



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8599 of 2009

and

M.P.No1 of 2009

Venkatachalam

...Petitioner

Vs.

1. The District Collector,
Salem District.

2. The Taluk Excise Officer,
Mettur,
Saelm.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in proceedings C.Pa 3/2008/A and dated .12.2008 in directing the petitioner to pay a sum of Rs.3,40,945/- alleged to be the notional loss to the government and quash the same as illegal, incompetent and without jurisdiction and further direct the first respondent herein to return the EMD of Rs.1,00,000/- together with interest at 18% per annum from the date of deposit till the date of realization and for consequential orders.

For Petitioner : Mr.A.Purushothaman
for Mr.V.Raghavachari

For Respondents : Mr.A.Zakir Hussain
Government Advocate

O R D E R

The order impugned in the present writ petition is levy of penalty, on the ground that the petitioner, being a licensee, had not lifted the minimum off-take of liquor fixed for the licensed shop, which is in violation of the conditions in the license. One of the main ground raised by the petitioner is that prior to the issuance of the impugned order, they were not given any prior opportunity to putforth their objection and therefore, in the absence of the same, the impugned order cannot be sustained.



2. On perusal of the impugned order also, the same does not reveal that the petitioner herein, was put on prior notice and the opportunity was extended for the petitioner to raise the objection to the notice, as such the demand itself would be in violation of the principles of natural justice. On this short ground, the impugned demand is liable to be set aside.

3. Nevertheless, if the respondents are still of the view that they are entitled to levy penalty, it was always open to them to exercise such an option, after due giving prior notice to the petitioner, calling for their objection and further, orders would be passed after due consideration of such objection.

4. With the above observations, the impugned order is set aside with liberty to the respondents to issue a show cause notice calling for the petitioner's objections and pass final orders on consideration of such objections. Accordingly, the writ petition stands disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

sni

To

1. The District Collector,
Salem District.
2. The Taluk Excise Officer,
Mettur,
Saalm.

+1cc to Mr.V.Raghavachari, Advocate SR.No.60994

+1cc to Government Pleader SR.No.61260

W.P.No.8599 of 2009
and
M.P.No1 of 2009

KK(CO)
GMY(16/08/2019)