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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22237 of 2014
Date of decision:18.05.2016

M/s Arora Trading Company and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. C.M.Munjal, Advocate,
for the petitioners.

Mr. Suresh Singla, Addl. A.G., Punjab.

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Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 07.08.2014 passed by respondent No.2.

In brief, the facts of the case are that a raid was conducted by a team comprising of police officials and the Department of Food Supplies and Consumer Affairs, headed by the DFSC, Ludhiana, on the godown of M/s Chandi Ram Roshan Dass (respondent No.5 herein) and a huge quantity of sugar was recovered. The raided godown was sealed on 17.09.2009 and on 20.09.2009, with the permission of the District Magistrate, Ludhiana, seals were broken and godown was opened in the presence of K.N. Singh, the then Tehsildar/Duty Magistrate and 9780 bags, each containing 100 Kgs. of sugar, was found stored. Pursuant thereto, FIR No.168 dated 20.09.2009 was registered under Sections 7 and 9 of the Essential Commodities Act, 1955 (hereinafter referred to as the "Act") at Police

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Station Sahnewal, Ludhiana against the partners of respondent No.5 for illegally stocking of sugar in violation of the guidelines/notification/ instructions dated 16.07.2009 issued by the Central Government in terms of Section 3 of the Act read with Clause 5 of the Sugar Control Order, 1996, which prohibited stock of sugar of more than 2000 quintals by a recognized dealer. The District Magistrate/Collector, Ludhiana, vide order dated 15.10.2009, by exercising his powers under Section 6A of the Act, ordered confiscation of 9780 quintals of sugar recovered from the godown of respondent No.5 and also ordered for its sale as per the procedure prescribed by law. The order of the Collector was challenged by way of five appeals, 4 filed by the present petitioners and the 5th by respondent No.5 as according to the petitioners, they had also stocked the sugar in the godown of respondent No.5 to the extent of 1870 quintals, 1970 quintals, 1980 quintals and 1990 quintals respectively besides the sugar of 1970 quintals of respondent No.5. Although it has been observed in appeal by the learned District and Sessions Judge, Ludhiana that in case the partners of respondent No.5 are acquitted from the criminal charge, the firm(s) would be entitled to refund of the price of the confiscated sugar from the State but the appeal was dismissed on 27.02.2010.

The four partners of respondent No.5, however, were tried in the FIR No.168 of 2009 by the Court of Judicial Magistrate 1st Class, Ludhiana, acquitted vide order dated 22.04.2013 and it was ordered by the Magistrate that the case property be dealt with as per the Rules.

After acquittal of the partners of respondent No.5, an application was filed to respondent No.2 to release the sale proceeds of the sugar which was sold during the pendency of those proceedings being perishable commodity but vide the impugned order dated 07.08.2014, the respondent No.2 has ordered for refund of the price of sugar only to the extent of 1970 quintals to respondent No.5 alleging that only that much of sugar belongs to the said firm. Aggrieved against this order, the present petition has been filed.

During the course of hearing, counsel for the petitioners made a statement on 31.10.2014 that they would have no objection if the entire value of sugar, which was confiscated and sold, be returned to respondent No.5. Actually thereafter, respondent No.5 was impleaded as a party through an application bearing CM No.15904 of 2014.

Counsel for the petitioners has submitted that as per Section 6C(2) of the Act, after the person, who has been prosecuted in a Criminal Court for the contravention of the Sugar Control Order, 1996 in respect of which an order of confiscation has been made under Section 6A of the Act, is acquitted, then the price of the perishable commodity, if sold, has to be returned to the said person. Section 6C of the Act is reproduced as under:-

> "**6C. Appeal-** (1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to the State Government concerned and the State Government shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.
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> (2) Where an order under section 6A is modified or annulled by the State Government, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquired, and in either case it is not possible for any reason to return the essential commodity seized, such person shall, except as provided by sub-section (3) of section 6A, be paid the price therefore as if the essential commodity had been sold to the

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> Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined -
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> (i) in case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;
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> (ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of section 3; and
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> (iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3."

It is further submitted that the entire sugar was confiscated from the godown of respondent No.5 and an FIR was registered which was tried before the Criminal Court and since the partners of respondent No.5 have been acquitted, therefore, the petitioners or at least respondent No.5 is entitled to the price of that entire confiscated/sold sugar.

On the other hand, counsel for the respondents has submitted that since the stock register showed sugar to the extent of 1970 quintals belonging to respondent No.5, therefore, the price of that sugar, which was confiscated and sold, has been ordered to be returned to respondent No.5.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are not much in dispute regarding the confiscation of sugar from the godown of respondent No.5, dismissal of appeal filed by the petitioners by the Appellate Authority and acquittal of all the partners of respondent No.5 who were tried for violation of Sections 7 and 9 of the Act. Once the sugar was confiscated from the godown of respondent No.5 and was sold being perishable commodity, the price of that sugar has to be paid to respondent No.5 in terms of Section 6C(2) of the Act and the order of respondent No.2 to refund only the amount to the extent of 1970 quintals of

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sugar to respondent No.5 is patently illegal and unsustainable.

Consequently, the present writ petition is hereby allowed, impugned order dated 07.08.2014 is set aside and a direction is issued to respondent No.2 to pay the amount of the remaining sugar, which was confiscated from the godown of respondent No.5 and sold, to respondent No.5 within a period of two months from the date of receipt of certified copy of this order.

May 18, 2016 **(Rakesh Kumar Jain)**
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