THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.25194 of 2009

DATE: 05.11.2015

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Between:

1. 1. M/s. Deepti Enterprises, Muktiyar Gunj, Hyderabad, rep. by its Proprietor Jitender Kumar Jain, and another.

PETITIONERS

AND

1. Government of Andhra Pradesh, rep. by its Principal Secretary, Consumer Affairs, Food and Civil Supplies (C.S.I.) Department, Secretariat, Hyderabad, and others.

RESPONDENTS

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.25194 of 2009

ORDER:

The order in Case No.CSA/48/2009 dated 12.11.2009 passed by the District Collector, Medak District- the 2nd respondent herein in exercise of the powers under

Section 6-A of the Essential Commodities Act, is under challenge in this writ petition.

The petitioners are dealers in pulses having licence under the Scheduled Commodities Dealers (Licencing, Storage and Regulation) Order, 2008 (for short 'the Control Order 2008'). It is stated that the petitioners have purchased 50 quintals each of Red Gram Dal from M/s. Parakh Agro Industries Limited, Pune Maharashtra State and the same was being transported in a Lorry bearing No.MH-23-1958 to Maharaj Gunj at Hyderabad along with the invoices dated 27.08.2009 raised by the vendor on the petitioners. On 28.08.2009 the Assistant Supply Officer, and the Deputy Tahsildar, Sangareddy have conducted a check on the lorry and seized the stock as well as the lorry on the ground that the documents required under the A.P. Sales Tax Act and the Way Bill are not produced at the time of inspection, and accordingly handed over the stock to the S.H.O. Police Station Pothireddypalli Cross Road, Sangareddy. Though the driver of the lorry made available the invoices issued by the vendor of the stocks, it has been recorded in the panchanama that no documents were shown to them. The petitioners questioned the action of the respondents in ordering interim sale of seized stocks by way W.P.No.20056 of 2009 and this Court by order dated 18.09.2009 directed the 2nd respondent to dispose of the 6-A proceedings within a period of eight weeks while making it clear that the seized stocks should not be sold.

Thereafter, the petitioners filed objections before the 2nd respondent in 6-A proceedings in Case No.CSA/48/2009. The 2nd respondent passed the impugned order dated 12.11.2009 holding that the petitioners have contravened the provisions of the Control Order, 2008 and A.P. VAT Act, 2005. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner submitted that the case registered against the petitioners under the Control Order 2008 is not applicable to the petitioners since the same is applicable only to persons who are engaged in selling, purchasing or storing of the scheduled commodities. He further submitted that the 2nd respondent has no power to impose any penalty against the petitioners having ordered for confiscation of 1% and 5% of the seized stocks against the petitioners, and that the power to levy penalty is not contemplated under Section 6-A of the Essential

Commodities Act. Such power is available only to the Criminal Courts. Hence the action of the 2nd respondent in imposing penalty of 25% and 50% of the invoice value on the petitioners is ultra vires and without jurisdiction.

On the other hand, learned Government Pleader for State of Telangana submits that though the order on the face of it discloses that what has been invoked is under A.P. VAT Act, in fact the Collector has passed the order under Essential Commodities Act and there is an effective alternative remedy available to the Commissioner under the Essential Commodities Act. Learned Government Pleader has admitted that there was clear violation of the provisions, and hence prays to release the stocks.

The allegation against the petitioners was that they are transporting pulses from Pune to Hyderabad in contravention of the provisions of A.P. VAT Act and Rules of Way Bill. Admittedly, the petitioners are registered dealers under the A.P. VAT Act. At the time of hearing of 6-A proceedings they have produced necessary documents i.e., tax invoice, delivery challan and also LR for transport of dal before the authority. On the very face of the allegations, it is crystal clear that the Collector does not have jurisdiction to stop the vehicle except for violation of the Control Order.

In the present case, the order is passed under Scheduled Commodities Dealers (Licencing, Storage and Regulation) Order, 2008. The petitioner raised objections, but the same have not been dealt with by the competent authority. Further, the goods are being transported from Pune to Maharaj Gunj at Hyderabad.

Admittedly, the authorities, notified under Section 45 of the A.P. VAT Act, 2005 r/w Rule 59 of the A.P. VAT Rules, 2005 are alone empowered to conduct check on goods in transit by following the procedure prescribed.

In the present case, the authorities i.e., the District Supply Officer had no authority to conduct check and they are not the authorized officers either under the VAT Act or under the Central Sales Tax Act. In that view of the matter, the very seizure is illegal and the subsequent proceedings, which are initiated under the Essential Commodities Act, are without jurisdiction. Therefore, the impugned order dated 12.11.2009 is quashed as having been passed without jurisdiction and contravention of A.P. VAT Act and the Rules made there under.

Accordingly, the writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

5th November, 2015

Js.

L.R. Copy to be marked.