IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.17813, 19536, 19547 & 19541 of 2020
and
WMP. Nos.22093, 22094, 24158, 24163 & 24160 of 2020

M/s.Nava Durga Wines, FL.2/21,
Rep. by its Partner, Mr.T.Vasudevan,
R.S.No.47/1, Mailan Road,
Sedurapet, Puduchery.

.... Petitioner in W.P. No.17813 of 2020

M/s.G.R.Rajasekaran Bar,
Rep. by its Proprietor,
Thiru G.R.Rajasekaran,
R.S. No.74/1, & 74/2, Veerampattinam Road,
Ariyankuppam, Puducherry.

.... Petitioner in W.P. No.19536 of 2020

M/s.Ranjit Bar, FL.2/41,
Rep. by its Proprietor,
Mr.N.Shanmugam,
No.4/27, Navasannithi Street,
Villianur, Puducherry.

.... Petitioner in W.P. No.19547 of 2020

M/s Saraswathi Wines, FL-2/81
Rep. by its Partner, Thiru. R.Balu,
No.4/27, Navasannithi Street,
Villianur, Pudcherry.

.... Petitioner in W.P. No.19541 of 2020

Vs.

1.Union of India,
Rep. by Union Territory of Puducherry,
Rep. by the Commissioner (Excise),
Puducherry.

2.Union of India,
Rep. by Union Territory of Puducherry,
Rep. by the Deputy Commissioner (Excise)
-cum-Licensing Authority, Puducherry.

.... Respondents in all Cases

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the 1st Respondent in Order No.2750/DCE/IMFL/S2/2020/126 dated 04.11.2020 in Appeal No.24/2020, No.2748/DCE/IMFL/S2/2020 dated 04.11.2020 in Appeal No.23/2020, No.2749/DCE/IMFL/S2/2020/124 dated 04.11.2020 in Appeal No.22/2020 and No.2746/DCE/IMFL/S2/2020/125 dated 04.11.2020 in Appeal No.25/2020, confirming the order of the 2nd respondent in No.1805/DCE/IMFL/2020-21 part XXIX dated 05.05.2020 and 07.05.2020 and to quash the same.

For Petitioner : Mrs.Radha Gopalan
in the above Wps

For Respondents : Mrs.N.Mala,
Government Pleader (Pondy)
in the above Wps

COMMON ORDER

Heard Mrs.Radha Gopalan, learned counsel for the petitioner and Mrs.Mala, learned Government Pleader (Union Territory of Puducherry) for the respondents.

2. The facts in W.P. No.17813 of 2020 are taken to be illustrative of the facts in all four writ petitions.

3. The petitioner is an FL2 licence holder and suffered an order of suspension of license passed by the 2nd respondent on 26.04.2020. The order of suspension refers to the on-going COVID-19 pandemic and the lock-down imposed, on account of such pandemic leading to the closure of all liquor shops in Puducherry. The officer also refers to complaints received in regard to the illegal sale of liquor.

4. Though this is mentioned in the narration to the order, this has no bearing on the reasons for suspension itself as the Officer proceeds to invoke condition No.6 of the license, which states that 'licencee is bound to maintain correct accounts of transaction and submits the retails every month to the Excise Officer concerned within the first week of the following months', invoking the aforesaid condition.

5. The Officer concludes that there is willful failure on the part of the petitioner to maintain the records and comply with condition No.6. This leads to his assumption that the non-

maintenance of the records would facilitate the illegal sale of liquor and thus justify the suspension of the license. The order of suspension was followed by a cancellation of the license itself on 05.05.2020 wherein, the first respondent confirms the order of suspension.

6. At paragraph no.11, the respondent refers to the reply filed by the petitioner on 02.05.2020 and his deposition before him, to the effect that he had admitted, in the course of the hearing, that records were maintained only once in 15 days and daily accounts were not maintained. This is objected to by the petitioner before me. Again I must note that neither the order of suspension nor the order of cancellation set out any material particulars of the alleged mismatch in records or the discrepancies found in stock and the only basis on which the suspension is confirmed is the assumption of the Officer that condition No.6 has not been complied with.

7. Reply dated 02.05.2020, is extracted below:

'To Dated:02.05.2020
The Deputy Commissioner (Excise),
Office of the Deputy Commissioner (Excise),
Govt of Puducherry, Puducherry.

Respected Sir,
Sub: Submission of Documents for verification – reg.
Ref No:1805/DCE/IMFL/2020-21/Part XLI, dated 29.04.2020

With reference to the above letter we are hereby submitting the documents for verification. We have already submitted monthly report upto February 2020. Due to COVID 19 lockdown, we could not able to submit the report for the month of March in April 2020. Now we are submitting the stock report for the month of March before the lockdown period.

In our shop we use two cashiers in a month (i.e.) 1st to 15th one cashier and 16th to 30th another cashier. Everyday cashiers use to take stocks and report us whereas we use to verify the stocks once in 15 days. After verification we change the 2nd cashier from 16th onwards. The second cashier take stocks everyday from 16th to 30th of every month. Again we cross verify the stocks on 30th of the month. The cumulative of stocks will be submitted to the excise department in the first week of the following months.

