavit of Shri Amar Pradhu Goel, partner. HI Wines Vend, respondent No. 4 has been filed wherein it has been inter alia stated that the stand of the petitioner that no site is available near the CTU workshop except where it has opened the liquor vend, is incorrect and the same is falsified from the fact that there are number of industrial plots which are situated within the periphery of 300-400 meters. Plot No. 4 is available for rent which is about 350 meters from the CTU workshop. Similarly Plot No. 70 is 300 meters and Plot No. 709 is about 600 meters from the CTU workshop.

6. Reply to the affidavit dated 12.8.2014 filed by AETC and the additional affidavit of respondent No. 4 dated 14.8.2014 has also been filed by the petitioner. It has been inter alia stated that both the affidavits proceed on the basis that the petitioner is required to have the nearest location of the CTU workshop whereas the excise Policy Annexure R-4/1 makes it apparent that the vend in question bearing No. 222 reads "Industrial Area, Phase I, Near CTU Workshop". There is difference between the words "near" and "nearest". The nearest location from the CTU workshop is the group of plots from No. 651 to 709 in the Industrial Area, Phase I, Chandigarh. Even according to the department, the next location where the vend can possibly be opened by the petitioner is at 650 meters from the main gate of the CTU workshop and 460 meters from the back wall of CTU workshop. Further, the affidavit filed by respondent No. 4 is in contradiction to the affidavit filed by the department that there are number of industrial plots which are situated within 300-400 meters of the CTU workshop. Various plot numbers have been mentioned therein. All these plots are huge plots in which large establishments such as Bhushan Industries, Hyundai Show room etc., are functioning. Liquor vend cannot be opened in these huge plots. Thus, the Excise policy uses the term Industrial Area Phase I, Near CTU Workshop and not the term Industrial Area, Phase 1, Nearest to CTU Workshop.

7. In view of the dispute with regard to existence and availability of plots for the liquor vend nearer to the CTU workshop, vide order dated September 3, 2014, Mr. Harkesh Manuja, Advocate was appointed as Local Commissioner to visit the site in dispute in the presence of representatives of the parties as well as the officials of the department. The Local Commissioner submitted his report dated 6.9.2014. Vide order passed by this Court dated 8.9.2014, the said report was taken on record. As per report, Mr. Manuja alongwith concerned persons as mentioned above and Mr. Nitin Gupta, property consultant of the area visited Plot No. 70 in the name of High Street Retail Spaces Godrej Properties. It was informed that sufficient portion was available for lease/sale in the above property for the purposes of running a liquor shop. Mr. Gupta informed that he had been verbally authorised by the owners of the property for leasing out or selling any portion in the said property. However, he was not having any authority in writing in that regard. Neither the owners nor any of their representatives were present at the spot and as such they could not be contacted. Similar was the position with regard to Plot No. 709. The distance of the two sites from the CTU workshop as well as from CTU extension gate was measured by traveling in the car. Distance of High Street Retail Spaces Godrej Properties from CTU workshop was around 400 meters and the distance up-to CTU extension gate was around 450 meters. Distance of plot No. 709 from CTU Workshop was around 900 meters and up-to CTU extension gate was around 950 meters. Distance between the CTU workshop and the existing vend of the petitioner was around 950 meters whereas distance up-to CTU extension gate was around 1000 meters. The distance between the CTU workshop and the liquor vend of respondent No. 4 was

around 1550 meters whereas the distance up-to CTU extension gate was 1600 meters.

8. We have heard learned counsel for the parties and perused the record.

9. Learned counsel for the petitioner submitted that the action of the respondents in closing down the vend of the petitioner suffers from the vice of malafides. There is no reason as to how the decision of the competent authority i.e. ETC was reversed. The representation submitted by respondent No. 4 was directly given to respondent No. 2 who had ordered for filing the same on 7.7.2014. Thereafter, as per office note, the file was to be put up to respondent No. 2 by the AETC on 17.7.2014. Learned counsel submitted that there was no requirement for approval of the order of ETC by the Finance Secretary. Respondent No. 4 being defaulter, his application could not have been entertained by the respondent department. Respondent No. 4 manipulated things so that only one L-2 vend is opened in the Industrial area thereby diverting all the sales from the remaining two vends to its single vend without paying the bid amount for the other two vends. Further the excise policy and the rules are silent about what the term "near" means with regard to distance. There is no mention of the word "nearest" in the excise policy. Reliance was placed on following judgments on the interpretation of the words, near, nearby, close, close proximity etc.:-

