



W.P(MD)No.3703 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.3703 of 2013

Krishnaveni

... Petitioner

Vs.

1.The Commissioner,
Prohibition and Excise,
Chepauk, Chennai-5.

2.The District Collector,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in proceeding No.M(M) Aa.1(1)/7570/2006 dated 07.02.2013 confirming the order of second respondent in his proceeding No.Mu.Mu.(M4) 1853/06 dated 23.02.2006 and quash the same and consequently direct the respondents to issue the L-2 license to the petitioner's pharmacy namely Prithik Ayurveda Pharmacy situated in door No. 5/89C, Periyakulam, Marungoor Post, Kanyakumari District as per the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 and SP11 license under the Tamil Nadu Spirituous Preparation Control Rules, 1984 within the time fixed by the Court.



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For Petitioner : Mr.H.Arumugam

For Respondents : Mr.A.Sivanupandian
Government Advocate

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein, under which the L-2 license under Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 was rejected.

2. According to the learned counsel for the petitioner, the petitioner is the Proprietrix of Prithik Ayurveda Pharmacy and she is manufacturing ayurvedic medicines like Asokaristam, Kanakasavam, Jeerakaristam by engaging qualified doctors and other experienced employees. The learned counsel for the petitioner further submits that the petitioner has obtained license to manufacture and sale of Ayurvedic (including siddha or unani drugs) as contemplated under Rule 154 of Drugs and Cosmetics Rules 1945 in Form No.25-D originally from 02.11.1999 to 31.12.2000. Thereafter, the license was renewed under Form No.26-D on 11.09.2004. However, for the purpose of selling the



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ayurvedic medicines, the petitioner requires L-2 license under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 as contemplated under Rule 83 of the said Rules. The petitioner had applied for the said L-2 license before the second respondent herein. The second respondent by an order, dated 23.02.2006 has rejected the said request on the ground that the petitioner's license under Form No.25-D has not been extended or renewed. Since the license under Form No.25-D has not been renewed, the petitioner is not entitled to a license under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The second respondent has further held that the petitioner is attempting to manufacture fake Aristam without L-2 license and SP-11 license and trying to sell alcoholic drugs. Based upon the said findings, the second respondent has rejected the request of the writ petitioner.

3. The petitioner had filed an appeal before the first respondent herein. The first respondent has passed an order on 07.02.2013, confirming the order passed by the second respondent herein. In the impugned order, the first respondent has held that the petitioner's license under the Drugs and Cosmetics Rules, 1945 had expired long back and the petitioner has just paid the fees for renewal of the said license and no renewal order has been specifically passed by the Director of Drugs



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Control, Tamil Nadu in Form No.26-D referable to Rule 155. Since the petitioner is not having the basic license namely, Form No.26-D, he will not be entitled to have a license under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The first respondent has also found that he is not having the SP-11 license as contemplated under Tamil Nadu Spirituous Preparations (Control) Rules, 1984. On the above said two grounds, the first respondent has chosen to confirm the order passed by the second respondent herein. The said order is impugned in the writ petition.

4. The learned counsel for the petitioner has contended that once a license has been granted under the Drugs and Cosmetics Act, duration of the said license is for a period of 5 years as contemplated under Rule 156 of Drugs and Cosmetics Rules 1945. As per the proviso to the said rule, if the renewal application is made before the expiry or within one month from the expiry of the license, or if the application is made within 3 months of its expiry after payment of additional fee, the license shall continue to be in force until further orders are passed on the application. According to the learned counsel for the petitioner, the license as contemplated under Rule 155 has been renewed on 24.12.2014 up to 31.12.2019. The petitioner has chosen to pay the requisite fee for the



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renewal of the said license on 23.12.2019. In view of the proviso to Rule 156, mere payment of the renewal fee is enough and no express orders are required from the Director of Drug Control for renewal of the license. In case, if the Director of Drug Control chooses to reject the request for renewal, he has to pass a specific order. Until such orders are passed by the Director of Drug Control, it is a deemed provision granting renewal for the next 5 years period from 23.12.2019 to 31.12.2024. Hence, he contended that the order impugned in the writ petition has been passed on a wrong premise, that the license under the Drugs and Cosmetic Rules 1945 has not been renewed after 2004. Hence, he prayed for allowing the writ petition.

5. Per contra, the learned Government Advocate appearing for the respondents has contended that under the guise of preparation of ayurvedic medicine, the petitioner is manufacturing fake Arishtam, which is an alcoholic drug. The petitioner's license under the Drugs and Cosmetic Rules 1945 has not been renewed specifically by the authority concerned. Apart from that, for selling the said ayurvedic medicines, the petitioner has to obtain license under Tamil Nadu Spirituous Preparations (Control) Rules, 1984 and the said license has to be obtained in form SP-11, which is meant for wholesale license for the possession and sale



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of spirituous preparations. As found by the second respondent herein, all the ayurvedic preparations are having alcohol content to an extent of 3.74%. Hence, the provisions of Tamil Nadu Spirituous Preparations (Control) Rules 1984 are squarely applicable to the case of the petitioner. Admittedly, the petitioner has not obtained the said license. Without the said license under form SP-11, the petitioner cannot be granted license under form L-2 under Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. Hence, he prayed for sustaining the order passed by the respondents one and two herein.

6. I have carefully considered the submissions made on either side.

7. The request of the petitioner for grant of L-2 license under Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 has been rejected by the respondents 1 and 2 herein on two grounds, namely the petitioner is not possessing a license under the Drugs and Cosmetic Rules, 1945 and the petitioner is not having SP-11 license under Tamil Nadu Spirituous Preparations (Control) Rules 1984. The authorities concerned have chosen to reject the request of the petitioner on both these said grounds. The petitioner has also prayed for quashing the impugned orders with a direction to the authorities to grant not only L-2



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licence, but also SP-11 license under the Tamil Nadu Spirituous Preparations (Control) Rules 1984.

8. Now let us consider the request of the petitioner relating to L-2 license under Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. The said request has been rejected mainly on the ground that the petitioner's license under Drugs and Cosmetic Rules, 1945 had expired in the year 2004 and thereafter, it was not renewed in a manner known to law. A perusal of the proviso to Section 156 clearly indicates that where a renewal application is filed before the expiry of the license period or within one month from the date of expiry of the license period, the license is deemed to have been renewed, unless it is specifically rejected by the authority concerned. In the present case, the petitioner has established that he has paid the renewal fee within a period of one month from the date of expiry of the renewal period and no adverse orders have been passed as against the petitioner rejecting the request for renewal. Hence, the license of the petitioner under the Drugs and Cosmetic Rules 1945 is deemed to have been renewed up to 31.12.2024. Hence, the respondent authorities were not right in holding that the petitioner was not holding drug license for the relevant period.



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9. However, the petitioner requires a license under form SP-11 under the Tamil Nadu Spirituous Preparations (Control) Rules 1984.

Admittedly, the petitioner has not even applied for the said license before the concerned authorities. The order impugned in the writ petition is set side and the second respondent is directed to issue a L-2 license in favour of the writ petitioner. However, the writ petitioner can start selling of the ayurvedhic products only after obtaining SP-11 license from the concerned authority under Tamil Nadu Spirituous Preparations (Control) Rules 1984.

10. With the above said observations, this Writ Petition stands allowed. No costs.

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Index : Yes / No
Internet : Yes / No

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To

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2.The District Collector,
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R.VIJAYAKUMAR ,J.



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