

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.307 of 2015

Shri Murugan Distilleries
Represented by its Proprietor
G.Manimaran

No.171(96) Coimbatore Road

Kangayam, Erode District.

...Appellant/Petitioner

Vs

The Commissioner of Prohibition and Excise

Chepauk, Chennai -5.

...Respondent/Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.34934 of 2013 dated 16.12.2014.

Prayer in WP.No.34934/2013:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the respondent to pass orders on directing the respondent to pass orders on the application of the petitioner dated 8.5.2002 based upon the orders of this Honourable High Court as made in W.P.No.29164 of 2007 dated 23.1.2009 and also the subsequent representations made by the petitioner on 8.9.2010 29.9.2010 and 11.1.2013.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.N.Manikandan
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by

K.K.SASIDHARAN, J.)

The application submitted by the appellant originally for Licence for manufacture of Indian Made Foreign Spirits (IMFS) was rejected by the Commissioner of Prohibition and Excise. The said order was set aside by this Court by order dated 23 January 2009 in W.P.No.29164 of 2007. The respondent was directed to re-consider the matter and pass an order within a period of eight weeks.

2. Thereafter, the application was taken up by the respondent. The respondent by order dated 23 April 2009 informed the appellant that the request cannot be considered on account of their failure to furnish certain documents, which were directed to be furnished. The appellant thereafter furnished the documents, which was received by the respondent

on 8 September 2010. However, there was no follow up action taken by the respondent.

3. The appellant filed a writ petition in W.P.No.34934 of 2013 for issuance of a Writ of Mandamus directing the respondent to pass fresh orders on the application dated 8 May 2002 based on the direction in W.P.No.29164 of 2007.

4. The learned single Judge negatived the prayer for issuance of a Mandamus on the ground that there was no challenge to the proceedings dated 23 April 2009. Feeling aggrieved, the appellant is before this Court.

5. We have heard the learned counsel for the appellant. We have also heard the learned Government Advocate on behalf of the respondent.

6. There is no dispute that the earlier order passed by the respondent rejecting the application for manufacture of Indian Made Foreign Spirits was set aside by this Court in W.P.No.29164 of 2007. The respondent was directed to consider the matter afresh. The application was returned for production of the following documents:-

- "i) The original challans for the remittance of necessary fees have not been enclosed.
- ii) Two more copies of the details of Vats in Receptacles have not been enclosed.
- iii) All the documents were not properly authenticated by Notary Public/ competent Officer. The latest solvency certificate has to be enclosed. "

7. The appellant appears to have not complied with the remarks made by the respondent. The respondent therefore pleaded its inability to consider the application and the same was intimated to the appellant by proceedings dated 23 April 2009.

8. There was no consideration of the application submitted by the appellant on merits by the respondent while rejecting the request through proceedings dated 23 April 2009. The only reason for not considering the application appears to be the failure on the part of the appellant to produce the documents. However, the fact remains that the application was not considered by the respondent pursuant to the order dated 23 January 2009 in W.P.No.29164 of 2007. This aspect was not considered by the learned single Judge. We are therefore of the view that the impugned order is liable to be set aside.

9. The order dated 16 December 2014 is set aside. We direct the respondent to consider and dispose of the application submitted by the appellant on merits and as per law. It is open to the respondent to call upon the appellant for further particulars or documents, in case, production of

such documents are necessary for considering the application on merits. The appellant shall comply with the direction within the time permitted by the respondent.

10. The intra court appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Prohibition and Excise
Chepauk, Chennai -5

+1cc to Government Pleader Sr.No.27270
+1cc to M/s.R.Karthikeyan, Advocate Sr.No.26211

SJ(CO)
sm:8.5.2018

W.A.No.307 of 2015



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