IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.09.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.Nos.4250 and 4251 of 2013
and
M.P. Nos.2 and 2 of 2013

M/s Mohan Breweries and Distilleries Limited,
Rep. by its Managing Director,
Mr.Arvind Nandagopal,
Rayala Towers, II Floor,
No.158, Anna Salai, Chennai 600 002. ...Petitioner in both WPs.

Vs

1.The Principal Secretary/Commissioner of
Revenue Department, Secretariat,
Chennai - 600 009.

2.The Principal Secretary/Commissioner of
Revenue Administration, Chennai -5.

3.The Commissioner of Prohibition and Excise,
Chennai -5.

4.The Excise Supervisory Officer,
Deputy Collector - IMFS Unit,
Mohan Breweries and Distilleries Limited,
Valasaravakkam, Chennai - 600 087.... Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, to call for the records pertaining to the letter bearing Nos.RC.20/2012 (IMFS) dated Nil.08.2012 and 31481/Ser.2(2)/2011-1, dated 21.09.2011 respectively on the file of fourth and first respondents and quash the same consequently, direct the respondents withdraw all respectively further communications demanding to pay the presumptive loss as stated in their letter.

For Petitioner : Mr.U.Karunakaran in both WPs

For Respondents : Mr.R.Pratap Singh
Government Advocate in both WPs

C O M M O N O R D E R

The petitioner is engaged in the business of manufacturing IMFL, Beer, ENA (Extra Neutral Alcohol), generation of Wind Power etc., in Tamil Nadu and Andhra Pradesh.

2. In accordance with the Tamil Nadu Indian-Made Foreign Spirit (Manufacturing) Rules, 1981 (hereinafter referred to as 'Rules'), the premises where the activity of distilling was carried on is entrusted to the supervision of the Manufactory Officer. The duties of the Manufactory Officer are set out in Rule 4. The petitioner is also responsible for providing a premises where the stock as well as all records including Excise Labels, may be stored under lock and key.

3. According to the petitioner, this room has been made available to the respondent from the time of commencement of operation, since early 1980.

4. While this is so, a letter dated 21.09.2011 appears to have been sent from the Principal Secretary to the Commissioner of Revenue Administration, the first and second respondents herein respectively, stating that 60,000 Excise Labels were found missing and the petitioner was solely responsible for the same. Pursuant thereto, a Government Order bearing G.O.(D) No.287 Revenue (Ser 2(2)) Department dated 21.09.2011 was issued framing six charges against the Deputy Collector who was the former Excise Supervisory Officer in regard to the petitioners' brewery.

5. I do not deem it necessary to refer to all the charges in extenso, except to state in summary that the Officer was alleged to have failed to keep the Excise Labels under safe custody, thus causing the loss of 60,000 Labels, leading to possible misuse of the same by marketing unaccounted/spurious liquor to the extent of 60,000 bottles of 180 ml or roughly 1000 cases, and thereby causing revenue loss of Rs.6,04,200/- towards excise duty and Rs.6,25,390/- towards sales tax to the Government. The charges are levelled only as against the Excise Supervisory Officer and do not include/address the brewery in any way. No allegation is made to the effect that the petitioner has failed to provide a secure premises as required under the Rules.

6. There appears to have been exchange of communication between R1 and R2 thereafter and vide letter dated 04.10.2011, R1 communicates to R2 that the Government had, on 21.09.2011 directed the petitioner to provide a secure room for storage of excise labels and this, not having been done, any loss caused to its account is directly attributable to the petitioner and has to be made good by it. This allegation is reiterated on 29.11.2011 as well. On 10.12.2011, the Excise Supervisory Officer (ESO) writes to the petitioner putting it to notice that

the cost of the missing 60,000 labels are to be remitted within seven days from date of receipt of the letter and also calling upon it to make arrangements to provide a secure room for preserving the excise labels to prevent such occurrences in future.

7. On 14.12.2011, the petitioner writes confirming that a room with lock and key adjacent to Essence room at the packing material hall had already been provided. Moreover, the cost of 60,000 Excise Labels had been fully for paid even in advance and prior to their issuance.

8. The question before me is as to whether the strong room has been provided in time by the petitioner and in line with the Regulations or has been provided only after the theft/loss of the Excise Labels. A note issued by the State Excise Revenue Officer also records exchange of communication in this regard, specifically the petitioners' letter dated 14.12.2011 wherein it confirms that a strong room had been provided by it. This statement has not been contradicted anywhere.

9. In the common counter filed by the respondents they admit at paragraph 5 that a room had been provided for its use by the petitioner even prior to the loss suffered. However, the respondents found this room unsuitable as it was work to flood with rain water during the monsoons. It does not appear to be the case of the respondents that this fact was even brought to the notice of the petitioner who did not attend to the same or provide alternate storage.

10. In my view, it was incumbent upon the respondents to have brought this to the notice of the petitioner in time, requesting it to provide alternate accommodation. This has not been done and it was only by letter dated 22.12.2011 that the 4th respondent had requested an alternate suitable room for protection of the excise labels and other valuables and materials.

11. Thus, in view of the above, the petitioner cannot be blamed for the loss of the Excise Labels. Moreover and admittedly, the Excise Labels have been paid for in advance by the petitioner. Thus, the impugned letter calling upon the petitioner to remit the notional loss of revenue on 60,000 bottles of IMFL is quashed.

12. These Writ Petitions are allowed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Principal Secretary/Commissioner of
Revenue Department, Secretariat,
Chennai – 600 009.

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Revenue Administration, Chennai -5.

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4.The Excise Supervisory Officer,
Deputy Collector – IMFS Unit,
Mohan Breweries and Distilleries Limited,
Valasaravakkam, Chennai – 600 087.

+2ccs to Mr.U.Karunakaran , Advocate SR.No. 77485,78456
+1 cc to Government Pleader Sr.No. 78133

W.P.Nos.4250 and 4251 of 2013
and
M.P. Nos.2 and 2 of 2013

A.SK(03/12/2019)