

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.38283 of 2006

and

M.P.No.2 of 2006

and

M.P.No.1 of 2009

1.Nanjappa gounder(deceased)

2.N.Chinnasamy

(2nd petitioner impleaded vide order
of this Court dated 06.08.2019

in M.P.No.1 of 2013)

...Petitioner

Vs

1.The State of Tamil Nadu rep. By its
Secretary to Government,
Prohibition and Excise (11) Department,
Fort. St. George, Chennai - 9.

2.The District Collector,
Erode District, Erode - 11.

3.The Regional Excise Officer,
Gobichettipalayam, Erode District.

4.N.Manickam

5.N.Sasikumar

...Respondents

(4th and 5th respondents impleaded as Lrs of
deceased petitioner vide order
of this Court dated 06.08.2019 in M.P.No.1 of 2013)

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a writ of Certiorari,
calling for the records pertaining to the G.O.Ms.No.81 dated
05.04.2004 issued by the 1st respondent herein and the
consequential demand of interest at the rate of 12% in the order
dated 05.07.2005 made in Na.Ka.Va.Ka.7/97-J1 passed by the 2nd
respondent herein and quash the same.

For Petitioner : No appearance

For Respondents: Mr.A.Zahir Hussain,
Govt. Advocate.
For R1 to R3

O R D E R

The Petitioner herein was granted the licence to run Arrack Shop Nos.9, 27 and 31 for the year 1984 - 85, pursuant to an auction. Since the Petitioner had lifted Arrack less than normal quote of fix, he was issued with a notice to remit a sum of Rs.87,932/- and interest at the rate of 12%. Aggravating a total sum of Rs.2,88,418/-, the interest was calculated from the year 1984 - 85 till 2005. The said notice is under challenge in the present Writ Petition. The said impugned notice deserves to be set aside on the grounds of violations of principles of natural justice and laches.

2. The present demand of the official respondents is that, during the licence period, there was a severe shortage of molasses and consequent shortage of production of Alcohol in the Distilleries and therefore, there was a short supply of Arrack for about five months.

3. This Court had issued directions in W.A.No.701 of 1985 to grant permission on the basis of quota for the aggrieved parties, who have approached the Court. Though the remission proposal was approved by the Commissioner of Prohibition and Excise, it was not given effect to, on the ground that the Commissioner has no power to remit the account.

4. At this stage, the Accountant General of Tamil Nadu had pointed out that the short supply of Arrack for the purpose of remission has been arrived at an uniform subtraction of actual supply from the normal quota fixed, but without taking into account the quantity indented by the licensees. Thereafter, the remission proposals were revised and the Petitioner was granted remission of Rs.166/- for short supply of arrack for the relevant period. The amount of Rs.87,932/- has been termed to be a Notional Loss to the Government, for which the impugned notice has been given for the Notional Loss that is alleged to have been incurred by the official respondents in the year 1984 - 85. The notice demanding the amount was issued only on 05.07.2005. Pursuant to this notice, the petitioner had paid the principle amount of Rs.87,932/-. Till July - 2006, the petitioner had not paid the interest amount of Rs.2,00,485/-. The petitioner being aggrieved against the interest imposed, has filed the present Writ Petition.

5. There is absolutely no explanation as to why the official respondents have chosen to issue a notice claiming the Notional demand, after about 20 years. The only reason assigned is that there were audit objections, which insisted them to raise the demand.

6. This Court is unable to comprehend as to how the petitioner himself would be in a position to recollect the terms of the license and the details with regard to the Notional Loss, after such an inordinate lapse of 20 years. This delay would therefore be fatal to the Department. On this ground, the Petitioner would be entitled to succeed.

7. It is also seen that prior to the demand for the Notional Loss as well as imposing of interest, the Petitioner was not given any prior notice calling for his objections which is clearly in violation of the principles of natural justice. On this ground also, the Petitioner would be entitled to succeed.

8. For all the aforesaid reasons, the impugned orders dated 05.04.2004 and 05.07.2005 are set aside. The Writ Petition stands allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Secretary to Government,
Prohibition and Excise (11) Department,
Fort. St. George, Chennai - 9.

2. The District Collector,
Erode District, Erode - 11.

3. The Regional Excise Officer,
Gobichettipalayam,
Erode District.

+1cc to the Government Pleader, S.R.No. 68082

W.P.No.38283 of 2006

PM(CO)
GN(06/11/2019)