IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.No. 6929 of 2009
and
W.M.P.Nos.1 & 2 of 2009

S.R.Muthusamy ...Petitioner

Versus

1. The State of Tamil Nadu
   Rep. by Secretary to Government,
   Prohibition & Excise Department,
   Fort St.George,
   Chennai - 9.

2. The District Collector,
   Erode.

3. The Divisional Excise Officer,
   Gobichettipalayam,
   Erode District. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the records in Na.Ka.No.19597/01 u3 dated 16.02.2009 on the file of the third respondent and quash the same as illegal, without jurisdiction, against the orders of the Division Bench of this Hon'ble Court and forbearing the respondents from proceeding under the Revenue Recovery Act for the recovery of the amount of Rs.4,93,637/-.

For Petitioner : Ms. A. Vinu Pradha

For Respondents : Mr. K. Venkatesh,
Government Advocate

O R D E R

Heard Ms. A. Vinu Pradha, the learned counsel appearing for the petitioner and Mr. K. Venkatesh, the learned Government Advocate appearing on behalf of the respondents.

2. The petitioner is before this Court for the third time relating to the same issue in spite of substantial relief given

by the Honourable Division Bench in W.A.Nos.3076 to 3078 of 2001, dated 16.11.2006 and few lines of pointed out the observations made to the respondent. However, the respondent appears to have not taken those observations in the right spirit and have issued the impugned demand notice calling upon the petitioner to pay the amount of kist being a notional loss arrived at on the alleged ground that the petitioner has not lifted the minimum off-take as per the license conditions.

3. At the first instance, the petitioner filed writ petitions challenging the notices dated 25.03.1994 issued by the respondents. The said writ petitions were dismissed by order dated 18.06.2001. As against which, the petitioner preferred appeals in W.A.Nos.3076 to 3078 of 2001. The Honourable Division Bench, by judgment dated 16.11.2006, quashed the impugned proceedings dated 25.03.1994. It was made clear that the respondent, namely, the District Collector, Erode, is free to proceed afresh, if he so desires, by furnishing all the required details or if he feels that at that relevant point of time, i.e., after 21 years, the requirements of the petitioner cannot be complied with, the the District Collector is free to close the proceedings. The operative portion of the order reads as follows:

> "6. .... As rightly pointed out by the learned counsel for the petitioner, though the above mentioned details are available along with the show cause notice, it is not clear, the basis on which the amounts payable by the licensee were fixed. According to the learned counsel for the petitioner, he is not a party to the batch of writ petitions in which orders were passed by this Court issuing direction to the Commissioner of Prohibition and Excise to arrive at a scheme. In such circumstances, the grievance/claim made by the petitioner cannot be ignored lightly.
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> 7. We have already observed that the respondent is not justified in asking the petitioner to approach this Court as well as the Commissioner, Prohibition and Excise for such details. When the Officer viz., the respondent was having all the details, it is but proper on his part to supply the required materials in order to put forth the stand of the petitioner. Unfortunately, the learned single Judge has not adverted to these relevant aspects and rejected the request of the petitioner. It is not in dispute that the petitioner has been offered opportunity

by way of issuance of show cause notice. However, the point is as to whether the clarification sought for by the petitioner is fulfilled by the respondent before determining the amount payable by the petitioners. In such circumstances, we are in agreement with the claim made by the learned counsel for the petitioner.

8. In such circumstances, we have no other option except to quash the impugned proceedings in all these three writ petitions. However, we make it clear that the respondent, the Collector, Erode District, Erode, is free to proceed afresh, if he so desires, by furnishing all the required details or if he feels that at this juncture viz., after 21 years the requirements of the petitioner cannot be complied with, he is free to close the proceedings."

3. In spite of the above judgment, the District Collector, Erode, had proceeded further with the matter by issuing notice dated 20.06.2005. The petitioner challenged the said notice in W.P.No.32736 of 2005, wherein the petitioner also questioned the Government Order in G.O.Ms.No.81, Prohibition and Excise-II Department, dated 05.04.2004, prescribing the rate of interest on the defaulted amount. The writ Court, by order dated 08.02.2008, observed that it had already upheld the G.O.Ms.No.81, dated 05.04.2004 and therefore the said order cannot be quashed. However, with regard to the challenge to the notice issued by the District Collector dated 20.06.2005, the Court took into consideration the decision of the Hon'ble Division Bench and disposed of the writ petition with the following observations:

"7. Before the Division Bench, it was the contention of the petitioner that when the demand notice was issued by the District Collector, he had sent a reply through his counsel on 15.02.1994 and requested the respondents therein to furnish a copy of the order passed by this Court, based on which, a suggestion was made by the Accountant General, Chennai and the Commissioner, Prohibition and Excise Department to furnish him the materials based on which the amount was arrived at, so as to enable him to make an effective representation. Inspite of that, the respondent without furnishing him the required materials, has passed an order dated 25.03.1994, as if the petitioner did not attend the enquiry and further directed him to approach the Commissioner, Prohibition and Excise and this Court for copies of orders. In the same order, the District Collector, Periyar District, Erode, the respondent has also directed the petitioner to pay a sum of Rs.25,498.15 within a period of two weeks from the date of receipt of the copy of the said order.

8. Impugned order, dated 20.06.2005 reveals that the amount deposited by the petitioner during the period of non-supply of Arrack, in respect of Shop Nos.13,18,29,42 remained with the department. Therefore, in the light of the Division Bench order, if the department wants to collect the arrears of loss caused to the Government, the respondent shall furnish all the required particulars to the petitioner, as per the orders of the Divisions Bench, provide a reasonable opportunity to the petitioner and pass orders in accordance with law. It is also open to the respondents to close the proceedings, having regard to the passage of time, as observed by the Division Bench."

4. Thus, in terms of the judgment of the Hon'ble Division Bench referred to supra as well as the order passed in the writ petition, the petitioner was required to be furnished with full details. Unfortunately, the Assistant Commissioner of Excise, Erode, while issuing the notice dated 16.12.2008, did not adhere to the direction issued by the Hon'ble Division Bench nor that of the direction reiterated in the order passed in the writ petition. Though the notice dated 16.12.2008 states that there are certain enclosures, it is not clear as to what are the nature of enclosures, which have been appended in the said notice.

5. In any event, the petitioner immediately by reply dated 07.02.2009 pointed out that as to what are the deficiencies in the said notice. This reply was received by the Assistant Commissioner of Excise, Erode, as could be seen from the postal acknowledgment. However, without reference to the said reply, the impugned demand has been issued demanding a sum of Rs.4,93,637/-. Once again, the petitioner has submitted his representation, followed by legal notice dated 13.03.2009. In spite of taking a specific stand that they are not liable for any penalty to be paid, the respondent excise department were not able to controvert the factual materials which were placed by the petitioner in his reply as well as in the legal notice dated 13.03.2009. Even in the counter affidavit filed by the

respondent, there is no specific averment as to how the calculation was arrived at and as to how the petitioner is liable to pay the penal interest.

6. Thus, this Court is of the view that the respondent cannot be given any further opportunity in the matter. Having been given sufficient opportunity from the year 2006 onwards, the department is not in a position to put-forth their claim in a proper manner. Thus, this Court has no hesitation to hold that the impugned proceedings cannot be enforced on the petitioner considering the peculiar facts and circumstances of the case.

7. In fine, for the reasons stated above, the writ petition is allowed and the impugned proceeding is quashed. Consequently, connected miscellaneous petitions are closed. No costs.

mrr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. Secretary to Government,
Prohibition & Excise Department,
Fort St.George,
Chennai - 9.

2. The District Collector,
Erode.

3. The Divisional Excise Officer,
Gobichettipalayam,
Erode District.

+1cc to Special GP(T) Sr.66353
+1cc to S.Ramesh Kumar, Advocate Sr.66222

W.P.No. 6929 of 2009

RV(CO)
rvr 10/11/2017