- i) Baso Prasad and Others Vs. State of Bihar, ;
- ii) Israr Vs. State of U.P., ;
- iii) Shiji @ Pappu and Others Vs. Radhika and Another, ;
- iv) K. Guruprasad Rao Vs. State of Karnataka and Others, ;
- v) Fertilizers and Chemicals Travancore Ltd. Employees Association and Others Vs. Law Society of India and Others, ;
- vi) Lakhbir Singh and another Vs. State of Punjab,
- vii) Sheelam Ramesh and Another Vs. State of A.P., ;
- viii) Oswal Agro Mills Ltd. Vs. Hindustan Petroleum Corporation Ltd. and Others, ;
- ix) Gunadhar Majhi and others v. State of West Bengal and another, 2012 AIR CC 1413;
- x) Hukma Vs. State of Rajasthan, ;
- xi) Manilal Bhanabhai Patel Vs. Union of India, ;
- xii) Commissioner of Income Tax, Ahmedabad Vs. Karamchand Premchand Ltd., Ahmedabad, ;
- xiii) State of U.P. and Others Vs. Manoj Kumar Dwivedi and Others, ;

xiv) K.G. Nanchahal v. State of Punjab, 2002(1) S.C.T. 485 : 2002 (2) SLR 695 (P & H);

xv) Balwinder Singh v. State of Punjab, 1993 (2) RRR 343 (P & H).

10. On the other hand, learned counsel for the respondents besides supporting the impugned order submitted that the entire action of the respondents was bona fide and the question of mala fide action does not arise in the present facts. The nothings are only views expressed by different officers. The distance being near is to be seen in common parlance. Reliance was placed on following judgments:-

i) State of U.P. and Others Vs. Manoj Kumar Dwivedi and Others, ;

ii) Pijush Kanti Das v. State of West Bengal, 2003 AIHC 1977;

iii) Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, ;

iv) Shanti Sports Club and Another Vs. Union of India (UOI) and Others, ;

v) Karnail Singh v. Darshan Singh, 1995 (2) RRR 488;

vi) BECIL Vs. Arraycom India Ltd. and Others, ;

vii) Commissioner of Central Excise, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd., New Delhi, ;

viii) Bangalore Turf Club Ltd. Vs. Regional Director, ESI Corporation, ;

ix) New India Assurance Co. Ltd. Vs. Abhilash Jewellery, .

11. The short question that arises for consideration in this petition is whether the action of the respondents in closing down the vend of the petitioner at the present location and shifting the same at some other place is legal and valid.

12. The Chandigarh Administration issued Excise Policy for the year 2014-15 for the period commencing 1.6.2014 to 31.3.2015 to regulate the sale and use of liquor in Chandigarh. The relevant clauses in the Excise policy read thus:-

"Terms and Procedure for allotment of Vends for Retail Sale of Country Liquor and IMFL

10. Sealed tenders will be invited individually for all Retail Vends. It shall be the responsibility of the Vendor to arrange premises. A bidder can apply for any number of vends separately. However one bid can be submitted by a firm/person for one particular vend.

11. In case, highest tenderer either surrenders or fails to deposit the first installment of license fee in stipulated period, his/her earnest money will be forfeited and the second highest bidder will be considered as successful tenderer for allotment of liquor vend provided the second bid is at least equal to the

Highest bid minus the forfeited earnest money. On the same principle offer will be extended to 3rd bidder. However, in case third bidder fails or his bid does not fit into above principle re-tendering will be done. The minimum reserve price for the unsold vends for re-tendering will be fixed by a committee comprising of Excise and Taxation Commissioner as Chairman, Addl. ETC and AETC as its members. The decision will further be approved by Finance Secretary.

