IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.07.2020
CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.8759 of 2020
& WMP Nos.10631 and 10633 of 2020

N.V.Sankar ... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC),
Head Office, CMDA Tower-II, IV Floor,
Gandhi Irwin Road, Egmore, Chennai 600 008

2. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC),
Salem Region, Salem - 16

3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd. (TASMAC),
Tiruvannamalai District ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari after calling for the concerned records relating to the order No.Na.Ka.R.V.6/531/2020 dated 22.06.2020 passed by the third respondent herein and quash the same.

For Petitioner : Mr. M.Gnanasekar

For Respondents : Mr. K.Sathishkumar, Standing Counsel

O R D E R

Mr.K.Sathish Kumar, learned Standing Counsel takes notice for the respondents. By consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2.The facts leading to the filing of this writ petition are as follows:

The petitioner is working as Supervisor in the TASMAC shop No.9481 situated at Tiruvannamalai. On 24.03.2020, due to COVID-19 pandemic, as a preventive measure, the Government has announced lock down for 21 days and ordered to close all the TASMAC shops. Accordingly, the petitioner closed the said shop. Thereafter, on verification, it was found that there was a shortage of stock and so, he was directed to pay a sum of Rs.1,44,360/- representing the value of the shortage of stock.

The petitioner also paid the said sum on 13.04.2020. Despite the same, the third respondent issued a show cause notice on 22.06.2020 proposing to impose 50% of the amount paid by way of penalty and interest at 24% along with GST. Aggrieved over the said notice, the petitioner has preferred this writ petition to quash the same.

3.According to the learned counsel for the petitioner, there is no shortage of stock as alleged by the respondents. However, without prejudice to his right, the petitioner paid a sum of Rs.1,44,360/- towards the value of the shortage of stock on 13.04.2020. He further submitted that without following due process of law, the third respondent issued the impugned notice, proposing to levy penalty and interest and hence, the same is arbitrary, illegal and in violation of the principles of natural justice.

4.On the other hand, the learned standing counsel taking notice for the respondents submitted that as per Rule 7(i) and (xiv) of the Code of Prevention and Detection of Fraudulent Acts in TASMAC, the petitioner is liable to pay penalty for the misconduct committed by him and accordingly, the impugned notice came to be issued, calling upon the petitioner to submit his explanation with respect to the proposed penalty and interest along with GST. He further submitted that after taking into consideration the explanation submitted by the petitioner, further action would be taken by the respondents. Thus, according to the learned standing counsel, there is no requirement to interfere with the same.

5.Heard both sides and perused the documents filed in the form of typed set of papers.

6.The challenge made in this writ petition is only to the show cause notice dated 22.06.2020 issued by the second respondent, by which, the petitioner was called upon to explain, as to why, for the shortage of stock, 50% penalty and 24% interest along with GST should not be imposed on him. After receipt of the explanation from the petitioner, the respondent authorities would pass final orders on merits. Therefore, there is no procedural violation or illegality in the notice so issued, as claimed by the petitioner.

7.In such view of the matter, this Court, without setting aside the impugned notice, directs the petitioner to submit his explanation within a period of two weeks from the date of uploading the copy of this order. Upon receipt of the same, the respondent authorities shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of four weeks thereafter. Till such time, no recovery shall be made by the respondents.

8.Accordingly, this writ petition is disposed of. No costs. Consequently the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

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A.SK(04/08/2020)