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

Criminal Revision Case No.460 of 2013

ORDER:-

The petitioner is the respondent in Ref:V12/CS/316/2012, dated 05-08-2012 before the Collector and District Magistrate, East Godavari District, Kakinada. The petitioner is said to be the managing partner of Sri Laxmi Srinivasa Agro Foods, Rajanagaram.

2. The brief facts are that on credible information that there was clandestine business for pecuniary gain, the Assistant Grain Purchasing Officer along with officials of Civil Supplies and mediators proceeded to the premises of the petitioner on 07-06-2012 and inspected the records. On physical verification of the stocks when compared with the records, they found certain variations. 1124 Qtls of paddy and 50 Qtls of rice were found to be less and 15 Qtls of broken rice were found in excess. They also found the workers of the petitioner indulging in shifting the PDS rice into other gunny bags. The entire stock consisting of raw rice, broken rice, PDS rice etc., valued at Rs.1,20,50,440/- were seized in view of the contravention of clause 17(a) of the A.P.State PDS Control Order 2008, Clause 18(2)(c) of the A.P.Scheduled Commodities Dealers (L,S&R) Order, 2008, Conditions 3, 4, 8 or 9 of Form B Licence issued under A.P.S.C.Dealers (L,S&R) Order, 2008 and Clause 7 (a) of the A.P.Rice Procurement (Levy) Order, 1984.

3. A show cause notice was issued and the explanation of the petitioner/dealer was obtained. Having found the explanation to be not satisfactory, by order dated 05-08-2012, the learned Collector and District Magistrate, East Godavari District, Kakinada, directed the confiscation of 15% of the total seized quantity to the Government under Section 6A of the Essential Commodities Act 1955.

4. Aggrieved by the said orders, the petitioner/dealer preferred Criminal Appeal No.290 of 2012 on the file of the Principal Sessions Judge, East Godavari, Rajahmundry, and by Judgment dated 08-02-2013, the learned Sessions Judge taking into consideration the totality of the facts and circumstances held that the confiscation of 15% of the seized stock is liable to be reduced to 5%. The appeal was accordingly disposed of confirming the order of the Collector and District

Magistrate subject to the reduction of the value of the confiscation from 15% to 5% and directed to return of the remaining 10% of the seized stock or the value thereof to the petitioner/appellant.

5. The petitioner preferred the present revision contending that the authorities erred in not taking into consideration the explanations offered by him. Significantly, 149 Qtls of paddy was in the process and it was liable to be deducted. Similarly, 6% variation is permitted. Similarly, with regard to the rice and broken rice, the variations were within the permissible limits. Therefore, the orders need to be set aside.

6. Learned Counsel appearing for the petitioner submits that the petitioner was in the business just few months prior to the inspection and therefore the records could not be properly maintained. 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 5% of the value thereof.

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

8 . **Point**:- Admittedly, the petitioner is a dealer in rice. He is having a rice mill possessing valid licences. The premises of the petitioner was surprised by the authorities on 07-06-2012 and the registers and records were perused so also the stock was compared with the book balance and ground balance. Variations to a tune of1124 Qtls., of paddy and 50 Qtls., of rice and 15 Qtls., of broke rice were noticed. For this discrepancy in the book balance and the ground balance, the explanation of the petitioner is that since he is new to the business out of inexperience, the discrepancies in maintaining the records have crept in. Both the authorities below have found that except the discrepancies in the book balance and the ground balance, there was nothing on record to show that the dealer was indulging in any clandestine dealings or was indulging in the activities of hoarding or black-marketing. However, the contraventions of clause 17(a) of the A.P.State PDS Control Order 2008, Clause 18(2)(c) of the A.P.Scheduled Commodities Dealers (L,S&R) Order, 2008, Conditions 3, 4, 8 or 9 of Form B Licence issued under A.P.S.C.Dealers (L,S&R) Order, 2008 and Clause 7 (a) of the A.P.Rice Procurement (Levy) Order, 1984 were noticed.

9. The learned Counsel submits that the seized stocks are worth more than 1.20

crores. For the technical violations directing confiscation of 5% of the value of the seized stock is excessive. Learned Counsel submits that this being the act or omission on the part of the petitioner/dealer in maintaining the records properly and it being the first time, the entire value of the seized stocks may be released.

10. Having considered the material on record, the nature of violations and the variations, I feel that the ends of justice would met if 3% of the total seized quantity or the value thereof may be confiscated to the State as against 5% ordered by the learned Sessions Judge. Subject to this modification, the revision case is liable to be dismissed. The point is answered accordingly.

11. In the result, while confirming the order of the authorities below, it is directed that 3% of the seized stock or the value thereof may be confiscated to the State 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

12th June 2015

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