21. The successful tenderer will be further required to deposit 30% of total bid amount within seven days from the date of finalizing the tenders (the exact date will be mentioned in the public notice inviting tenders) failing which the earnest money will stand forfeited. In such case, the liability of the highest tenderer will be limited only to the extent of earnest money tendered by him with the tender document. Bids for such licenses will be invited again by calling fresh tenders. The earnest money paid with the application/tender document will be adjustable in initial 30% amount of license fee.

22. The licenses will be granted at the locations advertised in the tender notice. These licenses will be granted in SCO/SCF/Shop/Booth, etc. in sectors, Industrial Areas, NAC, Re-habilitation colonies, already existing Pucca Structures in the areas where such structures are allowed by the Administration in the villages, etc. The Department will not be responsible for providing space for opening of liquor vend. The licensee has to prove legal possession of space before opening of the vend. In case, a successful tenderer fails to arrange suitable/eligible premises within 30 days, the 30% of bid money paid by him will be forfeited and the bids will be invited again for the said license after re-fixing the minimum reserve price for the remainder period of the license. Liability of a bidder in such case will be limited upto 30% of bid money.

43. Mode of Recovery of License Fee for L-2/L-14A licenses: The licensee will be required to pay 30% of license fee (bid amount) within seven days from the date of finalizing the tenders, which will also include the earnest money tendered by him with the tender document. The remaining 70%) of the license fee will be payable in equal installments by the close of the last working day of each month from commencement of contract. In case of late payment of any installment an interest @ 1.5% per month to be calculated on daily basis shall be charged. The license shall be deemed to have been suspended and the vend/vends will be closed if the entire license fee of the month is not paid by 15th day of the next month. The licensee shall have to pay the balance installment, interest to get his license operational.

52. Location of Liquor vends: - No liquor vend shall be permitted to be opened near (not less than 50-meters from) main gate of any place of worship, educational institution and place of public entertainment. The distance shall be measured from the main entrance of the liquor vend. The liquor vend on the National Highway/State Highway are required to be located strictly as per the provisions stipulated in the Punjab Scheduled Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963. No liquor vend shall be

allowed to be opened on National Highway. Administration reserves the right to refuse permission for a particular location for the reasons of public morality, public health and public order."

13. Clause 10 provides that sealed tenders will be invited individually for all retail vends. It shall be the responsibility of the vendee to arrange premises. A bidder can apply for any number of vends separately. Clause 11 stipulates that in case highest tenderer either surrenders or fails to deposit the first installment of license fee in stipulated period, his earnest money will be forfeited. Under Clause 21, the successful tenderer will be further required to deposit 30% of the total bid amount within seven days from the date of finalizing the tenders failing which the earnest money will stand forfeited. As per Clause 22, the licenses will be granted at the locations advertised in the tender notice. These licenses will be granted in SCO, SCF, Shop, booths etc. in Sectors, Industrial Area, NAC, Rehabilitation colonies already existing pucca structures in the areas where such structures are allowed by the Administration in the villages etc. It has also been provided that the department will not be responsible for providing space for opening of liquor vend. The licensee has to prove legal possession of space before opening of vend. Clause 43 prescribes the mode of recovery of license fee for L-2/L-14A licenses. According to Clause 52, no liquor vend shall be permitted to be opened near (not less than 50 meters from) main gate of any place of worship, educational institution and place of public entertainment. The distance shall be measured from the main entrance of the liquor vend.

14. The word "Near" has not been described in the Excise Policy 2014-15. Necessarily, one shall have to fall back on the dictionary meaning. According to Law Lexicon dictionary, it means thus:-

"Near. Close to or at no great distance; not distant from; not remote, but of reasonably easy and convenient access. Near is a relative term and its precise importance can be determined by surrounding facts and circumstances. Near has no precise meaning. The meaning varies with the context.

In close proximity: at a short distance."

Further, according to Black's Law Dictionary, the word "near" means "close to; not far away, as a measure of distance, almost close in degree, closely tied by blood, familiar; intimate". As per Oxford Dictionary, the word "near" means closely to or at a short distance from in space, time, condition or resemblance..."

According to D.K. Illustrated Dictionary, the word "near" means "at or to a short distance in space or time, almost: a near perfect fit, at or to a short distance in space or time from, close to, at a short distance away in space or time, close to being a near disaster, closely related, come near to, approach".

