IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T. SIVAGANANAM

W.P.No.9262 of 2004
and
W.M.P.No.10799 of 2004

I.G.Sudharsanan .. Petitioner

Vs.

1. State of Tamil Nadu
Represented by Secretary to Government
Prohibition & Excise Department,
Fort St. George,
Chennai- 600 009.

2. The Collector of Chennai,
Collectorate, Ezhilagam,
Chepauk, Chennai-600 005.

3. The Collector of Thrissur,
Thrissur,
Kerala State.

4. The Deputy Tahsildar/Village Officer,
Revenue Recovery,
Chavakkad Taluk Office,
Thrissur, Kerala State. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuing a Writ of Mandamus forbearing the respondents from in any manner resorting to recover any dues from the petitioner as arrears of land revenue in respect of the lease of arrack Shop No.A.S.16/81-82 of Egmore-Nungambakkam Taluk, Chennai District during the excise year 1981-82 by declaring such proceedings to be unconstitutional, void and unenforceable.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mrs.A.Srijayanthi
Special Government Pleader.

ORDER

Heard Mr.Rahul Balaji, learned counsel for the petitioner and Mrs. A.Srijayanthi, learned Special Government Pleader appearing for the respondents.

2. The petitioner has filed the writ petition praying for issuance of a Writ of Mandamus, to forbear the respondents from in any manner resort to recover any dues from the petitioner as arrears of land revenue in respect of the license granted to the petitioner for arrack Shop No.A.S.16/81-82 of Egmore-Nungambakkam Taluk, Chennai District, during the excise year 1981-82.

3. Several grounds have been raised by the petitioner stating that the impossibility to lift the required amount of quantity of arrack cannot be a ground to determine the notional loss has been settled in several decisions and taken note of in a recent decisions of the Division Bench of the Madurai Bench of this Court in the case of A.Meenakshi Sundaram Vs. The District Collector, Sivangai in W.A.(MD)No.608 of 2010, dated 08.11.2016. However, in the instant case, the learned counsel appearing for the petitioner would submit that there is a gross procedural error committed by the respondent in not serving the notice prior to determining the notional loss and what is sought to be enforced on the petitioner is only a revenue recovery proceedings. Thus the submission appears to be that revenue recovery proceedings is only a recovery proceedings and the demand of notional loss should emanate from the Prohibition and Excise Department or the licensing authority and such proceedings could have been issued to the petitioner only after due notice.

4. Counter affidavit has been filed on behalf of respondents 1 and 2. From the counter affidavit, it is seen that a notice was issued by the Taluk Excise Officer, on 06.05.1982, demanding payment of notional loss within 14 days. This notice appears to have been sent an address at Coimbatore as well as an address at chennai and in the counter affidavit, it is admitted that these notices were returned with an endorsement “no such addressee”. If such is the case, then Taluk Exercise Officer, who is the Officer of the Prohibition and Excise Department, ought to have adopted the procedure of substituted service. So that, the notice is deemed to have been served on the petitioner. Thus, unless the notice had been served on the petitioner and he has received the notices, yet defaulted in payment, then alone the recovery proceedings could have been resorted to by addressing the concerned District Collector. What is interesting to note is that the Excise Department, came to know the address of the petitioner in Kerala State, but they did not take any steps to

serve the notice demanding the notional loss and even if there was such notice, opportunity should have been granted to the petitioner to raise his objections. Thus, the entire proceedings initiated by the Excise Department is flawed.

5. For the above reasons, the writ petitioner is entitled to succeed and the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bri/vsm

To

1. The Secretary to Government,
   Government of Tamil Nadu
   Prohibition & Excise Department,
   Fort St. George,
   Chennai- 600 009.

2. The Collector of Chennai,
   Collectorate, Ezhilagam,
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3. The Collector of Thrissur,
   Thrissur,
   Kerala State.

4. The Deputy Tahsildar/Village Officer,
   Revenue Recovery,
   Chavakkad Taluk Office,
   Thrissur, Kerala State.

+1cc to Mr.Satish Parasaran, Advocate, S.R.No.47792

W.P.No.9262 of 2004

KGK(CO)
CS/27/07/17