



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.6859 of 2021

and

W.M.P. (MD) Nos.5273 and 5274 of 2021

WEB COPY

S.Rajendra Prasad

... Petitioner

Vs.

1.The Commissioner,
Prohibition and Excise Department,
Chepauk,
Chennai - 600 005.

2.The District Collector,
Kanyakumari District,
At Nagercoil.

3.The Assistant Commissioner of Excise,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records and the impugned order passed by the 1st respondent proceedings in ROC P&E 1(1)/24587/2008 dated 25.04.2018 and quash the same and directing the 2nd respondent to issue L2 License to the petitioner within the stipulated period by this Court.

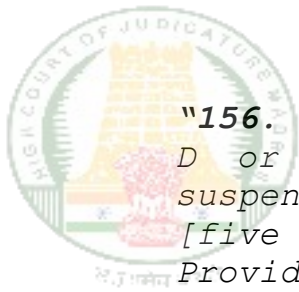
For Petitioner : Mr.H.Velavadhas
For Respondents : Mr.K.S.Selva Ganesan,
Additional Government Pleader.

ORDER

The petitioner has challenged the impugned order dated 25.04.2018 seeking to deny L2 licence under the provisions of Medicinal and Toilet Preparations (Excise Duties) Rules 1956. The reasons given for rejecting the application are as follows:-

- "(a) Not having valid drug licence
- (b) Finance position is not prazed"

2.The learned counsel for the petitioner submits that the petitioner has been regularly renewing the drug license in terms of Rule 156 of the Drugs Rules, 1945 (Drugs and Cosmetics Rules, 1945 - before amendment in 2020), which reads as under:-



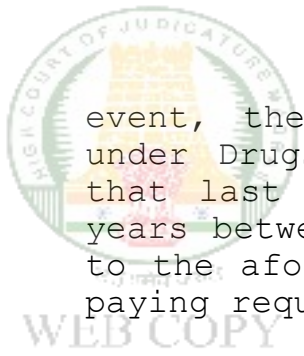
"156. Duration of licence.—An original licence in Form 25-D or a renewed licence in Form 26-D, unless sooner suspended or cancelled, shall be [valid for a period of [five years] from the date of its issue] or renewal:

Provided that if the application for the renewal of a licence is made before its expiry or within one month of its expiry, or if the application is made within three months of its expiry after payment of the [additional fee of rupees five hundred], the licence shall continue to be in force until orders are passed on the application. The licence shall be deemed to have expired, if application for its renewal is not made within three months of its expiry."

3.As far as financial viability is concerned, the learned counsel for the petitioner has drawn attention to the report of the Manager, Excise Department, Nagercoil, dated 09.01.2008.

4.Opposing the prayer in the writ petition, the learned Additional Government Pleader submits that the writ petition is devoid of merits. In any event, the petitioner has an alternative remedy under Rule 128 of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956. He therefore submitted that the writ petition is liable to be dismissed. As far as the financial viability is concerned, the learned Additional Government Pleader submits that the communication of the third respondent is dated 09.01.2008 and that therefore, the financial viability in the year 2008 cannot be the relevant fact for renewal in 2022 or 2021, when the petitioner had filed the present writ petition. He submitted that this aspect has to be examined by the authority.

5.By way of rejoinder, the learned counsel for the petitioner submitted that the petitioner has suffered immensely inasmuch as L2 license granted to the petitioner was earlier cancelled by the second respondent/District Collector in his proceedings dated 16.04.2002 based on a frivolous complaint received that the petitioner was manufacturing illicit madukashayam and sold to the public in the form of intoxicant and that there were several complaints received from the public regarding preparation and sale of illicit aristam and that the petitioner had violated the condition of L2 licence. It is submitted that the petitioner preferred an appeal before the first respondent/the Commissioner and that the case was remanded back to the District Collector for passing a fresh order. It is submitted that the petitioner has been going back and forth to Court all these years and despite the fact that no case has been made out against the petitioner, the respondents have now rejected the application by citing the aforesaid two grounds. The learned counsel for the petitioner therefore submitted that the petitioner is entitled for L2 licence as there is no material to sustain the earlier rejection and in any



event, the petitioner has been renewing the drug license issued under Drugs and Cosmetics Act, 1940 periodically. It is submitted that last of the renewal was on 23.12.2019 for a period of five years between 01.01.2020 to 31.12.2024. It is submitted that prior to the aforesaid period, the petitioner had renewed the license by paying requisite challan as detailed below:-

S.No.	Date	Description
1.	28.01.2005	Challan for the period 2005-2006
2.	07.12.2006	Challan for the period 2007-2009
3.	08.12.2009	Challan for the period 2010-2012
4.	06.12.2012	Challan for the period 2013-2014
5.	17.12.2014	Challan for the period 2015-2019

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the challan furnished by the petitioner and the provisions of Drugs Rules, 1945, framed under Drugs and Cosmetics Act, 1940, Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 framed under Medicinal and Toilet Preparations Act, 1955. The uncontroverted facts are that the petitioner has been renewing the drug license under the provisions of Drugs and Cosmetics Act, 1940 and the license is deemed to be valid and renewed in terms of Rule 156 of the Drugs Rules, 1945. Therefore, on this score, the refusal to renew the license/grant L2 license to the petitioner cannot be countenanced. The only other aspect that needs to be verified is whether the petitioner is still endowed with financial wherewithal for grant of L2 licence. The reliance placed on the communication of the third respondent dated 09.01.2008 will not reflect the current status. Considering the same, I am inclined to dispose of this writ petition by directing the third respondent to give a fresh report after inspecting the premises of the petitioner and other relevant materials and give a report to the second respondent, who shall consider the same and pass appropriate orders as to whether the petitioner is entitled for a fresh L2 license as the petitioner's license under Drugs and Cosmetics Act, 1940 is currently in force. This exercise shall be carried out by the second and third respondents within a period of sixty (60) days from the date of receipt of a copy of this order. It is needless to state that before preparing the report and visiting the petitioner's pharmacy, the third respondent shall inform the petitioner in advance and in case, the second respondent proposes to pass any adverse order, appropriate notice shall also be issued to the petitioner.



7.This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar(CS)

To:

- 1.The Commissioner,
Prohibition and Excise Department,
Chepauk,
Chennai - 600 005.
- 2.The District Collector,
Kanyakumari District,
At Nagercoil.
- 3.The Assistant Commissioner of Excise,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-10318[F] dated 07/03/2022)

W.P. (MD)No.6859 of 2021
04.03.2022

RS (21.03.2022) 4P-5C