As per Oxford Dictionary, the word "proximate" means "nearest, next before or after", whereas "proximity" means nearness, closeness, propinquity." According to Law Lexicon dictionary, "proximate" means "very or relatively close or near".

"Nearest" means "immediately adjacent to; next; in close proximity."

15. In *Hukma's* case (*supra*), while interpreting the words "area adjoining land customs frontiers", it was held thus:-

"This brings us to Mr. Kapur's main contention, namely, that Lal Singh was not a Customs Officer for the place where the seizure was made, and so the seizure was not under the Land Customs Act, taken with the provisions of the Sea Customs Act. The answer to this contention depends on the construction of the notification appointing Customs Officers for the areas adjoining the frontier between West Pakistan and India. The notification as it stands after an amendment in 1956, runs 46-2 S.C. India/64714 as follows:-

"1. In exercise of the powers conferred by Sub-section (1) of section 3 of the Land Customs Act 1924 (19 of 1924) read with the notification of the Government of India in the late Finance Deptt. (Central Revenues) No. 5444, dated 1st December 1924, the Central Board of Revenue hereby appoints for the areas adjoining the Land Customs Frontiers separating West Pakistan from India, the officers of the Government of Rajasthan specified in the schedule hereto annexed, to be Land Customs Officers within the jurisdiction of the Collector of Land Customs Delhi."

"The Schedule."

"All officers of the Rajasthan Civil Police and the Rajasthan Armed Constabulary of and above the rank of Head Constable posted in the Districts of Barmer, Bikaner, Ganganagar, Jaisalmer and Jalore in the State of Rajasthan."

Asking us to give a restricted meaning to the word "adjoining" in the notification, Mr. Kapur has suggested that this notification gave authority to the Customs Officers only for the areas within a few miles from the border. He contended next that even if this be not accepted, the notification on a reasonable interpretation gave authority only to the officers of the Districts mentioned in the Schedule to function as Customs Officers in those Districts and nowhere else. The trial court appears to have accepted this construction, and as admittedly the place of seizure was not in any of the District mentioned in the Schedule, it held that Lal Singh was not authorized to search the accused or to seize the gold. The High Court, on the contrary, has taken the view that each of the officers mentioned in the Schedule has been appointed a Customs Officer for the entire area which has "jurisdiction of the Collector of Land Customs, Delhi".

In our opinion, this is the correct and only possible construction. Section 3 of the Land Customs Act authorizes the Central Government to appoint by notification in the official gazette one person to be the Collector of Land Customs for any area adjoining a foreign frontier and specified in the notification. The section also authorizes the Central Government to appoint by a similar notification such other persons as it thinks fit to be Customs Officers for the same area. "Foreign frontier" has been defined in s. 2, cl. (e) of the Act as the frontier separating any

foreign territory from any part of India. "Land Customs area" has been defined in cl. (g) of the same section as any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under s. 3. From the definition of foreign frontier in cl. (e), it is clear that an area adjoining the frontiers separating any foreign territory from any part of India, is within these words. What, then is meant by the word "adjoining"? According to Mr. Kapur, only a few miles near the frontier can be considered to be adjoining the frontier. We can see no justification for such a restricted construction of the word "adjoining". It is true that the village next to the frontier adjoins the frontier. It is equally correct, however, to describe the entire District nearest the frontier as adjoining the frontier; and we can see nothing wrong in the entire State of Rajasthan adjoining the West Pakistan Frontier. It appears to us that the Central Government treated the whole compact block consisting of the State of Punjab, State of Jammu & Kashmir and State of Rajasthan and Himachal Pradesh and Delhi as one area adjoining the West Pakistan frontier, and for this one area it appointed a Collector of Land Customs. This appears clear from the order appointing the Collector of Central Excise, Delhi, to be the Collector of Land Customs (Notification No. 2L Customs, dated 25th January, 1958), taken with Rule 2(ii)A(i) of the Central Excise Rules, according to which Collector means "in the State of Punjab, Jammu and Kashmir and Rajasthan and in the Union Territories of Himachal Pradesh and Delhi, the Collector of Central Excise, Delhi". In other words, the jurisdiction of the Collector of Central Excise, Delhi, is not only over Delhi, but also it extends to the States of Punjab, Jammu & Kashmir and Rajasthan and the Union Territories of Himachal Pradesh and Delhi. It was for this entire area that the collector of Central Excise, Delhi was appointed Collector of Land Customs...."

