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.19313 of 2006

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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 order made in S.R.No.54/89 dated 29.03.2006 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.154 in Semmedu Natham, 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.12,106/-, licence was issued to the petitioner on 23.02.1985 and the petitioner's case is that he had been regularly paying the kist amount without any default from the date of licence till 15.07.1985. His allegation is that between October 1984 and February 1985, 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.12466 of 1987 stating that he is not liable to pay the amount demanded. In other words, he disputed the quantum demanded. The writ petition was allowed by order dated 03.02.1997. The operative portion of the order is narrated hereunder:

> "In the result the W.P is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh disposal according to law after giving opportunity to the petitioner to put forth his case within 90 days (ninety) from the date of receipt of records from this Court. In the circumstances of the case, there will be no order as to costs."

However, the respondent issued a demand notice dated 12.01.2005, nearly eight years after the order passed by this Court in W.P.No.12466 of 1987. It is not known as to whether the respondent was aware of the observations / directions issued by this Court. In the said notice, a sum of Rs. 48,578/- with 12% interest, 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 02.02.2005 demanding a sum of 1,78,017/- and directing the petitioner to pay the same within a period of one week. The petitioner challenged the said notice by filing W.P.No.11002 of 2005. The writ petition wad disposed of on 01.04.2005 directing the respondent to give fresh opportunity to put forth his case. Subsequently, another notice was issued on 22.11.2005 claiming the same amount. Presumably after issuing these four 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.

4. 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 this Court, 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.

5. 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 29.03.2006 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

gpa

To

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

+1 cc to G.PUGAZHENTHI Advocate SR.NO. 74871

RD 27/11/2017

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