Now we have enclosed daily stock details for the month of January, February, March 2020 for your verification. Further we are ready to submit stock

report in the daily basis format instead of cumulative monthly report.
We are into this liquor field for the past 25 years, we use to follow the rules and regulations of Excise strictly and maintaining our goodwill with the society. So, we kindly request you to go through the documents and do the needful.
Thanking you sir,
Yours faithfully
(for NAVADURGA WINES)
Encl.
1.Copy of Daily stock report for the month of Jan, Feb, March 2020.
2. Copy of Monthly report already submitted to excise office.'

8. A reading of the reply militates against the conclusion drawn by the Officer. The petitioner neither states that no daily accounts are maintained, nor does he state that records are maintained only once in 15 days. In fact, the import of response dated 02.05.2020 is that there are two cashiers employed by the petitioner, one who works for the first half of the month and the second for the latter half of the month.

9. There is a specific confirmation that daily records are maintained and the petitioner expresses its readiness to submit its stock report on a daily basis format instead of a cumulative monthly report. I thus do not find anything in this response to support the conclusion of the original authority to the effect that records are not maintained on a daily basis but only on a fortnightly basis.

10. Be that as it may, an appeal came to be filed before the first appellate authority/R2 who had sought a remand report from the original authority. It is for the first time in the course of the remand report that there are some particulars provided in regard to what the alleged variations are that were found in the course of inspection. The particulars contained in the remand report however, cannot support the impugned order which has to stand or fail on its own contents.

11. A perusal of the impugned order does not reveal any material particulars necessary to support the Officers conclusion that accounts have not been maintained by the petitioner or that the petitioner has engaged in sales outside its books. Though the order itself stretches over two pages, the operative portion is contained in paragraph no.17, extracted below:

'17. I record my observations as under:

(i) Regarding maintenance of accounts of transaction by the appellant, it is observed from records that appellant had not maintained correct daily accounts as there were discrepancies in stock position and also not submitted monthly returns regularly.

(ii) It is seen from the records that no requests were made by the appellant regarding submission/availability of additional documents inside the shop or for grant of more time to prove their claim. The undersigned had given an opportunity after hearing to get any relevant documents from the shop which is sealed by respondent.

(iii) It is seen from the records that difference in stock position was disclosed to appellant during hearing and explanation was demanded for the same. The appellant has been informed about the variations in stock and the copy of physical verification report was also given to him by the undersigned. After verification the discrepancies still persists for which the explanation of the appellant is not satisfactory.

(iv) It is seen from the records that the respondent has conducted enquiry after issuing necessary notices and after hearing the appellant. It is seen that reasonable opportunity has been given by the respondent to explain the stock discrepancies.

(v) Section 27 of the Puducherry Excise Act, 1970, is about technical defects irregularities or omissions in the licence or any proceedings taken prior to the grant thereof. Non-maintenance of correct daily accounts of transactions and submission of the return every month mandated under conditions of license issued under Puducherry Excise Rules, 1970 is not related with the technical defects/irregularities/omissions under section 27 of the said Act and needs to be looked into as per provisions under Section 28 of Puducherry Excise Act, 1970.

(vi) Regarding the provision of compounding of offence under section 44 of the Puducherry Excise Act, 1970 to be considered before cancellation, it is observed that respondent has opted to exercise his power under Section 28 of the said Act and has stated his reasons for the same. The undersigned is satisfied with the same.'

12. The above observations are merely bereft of material particulars and if at all the authorities are to proceed on the basis that the petitioner is engaged in suppression of sales, the order must contain particulars of the discrepancies (in numbers) of the variations noticed at the time of inspection. The remand report cannot support or bolster the orders in this regard. Even the counter filed only refers to 'the stock statements', 'the discrepancies', 'the variations' and 'the mistakes' without giving any particulars thereof.

13. For these reasons, I am inclined to set aside both the impugned as well as the original order which stands telescoped into the order of the first appellate authority. With the setting aside of the orders of cancellation dated 05.05.2020 and 07.05.2020, it is open to the parties to consider the plea of compounding, if any, putforth by the petitioner.

14. Let the petitioner appear before the respondent on Friday, the 30th April, 2021 without awaiting any further notice from the respondents, with all materials as has been sought for by the authorities till date. The respondent will supply to the petitioner the basis of his conclusion in regard to sale suppression and upon hearing the petitioner, and considering all materials relied upon and filed by it, an order shall be passed de novo, within a period of four (4) weeks, that is on or before 31.05.2021. The petitioner is also at liberty to putforth its claim for compounding which, if and when made, shall be considered by R1, in accordance with law.

15. These writ petitions are disposed in the aforesaid terms. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The Commissioner (Excise),
The Union Territory of Puducherry,
Union of India,
Puducherry.

2. The Deputy Commissioner (Excise),
-cum-Licensing Authority,
Union Territory of Puducherry,
Union of India,
Puducherry.

+4cc to Mr.S.Ratha Gopalan, Advocate Sr.22978, 22975, 22976, 22977
+1cc to the Government Pleader Sr.22874

W.P. Nos.17813, 19536, 19547 & 19541 of 2020
and
WMP. Nos.22093, 22094, 24158, 24163 & 24160 of 2020

cp[co]
srg 03/05/2021