IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19186 of 2005
and W.P.M.P.No.20756 of 2005

M.Ganesan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Commissioner & Secretary,
Revenue Department,
Fort St. George, Secretariat,
Chennai 60 009.

2.The District Collector,
Coimbatore District,
Coimbatore.

3.The Divisional Excise Officer,
Coimbatore North,
Coimbatore. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 2nd and 3rd respondents relating to its proceedings Na.Ka.No.92650/89G-7, dated 09.01.2002 and the consequential proceedings dated 03.05.2005 in Na.Ka.No.1298 / 93 A, respectively and quash the said proceedings dated 09.01.2002 and 03.05.2005.

For Petitioner : Mr.M.Sriram

For Respondents : Mr.K.Bhuvanesewari, AGP

O R D E R

The orders impugned in the present Writ Petition is to a claim made by the third respondent herein calling upon the petitioner to pay a sum of Rs.2,99,162/- as notional loss and penalty of Rs.1,41,478/- with interest at the rate of 5% per annum, totalling to Rs.4,40,640/- and the consequential demand made for the future interest, totalling to Rs.9,11,926/-.

2. It is the case of the respondents that the petitioner, who had been granted with licence for running arrack shop No.150 for the excise year 1983-84, had caused notional loss to them. The reason assigned by the respondents for notional loss is that the petitioner had earlier approached this Court and filed a Writ Petition preventing the respondents from re-auctioning the shop, thereby, causing revenue loss to them.

3. The impugned order dated 09.01.2002 is apparently after a lapse of about 22 years. The reason assigned by the respondents in the impugned notice is also not justifiable. It is the case of the petitioner that his shop came to be illegaly closed, which necessitate him to file the Writ Petition and in view of the interim orders, the shop could not be auctioned in favour of the third persons.

4. It is needless to point out that the petitioner has a right to challenge any action of the respondents, which are detrimental to his fundamental rights to carry out any profession or trade and questioning the legality of such right cannot be termed as illegal or unjustified.

5. It is seen that in identical cases, the respondent Department had made similar claim of notional loss, which has been the subject matter of many Writ Petitions before this Court and this Court had also quashed the said action. One such decision of this Court is reported in CBJ 2018 MBC 4918 (Loganayaki vs. The State of Tamil Nadu), which reads as follows:

> "7. Admittedly, the Government Order was passed only in the year 2004, whereas the licence granted to the erstwhile firm was for the Excise year 1982-83. The fourth respondent in the counter affidavit has not stated that the Government Order is retrospective. Even assuming, it is so, what is sought to be recovered is the penal levy given the nomenclature as interest. Thus, what is sought to be recovered from the petitioner is the penalty termed as interest for the belated payment. Admittedly, the decision of the Government to levy interest is an executive order, not a statutory rule or a regulation. Therefore, the said Government Order cannot be made retrospective to be made applicable to the relevant Excise year 1982-83. Furthermore, when there is a direction to levy penal charges on a licencee, the same cannot be made retrospective, as it would tantamount to change of the licence conditions. In the counter affidavit, there is an averment stating that the Government has issued notification specifying the rate of interest to be recovered on the amounts due to the State Government

under the provisions of the Tamil Nadu Prohibition Act and the Rules made thereunder and the rate of interest was fixed at 12%. It is further stated that in terms of G.O.Ms.No.81, dated 05.02.2004, the rate of interest has been fixed at 5%. The respondent have not placed before this Court, the terms and conditions of the licence granted in favour of the firm. Even assuming that there was a condition to levy interest for belated payment, the same cannot be at the rates fixed by the Government in G.O.Ms.No.81, as the said Government Order was issued much after the expiry of the Excise year.

8. One more aspect, which is peculiar to the case on hand is that the petitioner was granted liberty to remit the entire arrears of notional loss in installments. At the time when the installment payments were accepted by the respondent department, there was no refusal to accept the payment in installments and insisted the petitioner to pay the entire amount in one lumpsum. Thus, the delay in remitting the notional loss is deemed to have been condoned by the respondents on account of the indulgence granted by the petitioner to remit the amounts in installments. What is interesting to note is that apart from the payment of entire notional loss, the respondents have also collected a sum of Rs.1,89,100/- towards interest. In such circumstances, the respondent cannot now demand interest at the rates fixed by the Government in G.O.Ms.No.81, which was issued in the year 2004. From the tabulated statement found in the impugned notice, it appears that whatever remittance were made by the petitioner towards the arrears of notional loss appears to have been adjusted against notional loss and interest, for which there was no specific written consent from the petitioner nor the petitioner was informed as to how such adjustment has been made. Inspite of the said factual position, the petitioner has remitted the entire notional loss for the three shops along with interest, which according to the petitioner is in full and final settlement of all payments.

9. Thus, for all the above reasons and more particularly in the peculiar facts and circumstances of this case, this Court is of the considered view that the impugned demand notice is unenforceable, as the petitioner has paid the entire notional loss along with interest in respect of all the three shops, which was licenced to a partnership firm, and which has become default."

6. The aforesaid observations of this Court in an identical case is applicable to the facts of the present case also. As such, the belated claim of notional loss after a period of 23 years cannot be justified at any stretch of imagination.

7. In the light of the above observations, the proceedings of the second respondent in Na.Ka.No.92650/89G-7, dated 09.01.2002 and the consequential proceedings of the third respondent, dated 03.05.2005 in Na.Ka.No.1298 / 93 A are quashed. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. At this juncture, the learned counsel for the petitioner submitted that when the Writ Petition came up for admission, the petitioner had deposited a sum of Rs.1,50,000/- with the respondents through an interim order, dated 16.06.2005. Now as this court has quashed the impugned orders, it would be open to the petitioner herein to seek for refund of sum of Rs.1,50,000/-, which is claimed to have been deposited pursuant to the interim order of this Court, dated 16.06.2005.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Commissioner & Secretary,
The State of Tamil Nadu,
Revenue Department, Fort St. George, Secretariat,
Chennai 60 009.

2.The District Collector,
Coimbatore District, Coimbatore.

3.The Divisional Excise Officer,
Coimbatore North, Coimbatore.

+1 cc to Mr.M.Sriram, Advocate, S.R.No.23019

+1 cc to the Government Pleader, S.R.No.23139

W.P.No.19186 of 2005

RR(CO)
SSM(12/04/2019)