BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.06.2017
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)No.5621 of 2017
and
W.M.P(MD)Nos.4500 and 4501 of 2017

T.Sivakumar ... Petitioner

Vs.

1. The Assistant Commissioner,
   Excise Department,
   Sivagangai District.

2. The Divisional Excise Officer,
   Devakottai,
   Sivagangai District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.F1-219-2007 dated 05.01.2007 and quash the same.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.G.Muthu Kannan
Government Advocate

O R D E R

The Writ Petition has been filed for issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.F1-219-2007, dated 05.01.2007 and quash the same.

2. The petitioner would among other things aver that the petitioner has participated in the open tender for retail sales of Indian Made Foreign Liquor in the year 2002 and since he was a successful bidder, he was issued license on 14.12.2002 to sell the liquor at the place of Aranmanai Siruvaiyal Village, Kallal to Kalaiyarkoil Road, Door No.4/48T. The retail license number was 68 and IMFL Shop number was 98. The license was granted up to 15.09.2003 and the same was subsequently extended up to 15.10.2003. Thereafter, as per the policy decision, the Government of Tamil Nadu took over the IMFL shops under TASMAC and the Government itself is running the shops. Therefore, the petitioner shop was closed. Be that as it may, after 14 years, the second respondent issued a notice dated 05.01.2017, to the petitioner to pay a sum of Rs.1,91,058/-, on the ground that he has not lifted the minimum intake of IMFL referring to Rule 30(2) of Tamil Nadu Liquor (Retail Vending) Rules, 1989.

3. The learned Government Advocate would fairly submit that though show cause notice was given on 20.10.2016 and 22.11.2016, was not served on the petitioner, the present impugned order has been passed. He would further submit that the impugned order may be set aside and the matter may be remanded back to the authorities for fresh consideration.

4. The learned counsel for the petitioner would submit that the impugned order has been passed after a period of nearly 14 years without being conducting any enquiry.

5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents.

6. In my considered opinion even if the matter is remitted back, that would not solve the purpose for the simple reason even a single notice of any adjudication against the petitioner or any allegations as to the contravention of the Rule while completing the license period made against the petitioner has been placed before this Court. It is also not placed before this Court on what basis the impugned order dated 05.01.2017 has been passed. Therefore, in my considered opinion there will be no fruitful purpose even if the matter is remitted back to the second respondent for fresh consideration. Therefore, the writ petition is allowed and the proceedings of the second respondent in Na.Ka.F1-219-2007, dated 05.01.2007 is set aside insofar as the petitioner is concerned. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Assistant Commissioner,
   Excise Department,
   Sivagangai District.

2. The Divisional Excise Officer,
   Devokottai,
   Sivagangai District.

+1cc to Mr.V.Panneer Selvam, Advocate Sr.No.61767
+1cc to Spl.Government Pleader Sr.No. 62031
AKV
VB/MR/KKR/SAR4/26.07.2017/2P/5C