IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.16053 of 2020 and
WMP.Nos.19990, 19991 & 19993 of 2020

M/s.Sagayamatha Wines
Licence No.12/FL-2,
Rep. by its Partner Sella Muthu
T.S.No.171, 172, 173, 174
Nadu Oduthurai, Karaikal
Pudhucherry. …Petitioner

Vs.

1.The Government of Puducherry,
Rep. by its Secretary,
Department of Excise,
Karaikal, Puducherry.

2.The Commissioner,
Department of Excise,
Karaikal, Puducherry.

3.The Deputy Commissioner (Excise),
Karaikal, Puducherry.

4.The District Collector,
Karaikal, Puducherry. …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in Appeal No.14 of 2020 dated 16.09.2020, quash the same, and further direct the 3rd respondent to renew the petitioner's License (FL-2) for the period from 01.04.2020 based on the petitioner's application dated 12.02.2020 forthwith.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for Isaac Chambers

For Respondents: Mr.J.Kumaran
Additional Government Pleader (Pondicherry)

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ORDER

The petitioner is a firm that is engaged since 2008 in the business of selling Indian and Foreign Liquors with a bar and restaurant attached, and based in Pondicherry. The challenge in this writ petition is to an order passed by the first appellate authority i.e. R2 read with an original order of cancellation of the excise licence granted to the petitioner, passed by R1.

2. The petitioner received a show cause notice on 14.04.2020, alleging certain violations of Government Orders issued suspending business of the petitioner in order to combat the Covid-19 pandemic. The allegations under the show cause notice are that liquors were being stored unauthorisedly and also that the liquor shops was kept partially open in violation of the order for complete closure of the shop.

3. In response to the notice calling upon the petitioner to show cause why the licence should not be cancelled, the petitioner filed a response dated 24.04.2020 denying the allegations and also putting forth an explanation to the effect that the stocks were in a haphazard condition on 23.03.2020, when the lock down had been suddenly announced by the Government and thus a proper tally of stocks could not be taken. There appears to be some concession to the effect that the daily accounts of the shop have not been maintained from 15.03.2021 and in any event on 23.03.2021, the stock tally had been incomplete. The petitioner had assured the authorities that all precautions would be taken to ensure that the tally would be brought up to date and there would not be any violation or breach of the licence conditions.

4. A notice was thereafter issued on 28.04.2020 calling upon the petitioner to appear personally. On 04.05.2020, when the petitioner appeared for the personal hearing, taking a cue from the reply filed by the petitioner to the show cause notice, violation of condition No.6 in the licence was alleged. This allegation was, in fact, made only in the course of the personal hearing and it appears clear that the respondents have been enlightened by the petitioner's reply to the show cause notice since the earlier communications of the respondents did not refer anywhere to discrepancies in the accounts of the petitioner.

5. Be that as it may, in reply to the show cause notice that had been given in the course of hearing of the matter, the petitioner filed a reply the very next day, which is detailed and sets out explanations in regard to the maintenance of stocks of the various kinds of liquors stored by it. I do not refer to the averments in detail since these are matters of fact with which I will not concern myself in this writ petition. The

impugned original order came to be passed on 20.05.2020 rejecting the explanations put forth and confirming the order of cancellation.

6. The petitioner challenged the order by way of a statutory appeal under the Pudhucherry Excise Act, 1970 (in short 'Act') raising various grounds of appeal. After the hearing, the petitioner filed detailed written submissions as well. The impugned order of the first appellate authority is dated 16.09.2020. Interalia, the appellate authority refers to the contents of the original order as well as the grounds of appeal filed by the petitioner. The observations are recorded in eight (8) short points and a perusal of the reasoning set forth by the authority does not reveal to me any independent application of mind on the issues that had arisen before him for decision. The observations are extracted hereunder for clarity and completion of narration:

