

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.25757 of 2008
and
M.P.No.1 of 2008

P.Arumugam

...Petitioner

Vs

1. The Deputy Commissioner (Excise),
Coimbatore, Coimbatore District.

2. The Divisional Excise Officer,
Coimbatore North,
Coimbatore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent in Ref:3308/2007/Z7 dated 08.12.2007 and the consequential notice of the 2nd respondent in Na.Ka.No.522/07/A1 dated 24.09.2008 and quash the same and consequently direct the respondents to refund to the petitioner the sum of Rs.1,50,000/- deposited by the petitioner towards security deposit for IMFL Shop under License No.2/2002-2003 and Bar License No.53/3003 respectively with interest at 12% per annum.

For Petitioner : Mr.S.Abubacker Sidhic
for Mr.Palani Selvaraj

For Respondents: Mr.A.Zakkir Hussain, GA

ORDER

The petitioner herein was granted a license to run the IMFL shop No.125 & 1 in S.F.No.335/1A, Vellakinar Village, Vellakinar, Coimbatore North Taluk for the period 2001-2002 and 2002-2003. According to Clause 25 of the license, the licensee was required to lift the minimum off-take of liquor fixed for the shop by the licensing authority and in case of failure to lift the minimum off-take so fixed consecutively for two months, the licensee would be liable to pay a penalty in proportion to

the loss of revenue to the Government due to such non-lifting. At the time of granting of license, the petitioner herein had remitted a sum of Rs.1,00,000 towards security deposit for running the shop.

2. The present impugned order dated 08.12.2007 is for a demand of Rs.2,91,630/-, which includes the security deposit of Rs.1,00,000/- adjusted therein, on the ground that the petitioner herein had violated Clause 25 of the license by failing to lift the minimum off-take fixed under the license conditions consecutively for two months.

3. The learned counsel for the petitioner submitted that there was absolutely no violation of Clause 25 of the license and that the petitioner herein had complied with the minimum off-take of liquor as contemplated under the license. Even otherwise, the petitioner herein was not issued with any prior notice calling for his objections, nor was any information given as to how the respondents had arrived at the penalty amount of Rs.2,91,630/- and the relevant period of such alleged violation also has not been explained to them.

4. The learned Government Advocate on the other hand opposed such submissions and stated that the petitioner herein was very much aware of the license conditions and there was a duty cast on him to lift the minimum off-take of liquor and that since he had violated by not lifting such off-take, a prior notice was not required. As such, he would submit that there was no violation nor any infirmity in the impugned order.

5. I have given careful consideration to the submissions made by the respective counsels.

6. A perusal of the impugned order dated 08.01.2007, reveals that prior to the issuance of demand of penalty, the petitioner was not given any prior opportunity calling for his objections. Neither does the impugned order reveal as to on what basis the penalty was arrived at, or the period for which such penalty has been levied. The 1st respondent had relied upon certain proceedings of the Commissioner of Prohibition and Excise, Chennai and the Divisional Excise Officer, Coimbatore North, for the purpose of levying penalty, which orders also have not been served on the petitioner. When the petitioner herein has come before this Court challenging the impugned demand of penalty, specifically on the ground that he had not violated the conditions and that he had not lifted the minimum off-take of liquor consecutively for two months, in all fairness, the respondents ought to have given a prior notice to them calling for their objections, as to why the penalty should not be imposed for the alleged violation of Clause 25 of the license.

In the absence of the same, it can only be held that the impugned demand of penalty itself is in violation of the principles of natural justice as enshrined under the Constitution of India. As such, the demand itself cannot be sustained.

7. Nevertheless, if the respondents are still of the view that there was a violation of Clause 25 of the license, it would be appropriate to give them an opportunity to re-exercise the entire issue by calling for objections from the petitioner, prior to any decision of levying penalty.

8. In the light of the above observations, the impugned proceedings of the 1st respondent in Ref:3308/2007/Z7, dated 08.12.2007, is set aside. Consequently, the 1st respondent herein is granted liberty to make a fresh demand by giving prior show cause notice to the petitioner calling for their objections and in any event of such notice being issued, the 1st respondent shall also give details of the mode in which the penalty has been arrived and the relevant period for which it is imposed. In case the petitioner gives any reply to the show cause notice, the 1st respondent shall consider the same, on its own merits and pass appropriate orders, after giving due opportunity to the petitioner. The entire exercise commencing from issuing a prior show cause notice and passing of a final order shall be completed, preferably within a period of 4 months from the date of receipt of copy of this order.

9. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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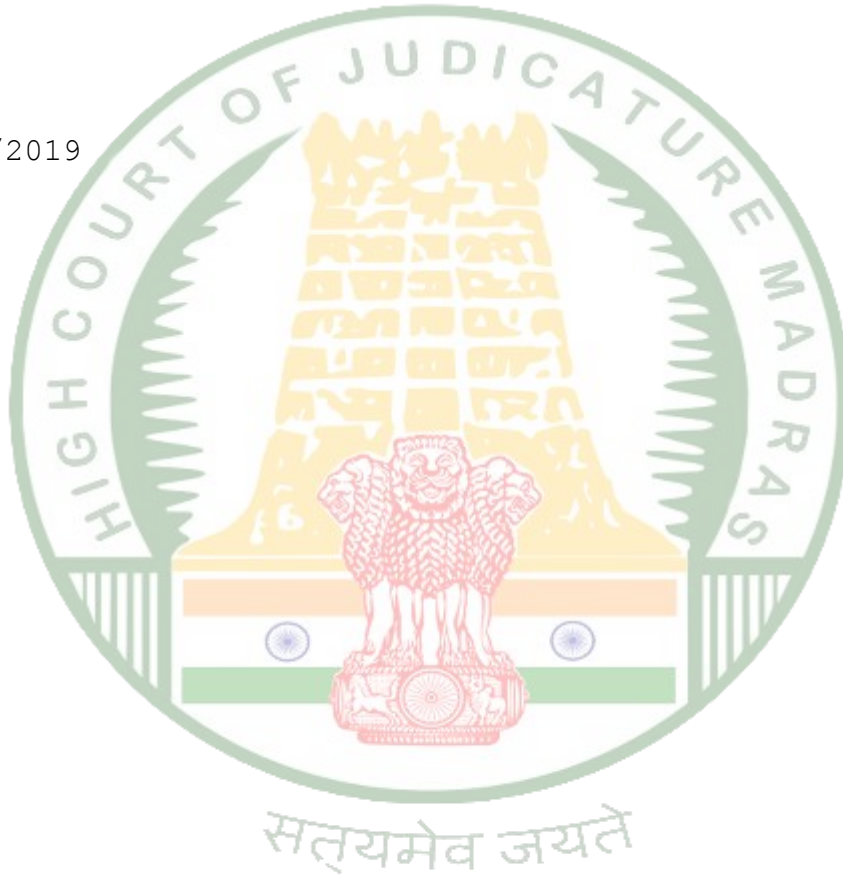
1. The Deputy Commissioner (Excise),
Coimbatore, Coimbatore District.

2. The Divisional Excise Officer,
Coimbatore North,
Coimbatore District.

+1cc to Mr.Palaniselvaraj, Advocate Sr.54318

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