IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1140 of 2021

1.The Commissioner of Prohibition and Excise,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The District Collector,
Coimbatore District,
Coimbatore.

3.The Deputy Commissioner (Excise),
Prohibition and Excise Department,
District Collectorate (2nd Floor),
Coimbatore District,
Coimbatore.

4.The Divisional Excise Officer,
Pollachi, Coimbatore District. .. Appellants

Vs.

A.P.Dharmalingam .. Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 13.08.2020 passed in W.P.No.3686 of 2020.

For the Appellants : Mr.P.Muthukumar
State Government Pleader

For the Respondent Mr.R.Gunaalan

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.P.Muthukumar, learned State Government Pleader for the appellants and Mr.R.Gunalan, learned counsel for the respondent.

2. The respondent had filed the writ petition seeking refund of the amount of Rs.1,89,100/-.

3. The respondent was issued a notice on 18.9.2019 calling upon the respondent to pay the interest on the amount of Rs.1,81,077/-. The present appellants had recovered the amount of

Rs.1,81,077/- on account of notional loss. The same was for the year 1982-1983.

4. The learned Single Judge held that there was no provision for notional loss in the year 1982-1983. The provision was inserted only in the year 1989. As such, the Court directed refund of the amount.

5. Learned State Government Pleader submits that the respondent had paid the amount as demanded without any demur. Now, he cannot turn around and contend otherwise that in the year 1989 an amendment has been made for payment of excise on the basis of notional loss. This aspect ought to have been considered.

6. The learned Single Judge has considered the fact that Section 18-I of the Tamil Nadu Prohibition Act, 1937 has been amended in the year 1989. Earlier to that, there was no provision for the levy of notional loss and, as such, there was no basis for the levy of notional loss. The respondent had no option, but to pay the amount. The learned Single Judge has considered the fact that the said recovery is

without authority and directed return of the amount. The learned Single Judge directed to return the amount within twelve weeks. We extend the said period by six weeks from today.

7. The writ appeal is disposed of accordingly. There will be no order as to costs.

(S.V.G., CJ.) (D.B.C., J.)
21.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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