IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3686 of 2020
and
WMP. Nos.4360 & 4362 of 2020

A.P.DHARMALINGAM,
S/o. Late K.A. Palanisamy Gounder,
20/29A,Kamatchiyammal Koil Street,
Kottur Malaiyandipattanam, Anaimalai Taluk,
Coimbatore District.
.. Petitioner

Vs.

1 The Commissioner of Prohibition and Excise,
Ezhilagam, Chepauk,
Chennai 600 005.
2 The District Collector,
Coimbatore District, Coimbatore.
3 The Deputy Commissioner (Excise)
Prohibition and Excise Department
District Collectorate (2nd Floor),
Coimbatore District, Coimbatore.
4 The Divisional Excise Officer,
Pollachi, Coimbatore District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari fied Mandamus to call for the records in Na.Ka.No. 13330 / 85 / A dated 18.09.2019 on the file of the 4th respondent quash the same and further direct the 4th respondent to refund Rs. 1,89,100/-.

For Petitioner : Mr.V.Ravi
For Respondent : Mr. R.P.Pratap Singh, G.A

O R D E R

The petitioner states that his father was a successful bidder in the auction conducted in 1982 for an arrack shop bearing No.1/83 in Attakatti Village, Valparai Taluk, Pollachi Division, Coimbatore District and had remitted a sum of Rs.8,000 as caution deposit. Since the shop was in a protected forest area, the licence for the arrack shop was not issued. The petitioner's father had requested the refund of the amount, which was never given. The petitioners' father passed away on 07.09.1984.

2. It appears that earlier, in the year 1981, one Palanisamy, had taken the same shop in auction, but could not run the same on account of objections raised by the Forest Department. While this is so, a notice appears to have been received from the respondents demanding payment of a sum of Rs.1,81,077/- as notional loss. On account of the pressure exerted by the respondents, the amount of Rs.1,81,077/- was remitted by the petitioner in instalments.

3. The impugned proceedings dated 18.09.2019 now call upon the petitioner to pay interest on the amount of Rs.1,81,077/-. Despite a representation dated 21.09.2019 sent to the first respondent seeking cancellation of the demand and also damages, there has been no response.

4. Admittedly, there is no provision in the Tamil Nadu Prohibition Act, 1937 (in short 'Act') providing for the levy of notional loss and to this extent, the levy of notional loss has no basis. As regards the levy of interest, the respondents has placed reliance upon G.O.Ms.No.81 dated 05.04.2004. This Government Order does not refer to the imposition of notional loss and only deals with the levy of interest on monies due and payable to the Department.

5. Section 18-I of the Act deals with recovery of amounts due to the State Government reading as follows:

> 18-I. Recovery of amount due to the State Government. — (1) Nowithstanding anything contained in this Act or in any other law for the time being in force and without prejudice to any other mode of recovery which is being taken or may be taken, any amount due to the State Government under any of the provisions of this Act or the rules made thereunder along with interest, at such rate as may be specified by the State Government,--
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> (a) by deducting the amount due with interest from any money ownig to the person which may be in the hands or under the control or disposal of any officer of the State Government; or
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> (b) by recovering the amount due with interest by attachment and sale of exciable articles belonging to the person from whom such amount is due.
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> (2) If the amount due to the State Government with interest cannot be deducted or recovered in the manner

provided for in sub-section (1) or the money so deducted or recovered is not sufficient to satisfy the amount and interest so due, the officer empowered may prepare a certificate signed by him specifying the amount with interest due or, as the case may be, the balance of the amount due from the person, and send it to the Collector of the district in which such person resides or carries on business and the Collector, on receipt of such certificate, shall recover the amount with interest specified therein as an arrear of land revenue from the said person.

(3) Notwithstanding anything contained in any law for the time being in force and subject to the prior claim, if any, of the State Government in respect of land revenue, any amount due to the State Government with interest shall be a first charge upon the property or interest in the property of the person from whom the amount is due.

6. This provision has itself been inserted only in 1989 and cannot thus relate back to a transaction of the excise year 1982-83. The Government Order relied upon by the respondents is also dated 05.04.2004, passed long after the transaction in question. Thus, neither the provisions of Section 18-I nor G.O.Ms.No.81 dated 05.04.2004 advance the case of the respondent for either the levy of notional loss or interest thereupon. I am also given to understand that a view similar to the one I have taken has been taken by this Court in W.P.Nos.9855 of 2018 and 11369 of 2019.

7. In the light of the discussion as above, the impugned order is set aside and the Writ Petition allowed. The amount of Rs.1,89,100/- (Rs.8,000/- remitted towards caution deposit and Rs.1,81,077/- remitted towards notional loss) are directed to be refunded to the petitioner within a period of twelve (12) weeks from date of uploading of this order. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2 The District Collector,
Coimbatore District, Coimbatore.

3 The Deputy Commissioner (Excise)
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District Collectorate (2nd Floor),
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and
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AJS(CO)
RMP(09/11/2020)