IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-07-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.15310 of 2021

M/s.Venugopal Inn Pvt Ltd.,
Represented by its Managing Director
Mr.Velmurugan,
No.240, J.Nehru Street,
Puducherry-1. .. Petitioner

vs.

1.Government of Puducherry,
by its Secretary (Excise),
Chief Secretariat,
Goubert Avenue,
Puducherry-605 001.

2.The Deputy Commissioner,
Excise Department,
Government of Puducherry,
Thattanchavady,
Puducherry-605 008. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to adjust the Excise License Fee already paid in advance for the financial year 2020-2021 against the future payments pertaining to License No.190, in view of Force Majeure Condition created by Covid-19 pandemic and the total lockdown ordered by the Government.

For Petitioner : Mr.J.Srinivasa Mohan
For Respondents : Mr.J.Kumaran,
Additional Government Pleader
(Puducherry).

ORDER

The relief sought for in the present writ petition is to direct the respondents to adjust the excise license fee already paid in advance for the financial year 2020-2021 against the future payments pertaining to License No.190, in view of Force Majeure Condition created by Covid-19 pandemic and the total lockdown ordered by the Government.

2. The petitioner is running a Hotel business in the name and style of “The Sunway Manor” situated at No.155/D, 100 Feet

Road, Mudaliarpet, Pondicherry. The petitioner has an excise license and permit to deal with intoxicants for its sale and serving at the Hotel.

3. The grievance of the petitioner is that on account of the lockdown as ordered by the Government, the petitioner lost its business fortune and therefore, the excise license fee already paid in advance is to be either adjusted or refunded.

4. The learned counsel appearing on behalf of the petitioner, in this regard, relied on Section 66 of Pondicherry Excise Act, 1970, which grants empowerment to the Government to grant exemption and therefore, it is contended that the respondents ought to have taken any decision either to grant exemption or to reject the same, however, no decision is taken in this regard. Thus, the petitioner is constrained to move the present writ petition.

5. The learned Additional Government Pleader, appearing on behalf of respondents 1 and 2, objected the said contention of the learned counsel appearing on behalf of the petitioner, by stating that Section 66 of the Pondicherry Excise Act, 1970, is not applicable with reference to the relief sought for in the present writ petition. Section 66 is relatable for granting of exemption of excise duty and not connected with the adjustment of excise license fee already paid in advance by the petitioner.

6. Section 66 of the Pondicherry Excise Act, 1970, reads as under:-

> “66. Power of Government to exempt, etc. - The Government may, by notification, and subject to such restrictions and conditions as may be specified in such notifications,-
>
> (a) exempt, reduce or remit either in whole or in part, the excise duty levied under section 21 on any liquor sold,
>
> (i) for use or consumption by the members of the Armed Forces of the Union; or
>
> (ii) for use for bona fide medicinal, scientific, industrial or such like purpose;
>
> (b) exempt any intoxicant from any of the provisions of this Act, other than those of Chapter V in any specified area or for any specified period or occasion.”

7. Section 66 (a) is about exemption, reduction or remission of excise duty in whole or in part. Sub-clause (b) enumerates exemption of any intoxicants from any of the

provisions of the Act, other than those of Chapter V in any specified area.

8. This Court is of the considered opinion that Covid-19 pandemic is not at all connected with the petitioner alone. It is a pandemic affected the entire Globe and several countries, including our Great Nation, suffered a lot. Therefore, the decisions to be taken for grant of exemption or providing certain welfare benefits, are the policy decision of the Government and the Court cannot grant exemption or issue any such directions to the authorities to grant exemption or revision or adjustment or otherwise. In the event of interference by the High Court, in such pandemic situations, undoubtedly, a sort of inconsistency would be created and the Government is bound to provide such welfare schemes by way of policies to all the people if a policy decision is taken by the government in this regard.

9. The petitioner, admittedly, running a Hotel business. Probably, he will be in a better position to manage the affairs. Near about 2-1/2 crores people of this Great Nation lost their jobs and are standing in the midst of the streets. Many people lost their livelihood and still the pandemic is causing greater impact on the livelihood of many people and under these circumstances, the petitioner, as a dutiful citizen, has also got duty to ensure that the people get equal level of opportunity for their livelihood. The economic status and removal of inconsistencies in the society is the constitutional perspectives and therefore, every citizen under Article 51-A of the Constitution of India, has duty to cooperate and obligated to support each other.

10. This being the duty, right alone cannot be claimed. Right and duty are inseparable and should go together, then only we can create a happy orderly society as enunciated under the Constitution. Constitution of India is a vision and is not mere provisions. The visionaries enumerated in the Constitution must be understood and considered by each citizen by performing their duties as contemplated.

11. When the petitioner claims that he suffered due to Covid-19 pandemic situation, let him point out one citizen of this Great Nation, who has not suffered from and out of the very same Covid-19 pandemic. Most of the families have suffered on account of the pandemic and therefore, the petitioner is expected to think about the plight of the co-citizens against whom he has got a duty under the Constitution.

12. As far as Section 66 of the Pondicherry Excise Act, 1970 is concerned, exemption cannot be claimed as a matter of right. Exemption is a power conferred on the Government to grant

on certain circumstances. As far as the excise license fee is concerned, there is no specified mentioning in the said provision.

13. If at all a policy decision is taken for adjustment of excise license fee or grant of exemption, then alone the petitioner would be eligible to avail the benefit and not otherwise. Further, the High Court cannot compel the Government to take any such policy decision, as the priority on decisions are the prerogative of the Government. The High Court is not expected to interfere in any such administrative decision to be taken.

14. This being the view of this Court, the relief sought for by the petitioner, in the present writ petition, cannot be granted and accordingly, the writ petition stands dismissed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

Svn

To

1.The Secretary (Excise),
Government of Puducherry,
Chief Secretariat,
Goubert Avenue,
Puducherry-605 001.

2.The Deputy Commissioner,
Excise Department,
Government of Puducherry,
Thattanchavady,
Puducherry-605 008.

+1CC to Mr.TVJ Associates, Advocate, SR.No. 36080
+1CC to The Government Pleader, SR.No. 36070

WP No.15310 of 2021

PCH(CO)
B.VC (25/08/2021)