

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2017

Coram

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

Writ Petition No.46769 of 2002
W.P.M.P.No. 117 of 2013

- V.P.Palaniappan (Deceased)
1. Ponnammal

(Petitioner has been substituted in the place of the deceased writ petitioner as per order passed today in W.P.M.P.No.116/2013). ...Petitioner

Vs.

1. The Commissioner of Prohibition and Excise, Chepauk, Chennai - 600 005.
2. The District Collector, Coimbatore District, Coimbatore.
3. The Assistant Commissioner, Prohibition and Excise, Coimbatore.
4. The Excise Officer, Coimbatore.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the Excise Commissioner (first respondent) dated 01.11.2002 made in No.P and E-x(4) 19369/2002, confirming the proceedings of the District Collector, Coimbatore, dated 19.04.1992, made in his proceedings, dated 19.04.2002, in reference Na.Ka.No.13/89/Gau.7, and to quash the same.

For Petitioner : Mr.Haja Mohideen Gisthi
For Respondents : Mrs. A. Srijyanthi
Special Government Pleader

O R D E R

Heard Mr.Haja Mohideen Gisthi, the learned counsel appearing for the petitioner and Mrs. A. Srijyanthi, the learned Special Government Pleader for the respondents.

2. The original writ petitioner was granted a licence to run a Arrack shop in Goundampalayam Town Panchayat, in Coimbatore North Taluk, for the year 1984-1985. The impugned proceedings are orders passed by the second respondent/District Collector and the first respondent/Commissioner of Prohibition and Excise, directing the writ petitioner to pay a sum of Rs.1,28,098/- being the notional loss caused by the deceased petitioner.

3. The case of the writ petitioner is that, the amount demanded from him, viz., a sum of Rs.1,28,098/- is not payable by him, and the amount, which is required to be paid is only Rs.23,925/-. When demand was raised by the respondents, the petitioner submitted a representation to the District Collector, through his Advocate, clearly setting out as to what was the amount paid, the amount payable, and what was the excess amount paid, and after giving a detailed calculation, the writ petitioner admitted the fact that he has to pay a sum of Rs.23,925/-. Though substantial grounds were raised by the writ petitioner, the second respondent/District Collector, in his order, dated 19.04.2002, merely extracted the grounds raised by the writ petitioner (deceased) and stated that the petitioner has to pay a sum of Rs.1,28,098/-. Aggrieved by such order, the petitioner preferred Appeal before the first respondent/Commissioner of Prohibition and Excise, wherein, detailed grounds were raised and calculation was given. The first respondent/Commissioner of Prohibition and Excise, who is the First Appellate Authority is required to independently assign reason as to whether the Appeal filed by the writ petitioner is sustainable or not, on the contrary, the first respondent merely extracted the entire grounds raised by the writ petitioner and in the last para of the order stated that the petitioner has not raised any fresh grounds and confirmed the order passed by the second respondent/District Collector.

4. The impugned orders are nothing but clear examples to show as to how the administrative orders should not be passed, as they have passed without taking into consideration the specific objection raised by the writ petitioner. It goes without saying that the respondents have no material to controvert the contention raised by the writ petitioner that he is due and liable to pay only Rs.23,925/-. The second respondent/District Collector has not given any explanation as to how the petitioner's calculation is either incorrect or wrong. In such circumstances, this Court has no hesitation to hold that the impugned orders are outcome of the total non application of mind.

5. Thus, in the light of the above discussions, the Writ Petition is allowed and the impugned orders are set aside with

liberty to the respondents to recover a sum of Rs.23,925/-. In view of the aforestated reason, the question of imposition of penalty on the petitioner does not arise and the respondents are restrained from imposing any penalty on the said amount of Rs.23,925/-. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

1. The Commissioner of Prohibition and Excise, Chepauk, Chennai - 600 005.
2. The District Collector, Coimbatore District, Coimbatore.
3. The Assistant Commissioner, Prohibition and Excise, Coimbatore.
4. The Excise Officer, Coimbatore.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate SR.No.47128
+1cc to Government Pleader SR.No.48124

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GN(21/09/2017)

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