16. In Manilal Bhanabhai Patel's case, the issue regarding the term "near" was discussed. It was noticed as under:-

"10. In our view, there is no substance in the aforesaid contention of the learned counsel for the petitioner. The Parliament has specifically used phrase "near the land frontier" or "near the coast of India". It has not used the phrase that goods should be brought on the coastal area. The phrase near the coastal area would indicate that if it is brought at some short distance place from the coastal area or the land frontier then it would be near the coastal area or the land frontier. There is no justification in restricting the meaning of the word "near" to mean that it must be adjoining to the coastal area or at the land frontier area. In case of Hukma Vs. State of Rajasthan, , the Supreme Court had occasion to consider the phrase "area adjoining land customs frontier", as provided under Section 3 of the Land Customs Act (1924). Section 3 of the Land Customs Act authorised the Central Government to appoint by notification in the official gazette one person to be the Collector of Land Customs for any area adjoining a foreign frontier. In that case, court negatived the contention that only few miles near the frontier can be considered adjoining to the frontier by holding that there was no justification for such a restricted meaning of the word adjoining. It also held that the village next to the frontier adjoins the frontier; it would be equally correct to

describe the entire District nearest the frontier as adjoining the frontier. Therefore considering the phrase used in Section 113(c) it will be clear that if the goods are brought near the coast of India which may be 5 to 10 k.m. from the coast or nearby, it can be said that the second ingredient of Section 113(c) of the Customs Act is satisfied. It is true that there is no prohibition for a citizen to keep in his custody silver even in coastal area. Further Sections 11H or 11M were not in force at the relevant time. But that would not mean that if the goods are brought near the coastal area for the purpose of being illegally exported, Section 113(c) of the Act would not be applicable. Section 113(c) would be immediately applicable if it is shown that a citizen staying in coastal area has kept in his custody prohibited goods for the purpose of being exported. Therefore in our view, there is no substance in the contention of learned counsel for the petitioner that it cannot be said that the goods found at village Tukwada which is at a distance of 10 km. from Daman would not be covered by the expression "near the coast of India". The Additional Collector has already rightly considered this aspect. He has arrived at a conclusion that there was a katcha road from Daman to village Tukwada and the expression near the coast of India is to be interpreted in a relative sense and not in absolute terms; the question whether particular place was near the coast would depend on the topography of the land, the availability of various means of transport, the possibility of engaging labourers for transport etc. He therefore held that village Tukwada had to be considered as a place near the coast of Daman and therefore essential ingredient of Section 113(c) of the Act has been satisfied by the department. At present, we are ignoring the contention raised by the respondents that village Tukwada is hardly a furlong away from the tidal river Kilak."

17. Examining the factual matrix in the present case, as per Excise Policy announced for the year 2014-15 commencing from 1.6.2014 to 31.3.2015, L-2 vend with Vend Code No. 222(0) with location mentioned as Near CTU workshop, Industrial Area, Phase I, Chandigarh was allotted to the petitioner with the bid amount of Rs. 34,71,325/- in the third round of tenders. The petitioner opened its vend at a location which is around 900 meters away from the main gate of CTU workshop and around 700 meters from the back wall of the CTU workshop. Another L-2 vend with Vend Code No. 186(0) was allotted to respondent No. 4 with bid amount of Rs. 87, 51,000/- and the said respondent is running the vend at Plot No. 149, Industrial Area, Phase I Chandigarh. Thereafter partner of respondent No. 4 Mr. Abhinav Garg gave a representation dated 23.6.2014 to the effect that as per excise policy the location of L2 vend with Vend Code No. 222(0) owned by the petitioner had been mentioned as "near to CTU workshop" and therefore, it should have been located within a distance of about 50 meters from the CTU workshop but the same has been opened at a distance which is close to its vend and as a result it is affecting its sales badly. Moreover, the license fee of vend of respondent No. 4 is more than the license fee of vend owned by the petitioner. The respondent-ETC after considering the matter and keeping in view the fact that the excise policy and the excise rules are silent

