

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12 OF 2017

DATED : 02.01.2017

Between :

M/s.Olam Agro India Private Limited,
(Formerly known as M/s.Olam Agro India Limited)
Rep., by its Sr.Manager (Legal) Sanjeev Mishra,
S/o.Banshidhar Mishra, Aged about 33 yrs,
Having office at Building No.8,
Tower-A, Ground floor,
DLF Cyber City, Phase-II, Gurgaon,
Haryana-121001

.. Petitioner

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Industries & Commerce Department,
A.P.Secretariat, Velagapudi,
Amaravathi, Guntur District. & others.

.. Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.12 OF 2017****ORDER :**

Heard. With the consent of learned counsel for the petitioner and learned Government pleader, the writ petition is disposed of at the admission stage.

2. On the premises of Cashew Processing Factory, in Vizianagaram District, petitioner undertook construction of building for development of Cashew processing unit. Alleging that the amounts due to the Government towards seigniorage fee and transit permits were not credited to the Government, the Regional Vigilance and Enforcement officer, conducted a check on the premises of the petitioner. On verification of the records of utilization of minor minerals for construction and development of cashew processing unit and based on the information furnished by the officials of the petitioner-factory, show cause notice was issued dated Nil-12-2016 received by the petitioner on 20.12.2016, quantifying the amounts due to the Government as Rs.8,92,77,125/- and called upon the petitioner to submit its explanation. This amount includes penalty for not paying the amounts due in time. Petitioner sought for information based on which the said show cause notice was issued and sought for some more time. It appears time as sought for was granted and on due consideration of the issue, orders are passed.

3. Learned counsel for the petitioner submits that wrong information was furnished by the employee of the petitioner and based on such wrong information, the amount is quantified.

According to the petitioner the road metal and sand as alleged in the impugned order was not consumed and the contractor-3rd respondent was responsible for bringing the road metal and sand and proceedings ought to have been taken against him.

4. On going through the material placed on record and hearing the submissions of learned counsel for the petitioner, it is clear that the objection that petitioner now trying to raise was never placed before the competent authority. The competent authority was never informed that due to mistake wrong information was placed before the competent authority. If what is contended now is true, it is the error committed by the petitioner himself. Therefore, the petitioner cannot allege that there was violation of principles of natural justice and in furnishing the relevant documents as sought for.

5. As rightly contended by the learned Government Pleader, against order of Assistant Director, Mines and Geology, making a demand to pay the amount as done in the present case, an appeal shall lie to the Director/Commissioner, Industries & Commerce, and without exhausting the remedy of appeal, this writ petition is filed. It cannot be said that the remedy of appeal is not efficacious for the petitioner.

6. A bare reading of the show cause notice and the impugned order would show that the amount quantified is based on the information furnished on behalf of the petitioner company. If the petitioner has any other information to submit or justify his claim that the amount quantified is not valid and that the consumption as alleged is not correct, he should raise those pleas in appeal and

place before the appellate authority the true and correct information as available with him and persuade the appellate authority either to set aside demand notice or atleast to reduce the quantum of amount levied against him.

7. Prima-facie, this Court is of the opinion that it is not a case where due opportunity was denied to the petitioner, whereas, based on the information furnished by the petitioner only the amount was quantified. Without exhausting the remedy of appeal, petitioner cannot directly invoke the jurisdiction of this Court. More so in the peculiar facts of this case it is but necessary for the petitioner to avail the remedy of appeal and to satisfy the appellate authority on the grounds, as sought to be urged in this writ petition.

I am not inclined to entertain the writ petition when the remedy of appeal is available to petitioner.

8. At this stage, learned counsel for the petitioner submits that the amount quantified is on high side and it is not possible for the petitioner to deposit the amount quantified while preferring appeal.

9. In view of the said submission, while granting liberty to the petitioner to avail the remedy of appeal, within three (3) weeks from the date of receipt of copy of this order, petitioner is directed to deposit 50% of the amount demanded in the impugned demand notice within three weeks and shall enclose to the appeal, the proof of deposit of the amount, if such appeal is preferred. This observation is applicable only if petitioner chooses to file an appeal.

10. With the above observations, the Writ Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

2nd January, 2017

Note : Issue c.c. in two days

B/o.

Rds

