IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2020
CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

WP.No.26984 of 2018
and WMP.No.31375 of 2018

S.Shanmugasundaram .. Petitioner

Vs.

1.The District Collector,
Coimbatore District,
Coimbatore.

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

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the Order of the 1st Respondent dated 24.07.2018 in S.R.8/90/Kow 2 and quash the same.

For Petitioner : Mr.P.Muthukrishnan

For Respondents : Mr.B.Anand
Government Advocate

O R D E R

The petitioner was the successful bidder for an Arrack shop licence on 02.06.1986. However, admittedly there was a delay in selection of the arrack shop and a consequential delay in lifting of arrack from the Government. A demand of notional loss of Rs.1,16,584/- had thus come to be imposed upon the petitioner. This demand was in respect of licence No.71/85-86 dated 02.06.1986. Since there was an outstanding due from the respondents to the petitioner in respect of licence No.9/84-85 of an amount of Rs.1,03,280/-, the petitioner requested adjustment of the aforesaid amount against the notional loss computed. After adjustment the loss was computed at a sum of Rs.1,00,629/- by order dated 14.07.2004.

2.The petitioner remitted the aforesaid amount in three instalments i.e. Rs.30,000/- on 21.07.2004, Rs.30,000/- on 10.08.2004 and Rs.40,629/- on 25.09.2004.

3.The second respondent, by proceedings dated 28.09.2004 also confirmed the aforesaid payments certifying that there were no dues pending recovery from the petitioner in respect of both arrack shops bearing Nos.9/84-85 and 71/85-86. The matter lay as is till 24.07.2018, when out of the blue impugned order dated 24.07.2018 came to be received by the petitioner imposing interest on the notional loss for the period 01.07.1988 to 25.09.2004.

4.Admittedly, no notice has been issued to the petitioner prior to passing of the impugned order.

5.On the aforesaid facts, the petitioner challenges the impugned order stating that the entire dues have been paid as early as in July, August and September of 2004 and by order dated 28.09.2004, the respondent has also certified that no dues were pending. Thus according to him, the imposition of interest, and that too, so belatedly, is contrary to law.

6.Learned counsel appearing for the respondents relies on the provisions of Section 18-I of the Tamil Nadu Prohibition Act, 1937 (in short 'Act') and G.O.Ms.No.81 Prohibition and Excise Department, dated 05.04.2004 in support of the impugned order. According to him, the levy of interest is in line with the aforesaid statutory provision and Government Order. He also relies on two decisions of a learned Single Judge of this Court in the case of V.S.Venkatachala Gounder (deceased) and 4 others v. The Secretary, Govt. of Tamil Nadu, Prohibition and Excise (II) Dept., Fort St. George, Chennai 600 009 and another (WP.No.20664 of 2005 order dated 06.02.2008) and C.Viswanathan v. The State of Tamil Nadu, rep. by its Secretary, Prohibition & Excise Department, Fort St. George, Chennai-9 and another (WP.No.4928 of 2006 order dated 23.10.2008), wherein, according to the respondents, after reference to the aforesaid statutory provision and Government Order, orders imposing interest in those cases, stood confirmed.

7.I however do not agree with the submissions of the respondents. The short point upon which I am inclined to allow the writ petition is that the petitioner has remitted the notional loss computed as early as in July, August and September 2004. The provisions of Section 18-I providing for Recovery of amount due to the State Government have been inserted in the Tamil Nadu Prohibition Act, 1937 vide Tamil Nadu Act 23 of 1989. G.O.Ms.No.81 dated 05.04.2004 specifies the rate of interest as being 12%, such Notification deemed to have come into force on 12.05.1981 itself. An anomaly that I note is that while the statutory provision has itself been inserted only in the year 1989, the Government Order stipulating the rate of interest at 12% with reference to Section 18-I of the Act, deems the Notification to have come into force even on 12.05.1981, eight years prior to the insertion of the statutory provision. Reliance upon Section 18-I and the Government Order thus, do not advance the case of the respondent, particularly when the impugned order has been passed in 2018, 14 long years after the notional loss has been made good by the petitioner. Simply on the aspect of inordinate delay, the imposition cannot be sustained. It was incumbent upon the respondents to have taken timely action to impose interest, if any, and not merely at their whims and fancies. Though the statute does not impose a time limit for the levy of interest one would have to read into the Scheme of the Act, a reasonable time limit having been stipulated for such levy. In my considered view fourteen (14) years is simply too long a period to be justified.

8.The impugned order is set aside and this writ petition allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs
To

1.The District Collector,
Coimbatore District,
Coimbatore.

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

+1cc to Mr.P.Muthukrishnan , Advocate SR.No. 804
+1 cc to Government Pleader Sr.No. 1011,1328

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A.SK(11/03/2020)