about what the term "near" means i.e., no distance has been prescribed to define the nearness to a particular landmark, ordered the closure of the vend of the petitioner and directed it to open the same at a location which falls within the parameters of near to CTU workshop. As per affidavit of AETC, Chandigarh dated 12.8.2014, the nearest location where the vend can be opened by the petitioner is located at approximately 650 meters from the main gate of CTU workshop and 460 meters from the back wall of CTU workshop. As per report submitted by the Local Commissioner dated 6.9.2014, the distance between the CTU workshop and the vend of the petitioner is around 950 meters. Even Plot No. 709 which is allegedly stated to be nearer than the present location, according to the petitioner, is not available for rent. Moreover, this plot is 830 meters from the CTU workshop gate whereas the plot rented by the petitioner is 900 meters from CTU workshop gate. Thus, the difference is only 70 meters. Still further, the word mentioned in the Excise policy is "near" and not "nearest". Although the excise policy and the rules are silent about the distance in the form of the term near, there is difference between the terms "near" and the "nearest". Keeping in view the overall facts and circumstances of the present case and particularly on account of the fact that there is no clear meaning assigned to the term "Near" in the excise policy and also there is no mention of any specific distance which falls within the parameters of the term "near", it cannot be conclusively said that the petitioner has violated any term of the Excise Policy 2014-15. It is apparent from the report of the Local Commissioner that the best possible location has been chosen by the petitioner and, therefore, it would not be appropriate in the interest of justice at this stage to uphold the action of the respondents. Thus, the impugned order passed by the respondents cannot be sustained.

18. Adverting to the judgments relied upon by learned counsel for respondent No. 4, in Manoj Kumar Dwivedi's case, the question was regarding interpretation of sub rule (4) of Rule 5 of the UP Number and Location of Excise Shop Rules, 1968, which provided that no shop or sub shop for vending of country liquor, foreign liquor and bhang shall be opened in the close proximity to a place of public resort, school, hospital, place of worship or factory or to the entrance to a bazar or a residential colony. The Apex Court upheld the view taken by the High Court that the word "close proximity" used in the said provision shall be meant to be 100 meters or 300 ft approximately. Similarly in Pijush Kanti Das's case, the Calcutta High Court held that the expression "close proximity" must be reasonably construed to mean that the site of a foreign liquor shop must not be within the visibility of students who are at an impressionable age.

19. In Sethi Auto Service Station (supra), it was held that nothings in departmental files do not have the sanction of law to be an effective order. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision making authority. Similarly in Shanti Sports Club's case (supra), it was held that mere nothings recorded in files do not become decision of Government unless the same is sanctified and acted upon by issuing an order in the name of President

or Governor, authenticated as per Articles 77(2) and 166(2) of Constitution and communicated to the affected person.

20. In Karnail Singh's case, it was observed that though two views may be possible on the same material, it must be left to the Government to take a decision unless the decision is vitiated by mala fide and the Court cannot substitute its own view to that of the Government taken in exercise of its administrative powers.

21. In Becil's case (supra), it was held that in administrative matters, scope of judicial review is limited and judiciary must exercise judicial restraint. In Connaught Plaza Restaurant (P) Limited's case (supra) concept of "common parlance" was discussed. It was held that when the legislature has expressed a contrary intention such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding. Similarly in Bangalore Turf Club Limited and M/s. Abhilash Jewellery's cases (supra), the term "common parlance" was considered. The judgments being based on individual fact situation involved therein do not come to the rescue of the respondents. In view of the above, the impugned order dated 18.7.2014, Annexure P. 5 is set aside and the petition stands allowed. Before parting, it is observed that the Excise Policy lacks in clarity in certain matters. The Administration is directed to ensure that in future, effort should be made to specify the location of the liquor vend and the site should be got approved from the Administration. The other terms and conditions of the Excise Policy should also be clear and unambiguous leaving no manner of doubt for the bidders to litigate later on. The original record produced by respondents No. 1 to 3 be returned to their learned counsel.