HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.369 of 2013

ORDER:-

The petitioner is the respondent in CC No.85/2011/CSR-5 before the District Collector, Visakhapatnam. The petitioner is said to be the Proprietrix of M/s.Nissy Filling Station, Pisinikada village.

2. The brief facts are that on credible information that there was clandestine business in petroleum products, the District Supply Officer (Rural), Visakhapatnam, along with his staff surprised the premises of the respondent on 19-07-2011 and found that the petitioner is conducting business. On their demand, the petitioner produced Form-B licence, which was valid upto 31-12-2010, a Certificate from Weights & Measures Department, Daily sales register, Density register, Invoice dated 19-07-2011, Inspection report of the Retail Sales Officer, HPC, dated 31-05-2011 and two Bill Books. A panchanama was conducted and it was signed by the petitioner herein. They also conducted density test in the presence of the mediators and on verification of the stock, they found 785 litres of variation in between the sales meter and that of the sales as per dip rod. Further, the petitioner failed to exhibit the stock-cum-price list board at the entrance of the business premises and also failed to file C-Returns before the concerned authorities. They further noticed that as per Bill No.68/30, dated 17-07-2011, 750 litres of diesel and Bill No.66/67, 400 litres of diesel was sold in plastic cans which is not permitted. Thus, the petitioner found in conducting business in petroleum products without having a valid Form-B and Explosive licence, thereby contravened Clause 3(i) and 12(1), 2 (2) of the A.P.Petroleum Products (License & Regulation of Supply) Order 1980, and condition 4 of the Form-B license issued under the above Control Orders, and also Clause 2(f)(iii) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution & Prohibition of Malpractice) Order 2005. They seized the stock of H.S.D. 16126 litres @ Rs.44.35 P.S., per litre, worth Rs.7,15,188/-. A detailed mediators' report and panchanama were drafted and recorded the statement of the petitioner who admitted the variation in

question.

3. A show cause notice was issued and the explanation of the petitioner was obtained. Having found the explanation to be not satisfactory, by order, dated 31-03-2012, the District Collector, Visakhapatnam, directed the confiscation of 50% of the total seized stock to the Government under Section 6-A of the Essential Commodities Act.

4. Aggrieved by the said orders, the petitioner preferred Criminal Appeal No.42 of 2012 on the file of the Principal District and Sessions Judge-cum-Appellate Authority under Essential Commodities Act, Visakhapatnam, and by Judgment, dated 02-11-2012, the learned Sessions Judge taking into consideration the totality of the facts and circumstances held that the confiscation of 50% of the seized stocks is liable to be reduced to 25%. The appeal was accordingly partly allowed confirming the order of the District Collector subject to the reduction of the value of the confiscation from 50% to 25% in favour of the Government.

5. The petitioner/dealer preferred the present revision against the orders of the Sessions Judge contending that the authorities erred in not taking into consideration the explanations offered by her. It is further submitted that the variations and discrepancies found during the course of inspection are all within the permissible limits and the Sessions Judge ought to have considered releasing the entire stock or value thereof instead of directing confiscation of 25% of the value thereof.

6. Arguments of both sides were heard.

7. The point that arises for decision is as to whether the prosecution could prove its case beyond reasonable doubt?

8. **Point:-** The admitted fact is that the petitioner is a dealer of petroleum products and she is the proprietrix of M/s.Nissy Filling Station, Pisinikada village, Anakapalli Mandal, Visakhapatnam. It is also a fact that she had valid license issued by the authorities to do the said business, which, however, expired by 31-12-2010. It was not renewed within the permissible statutory period. On 19-07-2011, when inspection was carried out, it was found that she was not having valid license. Subsequently, the dealer applied for renewal of license IN August, 2011

and the same was granted till December, 2011. This is the irregularity which is committed by the petitioner/respondent and there is no dispute about it. Learned Counsel submits that it is purely a technical error and since there were no allegations of the dealer indulging in clandestine sale of the petroleum products, the orders passed by the learned District Collector, Visakhapatnam, confiscating 50% of the value of the seized stock was excessive. However, in appeal, the Sessions Judge, Visakhapatnam, has reduced the confiscation from 50% to 25% and the learned Counsel submits that for this technical violation directing the seizure of 25% of the value of the stock is excessive. Taking into consideration the fact that the petitioner/respondent was a licensed dealer but however it was expired by the end of December, 2010 and was not renewed till August, 2011, I feel that the ends of justice would met if 10% of the total seized stock is confiscatged to the Government as against 25% ordered by the learned Sessions Judge while returning 90% of the seized stock to the petitioner/respondent. The total value of the seized stock is said to be about Rs.7,15,188/-, which was the price of about 16,000 litres of High Speed Diesel. Subject to this modification, the revision case is liable to be dismissed. The point is answered accordingly.

9. In the result, while confirming the order of the authorities below, it is directed that 10% of the seized stock may be confiscated to the Government while releasing the remaining stock or value thereof in favour of the petitioner/dealer.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M.S.K.Jaiswal, J

3rd July, 2015
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