

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).NO. 28760 OF 2012 (T)

PETITIONER:

MODERN PHARMACEUTICALS PRIVATE LTD,.
REPRESENTED BY ITS MANAGING DIRECTOR,
P. PADMANABHAN NAIR, TIRUR-1, MALAPPURAM DISTRICT.

BY ADVS.SRI.S.RAMESH BABU (SR.)
SRI.P.RAVINDRA NATH
SRI.K.P.KAMALAKARA BABU
SRI.N.KRISHNA PRASAD

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF EXCISE,
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.
2. THE EXCISE COMMISSIONER,
OFFICE OF THE COMMISSIONER OF EXCISE,
TRIVANDRUM - 695 004.
3. THE DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER OF EXCISE,
MALAPPURAM-1.
4. THE EXCISE INSPECTOR,
MODERN PHARMACEUTICALS PRIVATE LIMITED, TIRUR-1.

R1-R4 BY ADV. GOVERNMENT PLEADER, SRI. V.K. RAFAEEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE COMMUNICATION DATED 21/03/2012 ISSUED TO THE 2ND RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE CHALLANS FOR THE MONTH OF JUNE, JULY, AUGUST AND SEPTEMBER.

EXHIBIT-P3-TRUE COPY OF THE COMMUNICATION ISSUED TO THE 3RD RESPONDENT DATED 30/05/2012.

EXHIBIT-P4-TRUE COPY OF THE DEMAND DATED 27/06/2012.

EXHIBIT-P4 (A) -TRUE COPY OF THE LETTER DATED 09/08/2012.

EXHIBIT-P5- TRUE COPY OF THE COMMUNICATION DATED 16/08/2012 ISSUED BY THE PETITIONER.

EXHIBIT-P6- TRUE COPY OF THE LETTER DATED 21/08/2012 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P6 (A) - TRUE COPY OF THE LETTER DATED 22/08/2012 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P7 : TRUE COPY OF THE STATEMENT OF CALCULATION OF THE AMOUNTS ACTUALLY PAID FOR THE PERIOD FROM 4/11 TILL 31.03.2012 TOGETHER WITH THE DETAILS OF THE INTEREST CHARGEABLE FOR BELATED PAYMENT IN TERMS OF THE KERALA RECTIFIED SPIRIT RULES.

EXHIBIT-P8 : TRUE COPY OF THE CHALANS EVIDENCING PAYMENT OF THE AMOUNTS DUE FROM 4/11 TO 3/12 IN SUPPORT OF EXT.P7 STATEMENT.

EXHIBIT-P9 : TRUE COPY OF THE NOTICE FROM THE 3RD RESPONDENT DATED 4.10.2012.

EXHIBIT-P10 : TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 3.8.2013 RECEIVED ON 28.11.2013.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No. 28760 of 2012

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Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioner is a company engaged in the manufacturing of medicines and the company is having licence to deal with rectified spirit. The rectified spirit was stored in the premises of the petitioner and the transaction of rectified spirit was conducted under the supervision of one Excise Inspector and two Excise Guards, who were permanently posted in the establishment of the petitioner during the currency of the licence. According to Kerala Rectified Spirit Rules, 1972, the petitioner is liable to pay cost for the aforesaid personnels posted by the Excise Department in the establishment of the licensee. For the personnel so posted in the establishment of the petitioner, as licensee, the petitioner was required to pay monthly cost of establishment charges towards pay and allowances of the

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Excise Officials.

2. It is the case of the petitioner that the petitioner company has not renewed the licence, after 31.03.2012 and does not have a bonded warehouse and does not deal any more, with rectified spirit and there was no occasion for posting of any excise Officers in the premises on and from 01.04.2012. So the petitioner by Ext.P1, informed the respondents that the licence, which expired on 31.03.2012 is not renewed and further requested to withdraw the Excise Officials posted in his warehouse with immediate effect.

3. Even though, on receipt of Ext.P1, the respondents have issued challans requiring the petitioner to pay the cost of Excise officials up to September, 2012, though, the petitioner is not liable to pay cost of establishment charges after 01.04.2012. Therefore, the petitioner again sent Exts.P2, P3 and P5 letters repeatedly requesting to withdraw the Excise Officials from his warehouse. But, respondents have not withdrawn the Officials even though no

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manufacturing was effected in his establishment after, 30.03.2012.

4. In the above context, even though, he was not liable to pay any amount towards cost of Excise Officials he paid the same up to June, 2012. Now this Writ Petition is filed to issue a writ of certiorari calling for the records leading to the issue of Exts.P4, P4(a), P6 and P6(a) and quash the same and also to issue a writ of mandamus or order or direction commanding the respondents to refund with interest the cost of establishment charges remitted by the petitioner pertaining to the period after 31.03.2012.

5. The respondents filed a counter statement stating that huge amount is due to them from the petitioner under various accounts. But, it is admitted that the respondents have received Ext.P1. Hence, I am of the opinion that if respondents have received Ext.P1 dated 21.03.2012, requesting to withdraw the Excise staff posted in the establishment of the petitioner with immediate effect, the

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petitioner is not liable to pay any amount towards establishment cost of the Excise Officials after 31.03.2012. On receipt of Ext.P1, the 2nd respondent should have taken steps to withdraw the Excise staff from the petitioner's establishment, with immediate effect. So the petitioner could not be mulcted with the cost of those staff, who happened to be posted there, without any need or request from the petitioner, particularly when licence stood expired. On the other hand, it was so happened, due to the inaction from the part of the 1st respondent. If the petitioner has paid any amount, after 31.03.2012, towards this account, he is entitled to get refund of the same. But, considering the fact that the rights and liabilities between the petitioner and the respondents are under dispute, the petitioner can raise the said claim for set off, if any amount is due to the respondents from the petitioner. After the final settlement between the petitioner and respondents, if it is found that no amount is due from the petitioner the respondents, they are

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liable to refund the said amount to the petitioner.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge