IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21633 of 2004
and
W.M.P.No.26133 of 2004

P.M.Chockalinga Thevar ... Petitioner

Vs.

1. The Deputy Commissioner of Prohibition and Excise,
Chennai - 5.

2. The Tahsildar,
Perambalur -Purasawalkam,
Chennai.

3. The Taluk Excise Officer,
Mylapore Triplicane,
Chennai - 28. ... Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Writ of Certiorari to call for records of the third respondent made in R.C.No.E/526/87, dated 09.07.2004, and to quash the same.

For Petitioner : Mr.A.Jenasenan

For Respondents : M/s.A.Srijayanthi
Special Government Pleader

O R D E R

Heard Mr.A.Jenasenan the learned counsel appearing for the petitioner and M/s.A.Srijayanthi, learned Special Government Pleader for the respondents.

2. The petitioner was the successful bidder in an auction for grant of licence to vend arrack in Shop No.19 for the excise year, 1983-84. The petitioner is said to have paid kist amount

till the end of the excise year 15.07.1984. After a period of 4 years, i.e., after the end of the excise year, the respondent, demanded alleged arrears of kist amount in respect of the said shop for the period from 16.07.1983 to 12.08.1983. Aggrieved by the same, the petitioner filed a Writ Petition, in W.P.No.1846 of 1998, which was allowed by order, dated 26.09.1994, holding that the respondents cannot demand any kist amount for the period upto 12.08.1983, the date on which, the licence was issued to the petitioner. However, after about 14 years, after the end of the excise year, a notice was issued, dated 18.02.2000, demanding a sum of Rs.1,14,304/-. Immediately, the petitioner sent a reply through his Advocate on 02.04.2000, stating that he is not in arrears, and he has paid the entire kist amout for the shop till the end of the excise year. In response to the same, the third respondent sent a reply, dated 11.04.2000, calling upon the petitioner to go to the Office along with details of payment made, since the office of the third respondent did not have particulars about the payment.

3. Thus, when the petitioner had abandoned the business 16 years before, the question of retaining such records, (viz., details regarding the payment effected by the petitioner) would not arise. Thereafter, the nothing happened for about four years, and the impugned notice has been issued on 09.07.2004, wherein, there is no reference to the earlier proceedings, dated 18.02.2000, i.e., the proceedings with regard to the demand of Rs.1,14,304/-; the reply sent by the petitioner through an Advocate, dated 02.04.2000; and the proceeding of the third respondent, dated 11.04.2000. Thus, the impugned notice is an outcome of total non-application of mind and the same is unenforceable.

4. For the reasons stated hereinabove, the Writ Petition stands allowed and the impugned notice is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Prohibition
and Excise,
Chennai - 5.

2. The Tahsildar,
Perambalur -Purasawalkam,
Chennai.

3. The Taluk Excise Officer,
Mylapore Triplicane,
Chennai - 28.

+1cc to M/s.A.Jenasenan, Advocate, S.R.No.47132

Writ Petition No.21633 of 2004

CP(CO)
CA(19/07/2017)