IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.19250 of 2006
&
M.P.No.1 of 2006

P.A.Ayyasami ... Petitioner

vs

The Divisional Excise Officer
The Divisional Excise Office
Coimbatore South
Coimbatore District ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the notice made in S.R.No.4/89/A dated 24.03.2006 issued by the respondent and quash the same.

For Petitioner : Mr.A.Nagarathinam

For Respondent : Mr.R.Rajeswaran
Special Government Pleader

O R D E R

Heard Mr.A.Nagarathinam, learned counsel for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader for the respondent.

2. This case has had a chequered history commencing from the year 1985 onwards. The petitioner was granted a retail vending licence to vend toddy in Shop No.126 in Kembanur Village, Coimbatore South Taluk, Coimbatore District for the exercise year 1983-84. The petitioner was declared as a successful bidder. On acceptance of his bid amount of Rs.6100/-, licence was issued to the petitioner on 14.06.1983 and the petitioner's case is that he had been regularly paying the kist amount without any default from the date of licence till December 1983. His allegation is that from January 1984, the respondent did not supply the required quantity of toddy. Somewhere during 1986-87, the petitioner was issued with a demand notice by the respondent calling upon him to pay arrears

of kist amount, failing which action was threatened to be initiated under the provisions of the Revenue Recovery Act.

3. The petitioner challenged the said demand by filing W.P.No.11957 of 1987 stating that he is not liable to pay the amount demanded. In other words, he disputed the quantum demanded. However, the writ petition was dismissed by order dated 11.02.1997. The petitioner preferred W.A.No.874 of 1997, which was heard along with W.A.No.875 and 876 of 1997. By a common judgment dated 08.09.2003, the writ appeals were allowed. The operative portion of the order is narrated hereunder:

> "5.The learned counsel for the petitioners mainly contended that there are discrepancies in the amounts claimed by the respondent from the petitioners as kist arrears and drew our attention to those discrepancies. The respondent in his notice in NK No.1957-86/E, dated 24.10.1987, sent to the petitioner in W.P.No.11957 of 1987, has demanded a sum of Rs.7,879/- towards kist arrears for the Excise Year 1984-85 and in the break up figures, under Column No.5, a sum of Rs.6,940/- has been mentioned as kist arrears to be remitted and in Column No.6, a sum of Rs.1,061/- is mentioned as the amount paid and in Column No.7, a sum of Rs.7,879/- has been shown as the balance to be remitted. It is not known as to how the respondent has arrived at the figure of Rs.7,879/-, when he himself has shown only a sum of Rs.6,940/- under Column No.5 as the balance to be paid. Further, the respondent sent a notice, dated 24.10.1987, demanding a sum of Rs.18,743/- in respect of Shop No.105 and in the counter a sum of Rs.19,205/- has been mentioned as the amount due in respect of the above shop. It is further contended by the counsel for the petitioners that the respondent in his notice, dated 13.11.1986, sent to the petitioner in W.P.No.12179 of 1987, has demanded a sum of Rs.86,721 as kist arrears and whereas in the distraint order, dated 25.11.1987, a sum of Rs.93,021/- has been demanded as arrears.
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> 6.The further contention of the petitioners is that they were asked to pay kist for the period prior to the grant of licence and if really they were in arrears of kist, they would not have been allowed to continue the business and no demand was made during the course of business. The above contention cannot be brushed aside.
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> 7.It is needless to say that only for recovery of ascertained amount due to the Government, the provisions of Revenue Recovery Act can be invoked. As already seen, there are discrepancies in the amounts claimed by the respondent as kist arrears from the petitioners. In such circumstances, the impugned

distraint orders,issued under Revenue Recovery Act, cannot be sustained and the common order of the learned single Judge is liable to be set aside and at the same time, the matter has to be remitted back to the respondent for fresh consideration.

8.In the result, the writ appeals are allowed and the common order of the learned single Judge, dated 11.2.1997 is set aside the impugned orders are quashed and the matter is remitted back to the respondent for fresh consideration, in accordance with law, after giving opportunity to the petitioners to put forth their case and this exercise has to be done at expeditiously as possible. No costs. Connected C.M.P.Nos.10071 to 10073 of 1997 are closed."

4. In terms of the decision of the Hon'ble Division Bench, unless and until the amount to be recovered is ascertained, the question of initiation of proceedings under the Revenue Recovery Act does not arise. The Hon'ble Division Bench noticed that there is discrepancy in the amount claimed by the respondent as Kist arrears from the petitioner and therefore, the distraint orders were held to be not sustainable and the same were set aside. However, the Hon'ble Division Bench did not foreclose the powers of the respondent to proceed in accordance with law. Precisely for this reason, while setting aside the said impugned orders as well as the order passed in the writ petitions, remanded the matter to the respondent for fresh consideration. Thus, in terms of the judgment of the Hon'ble Division Bench, the respondent was bound to first clarify the arrears payable by the petitioner/licencee. However, the respondent issued a demand notice dated 11.01.2005, nearly two years after the judgment of the Hon'ble Division Bench. It is not known as to whether the respondent was not aware of the observations / directions issued by this Court. In the said notice, a sum of Rs. 28,240/- was demanded without furnishing any break-up details as to how the said amount has been quantified. This was followed by another demand notice dated 30.05.2005 demanding a sum of Rs.87,291/- and directing the petitioner to pay the same within a period of 10 days. Subsequently, another notice was issued on 15.07.2005 claiming the same amount. Presumably after issuing these three demand notices, the respondent realized their mistake and issued a notice dated 22.11.2005 directing the petitioner to appear for an enquiry and a statement was also recorded from him. Pursuant to the same, the impugned order has been passed.

5. From the above factual position it is seen that there is a serious error in the decision making process. The first and foremost what the respondent should have done is to quantify the amount payable by the petitioner. This quantification could have been done only after due notice to the petitioner with full

details. This having not been done, this Court has no hesitation to hold that despite the opportunity granted by the Division Bench, the respondent has failed to follow a reasonable procedure before passing an impugned order. These reasons are sufficient to hold that the impugned order is illegal.

6. Under normal circumstance, the Court would remand the matter for fresh consideration. But, however, in this case, I do not propose to do so considering the fact that the Excise year is 1983-84 and the case has had a checkered history.

For the above reasons, this writ petition is allowed and the impugned order dated 24.03.2006 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

gpa

To

The Divisional Excise Officer
The Divisional Excise Office
Coimbatore South
Coimbatore District

+1cc to Mr.g.Pugazhenthi, Advocate in sr.no.74870

W.P No.19250 of 2006 &
M.P.No.1 of 2006

NRI(CO)
NR 14/11/2017