> '(i) Regarding the claim of appellant of non disclosure of specific complaint against appellant's shop, it is observed that report of excise officer about unauthorised storage of liquor, arrest of accused person was mentioned at para 5 and 6 of cancellation order.
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> (ii) Regarding the claim of the appellant of non mentioning of sale of liquor and seizing done of the alleged sale, it is observed that appellant agreed that the stock was stored at additional storage facility inside the premises which was not disclosed to the Excise Department. Therefore, it is observed that the respondent has taken action on illegally stored liquor items.
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> (iii) Appellant stated that arrested person is cashier at appellant's shop. From the records, it is seen from the records that said liquors were stored at the above mentioned place by cashier.
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> (iv) It is observed that in impugned order at para 16 respondent mentioned condition No.6 of the licence. At para 14 of the same order, it is mentioned that, authorised agent during hearing before respondent admitted that he has not been maintaining records of transactions of accounts on daily basis. From the records it is observed that appellant has not submitted the stock statements as mandated in condition No.6 of licence. He also admitted about storage of

seized liquor in additional storage godown in premises.

(v) It is observed from the reply of the appellant dt.24.04.2020 that, he has submitted explanation which mostly mentions about additional storage facility. It is seen from the impugned order that, this aspect is considered by respondent while passing order.

(vi) Regarding claim of appellant about promptness of submitting stock statements every month, it is observed from the records that appellant has not submitted the stock statements.

(vii) Regarding the claim of appellant for compounding of offence, it is observed that respondent has opted to exercise his powers under section 28 of the Excise act 1970 and has stated reasons for the same. The undersigned is satisfied with the same.

(viii) Regarding claim of appellant of erroneously passing the impugned order and gross omission of rules and procedures, it is observed that the respondent has given reasonable opportunity to the appellant to put forth his version and passed the cancellation order after exercising due diligence and after considering available facts.'

7. Though each point has been adduced to briefly, there are no details in regard to the actual discrepancies that are alleged to have taken place. There are references to the records that are before the authority and also admissions made in the course of the proceedings before the original authority. However, I am of the view that the first appellate authority ought to have referred to each of the charges/allegations in detail and substantiated his confirmation of the order of cancellation making note of the specific violation alleged and the reply furnished by the petitioner. This has not been done and rather, the order of cancellation stands confirmed, sans any reasons for such confirmation.

8. The proceedings also refer to reports of the excise officer, wherein a reference is made to the routine rounds engaged in by the excise squad. If at all such records were available with the respondents authorities based on which allegations were levelled against the petitioner, it was incumbent upon them to have furnished the same to the petitioner

in order to afford a proper opportunity. These reports are again referred to at paragraph-4 of the order of the appellate authority.

9. The counter filed by the respondents supports the impugned order reiterating the discrepancies noted in them. However, the impugned order cannot be supplemented by the counter and must contain independent reasoning.

10. For the reasons set out above, specifically my observation that the impugned order of R2 is a non-speaking order which does not indicate the basis on which the order of cancellation has been confirmed by the appellate authority, as well as relies upon records that were admittedly not furnished to the petitioner, the impugned orders of the original and appellate authority are set aside. The 3rd respondent i.e. the Deputy Commissioner of Excise is directed to issue notice afresh setting out the details of the allegations along with supporting materials to which the petitioner will respond within a fixed time frame. Thereafter, let the petitioner be heard and an order be passed de novo within a period of eight (8) weeks from today.

11. The petitioner has filed an application seeking renewal of excise licence for the year 2021-2022, kept pending in view of the cancellation of its licence. The application will be considered subject to and pursuant to orders being passed by the original authority, as aforesaid. This writ petition is disposed as above. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The The Secretary,
Government of Puducherry,
Department of Excise,
Karaikal, Puducherry.

2.The Commissioner,
Department of Excise,
Karaikal, Puducherry.

3.The Deputy Commissioner (Excise),
Karaikal, Puducherry.

4.The District Collector,
Karaikal, Puducherry.

+1cc to Mr. Isaac Chambers, S.R.No. 26650

+1cc to the Government Pleader(Pondy), S.R.No. 26969

W.P. No.16053 of 2020 and
WMP.Nos.19990, 19991 & 19993 of 2020

BP(CO)

GN(02/07/2021)