BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.06.2017

CORAM
THE HON'BLE MR.JUSTICE J.NISHA BANU
W.P.(MD)No.8632 of 2014
and
MP(MD)Nos.1 and 2 of 2014

S.Prabhakaran : Petitioner

-vs-

The Divisional Excise Officer,
Theni. : Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, to call for the records of the respondent in Na.Ka.No.800/1991/A1 and quash the proceedings, dated 15.052014 passed therein, and pass such further orders.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.G.Muthukannan
Government Advocate

O R D E R

The prayer sought for in this writ petition is to call for the records of the respondent in Na.Ka.No.800/1991/A1, dated 15.05.2014 and quash the same.

2.The case of the petitioner is that his father K.T.S.Mani was the highest bidder in the auction in respect of the arrack shop No.9 at Hanumanthan Patti village, Uthamapalayam Taluk, Theni District, for the excise year 1981-82, but he failed to remit the three months rent and also the EMD and therefore, the shop was re-auctioned and some third party took the same. Thereafter, the District Collector, Madurai, issued a recovery notice to his father claiming a sum of Rs.1,17,450/- towards notional loss incurred to the Government, for which his father filed his objection and subsequently, no order was passed.

3.It is the further case of the petitioner that he is carrying on business of Radio Sales and Service and that the Thasildar, Cubam came to his shop and directed to pay the alleged dues of his father and therefore, the petitioner filed WP No.11500 of 1984 to direct the respondents therein not to disturb his business and that writ petition was allowed, dated 06.10.1993 and the respondents therein were directed not to proceed against the petitioner for recovery of the dues from his father Thiru.K.T.S.Mani, giving liberty to the respondents to take necessary action against the original purchaser in respect of the arrears of the notional loss, if any. In the meantime, the father of the petitioner died on 31.03.1995. Now, after a lapse of 30 years, the respondent issued the impugned notice, dated 15.05.2014. Hence, the petitioner is before this court.

4.The respondent has filed a counter stating that the father of the petitioner is the original auction purchaser in respect of arrack shop No.9/81-82, Hanumanthapatti village, but he failed to remit the 2-1/2 months kist in respect of the said shop, thereby caused notional loss to the Government to the tune of Rs.1,17,450/- and now, the Government issued instructions to collect such notional loss under Revenue Recovery Act and steps were taken to gather particulars of immovable properties owned by the father of the petitioner and it was found that the father of the petitioner owned properties to an extent of 0.30.5 Hec. of land in S.F.No.1996 of Uthamapuram Village and in the meantime, the petitioner filed W.P.No.1500 of 1984 and that was allowed on 06.10.1993 giving liberty to the Government to take necessary action against the auction purchaser in respect of the the arrears of the notional loss, if any and on 31.03.1995, the father of petitioner expired and thereafter, the petitioner and his mother promised to pay the dues in installment basis and Rs.20,000/- was collected from the wife and legal heir of the deceased delinquent and that the petitioner has inherited the properties of his father K.T.S.Mani and hence, he is liable to pay the dues with interest.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials available on record.

6.It is seen from the records that the father of the petitioner K.T.S.Mani is the actual auction purchaser/defaulter in repect of Arrack shop No.9 and revenue recovery proceedings were initiated only against him and not against the petitioner. The respondent has stated in the counter that there is no necessity to issue show cause notice to the petitioner for the notional loss incurred by his father. Further, it is seen from the order passed in W.P.No.11500 of 1984, dated 06.10.1993, this court granted liberty to the Government to proceed against the father of the petitioner alone, however, the respondent did not take any action for the recovery of the notional loss from the father of the petitioner, before his death on 31.03.1995. Now, after a lapse of 30 years, the respondent issued the impugned notice on 15.05.2014 stating that on behalf of his father, the petitioner has to pay a sum of Rs.1,02,450/- towards notional loss, which, according to me, is only a contempt against the order passed by this court in W.P.No.11500 of 1984, as this court has directed the respondents therein not proceed against the petitioner herein for the recovery of the dues from his father, Thiru.K.T.S.Mani.

7.For the reasons stated above, this court is of the considered view that the impugned order passed by the respondent, dated 1505.2014 is liable to be set aside.

8.In the result, the writ petition is **allowed** and the impugned order passed by the respondent, dated 15.05.2014 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AD-II)

/True copy/

Sub Assistant Registrar

To,

The Divisional Excise Officer,
Theni.

+1cc to Mr.S.Raja Jeyachandrapaul,Advocate,SR.60933
+1cc to M/S.Special Government Pleader,SR.60968

W.P.(MD)No.8632 of 2014
19.06.2017

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KK/MR KKR/SAR4/17.08.2017/ 3P- 4C