

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.9007 of 2007
and
M.P.No.1 of 2007 & 1 of 2010

P.Sundaram

... Petitioner

Vs

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai - 600 005.

2.The Collector of Erode District,
Gobichettipalayam,
Erode District.

3.The Assistant Commissioner (Excise),
Erode District, Erode.

4.Taluk Excise Officer,
Gobichettipalayam,
Erode District.

.... Respondents

Prayer in W.P.No.9007 of 2007: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records relating to the proceedings of the First Respondent in Proc.No.P & E 10(1)/31891/94 (S.R.) dated 06.11.2006 relating to Arrack Shop Nos.3, 5, 6, 8, 16, 17 and 21/84-85 all in Sathiamangalam Taluk in Erode District and Arrack Shop Nos.4 and 7/84-85 in Gobichettipalayam Taluk and quash the same.

For Petitioner : Mr.G.Sumitra

For Respondents: Mr.A.Zakir Hussain
for R1 - R4
Government Advocate

O R D E R

The issue involved in the writ petition is that the respondents had demanded an amount as notional loss in connection with the arrack shop, for which the petitioner is granted license for the year 1984-85.

2.The first payment was made in the year 1993, which is after 10 years. Thereafter, the petitioner had filed writ petitions in W.P.Nos.20733 to 20741 of 1993, which came to be allowed, on the ground that the petitioner should be given an opportunity of prior notice and personal hearing. Subsequently, when the second demand was made by the petitioner in W.P.No.13258 of 2005, the order again came to be quashed directing the petitioner to give his objection to the impugned order which should be treated as a show cause notice. The present impugned order has been passed in the year 2006, confirming the demand made. In various writ petitions challenging the demand of like nature, this Court had quashed the demand made for notional loss on the ground that the details as to how the notional loss was arrived was not furnished to the petitioner and that there is no explanation for the inordinate delay in making the demand. In one such order of this Court passed in W.P.No.32718 of 2013, dated 07.06.2018, it has been held as follows:

"4.Firstly, the impugned notices are bereft of particulars, as to the date on which the petitioner has surrendered the shop and the date on which the shop has been allotted to a third party. Further, the impugned notices did not give any details and straight-away distraint order has been passed. That apart, for 24 years, no action was initiated against the petitioner and it would be harsh on the petitioner to now proceed against him for the alleged loss caused on account of the surrender of the shop. It was well open to the second respondent to make recovery as and when the petitioner surrendered the shop. Having not done so, the question of directing the second respondent to proceed with the impugned proceedings cannot be entertained. For the above reasons the writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed."

3.In the instant case also, the impugned order does not explain the reason for the inordinate delay on the part of the respondents seeking for the notional loss. This Court is unable to appreciate as to how the petitioner would be in a position to substantiate their case after such inordinate delay and on this short ground, the writ petition requires to be allowed.

4.With these observations, the writ petition is allowed and consequently, the impugned order in Proc.No.P & E 10(1)/31891/94 (S.R.) dated 06.11.2006 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai - 600 005.
- 2.The Collector of Erode District,
Gobichettipalayam,
Erode District.
- 3.The Assistant Commissioner (Excise),
Erode, Erode District.
- 4.Taluk Excise Officer,
Gobichettipalayam,
Erode District.

+1cc to M/s.G.Sumitra, Advocate Sr.62841

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gp[co]
srg 12/09/2019