HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.463 OF 2017

ORDER:

The revision petitioner maintained the revision, impugning the order in Crl.A.No.433 of 2015 dated 19.12.2016 passed by the District and Sessions Judge, Rajahmundravaram, against the order dated 06.08.2015 in proceedings Ref.No.V9/CS/404/15 of the District Collector, Kakinada under Section 6-A of the Essential Commodities Act, 1955(for short, 'the E.C.Act').

2.The brief facts of the case are that the Regional Vigilance and Enforcement Department and the Mandal Agricultural Officer, Anaparthi in the course of inspection on 03.06.2015 at 10.00 A.M., of the premises of the petitioner firm 'M/s.Vivekananda Seeds' a paddy seed processing Marketing and Distribution unit, located at R.S. No. 176, Duppalapudi village, Aaparthi Mandal, found that there is variation between physical balance at Godown and the stock book balance which is the total wroth of the 'A' and 'B' variety of seed is Rs.72,97,025/-of 2812.80 Qtls(9376 bags) against the provisions of Seed Act, and seized the varying quantities of seed and filed report before the District Collector, who in this regard issued a show cause notice to the revision petitioner seeking explanation as to why not confiscate the seized stock to the government. The explanation of the revision petitioner is that he is the Managing Partner of above unit with licenses valid upto 05.05.2017 and maintaining records as per the provisions of Seeds Control Order 1983 and sending intimation to the agricultural authorities every month regarding stock position. On the date of inspection the variation of stock found by the authorities is for the simple reason of incompletion of accounts. In fact, the unprocessed seed brought by the farmers and other agricultural agencies to be taken into processing after entering into the basic register and after processing, the processed part will be entered into stock register and processed part will be subjected to verification by the Agricultural Department as well as the Central Agricultural Laboratory before it is put for sale to the farmers. The unprocessed seed after processing was brought into the stock book leaving the waste part and then the farmers, traders and dealers carry the seed and in case of return of the same for obvious reasons, the same part is added to the stock register and sometimes replaced by other variety of seed and therefore, there is no violation or variation and the figures of variation in filing the case not on the basis of the stock register but arrived on the basis of unprocessed seed which was stored in the godown and that part when put for processing basing on the requisition given by the Traders/Dealers/Farmers and after processing and packing at 30kgs. per bag and brought into the stock register before it delivers to the farmers. As this is only a seasonal processing unit more particularly during the agricultural season and it is not a subsidized item and it is a paddy seed and no tax is involved and no loss will be incurred to the Government or to the consumer (farmer) any loss will be borne by the license holder himself. With regard to seeds referred in 'A" and 'B' of the show cause notice, while processing of the seeds when demand is come up for other varieties of seeds and that part will be taken up and the earlier processing seeds which were available in bags were yet to be stitched and fixing the labels and lot numbers and after completion, entry will be made in the stock register. Thereby the difference of bags shown in A and B is not correct and so also as the Managing Partner was out of the station, the sales are not deducted from the stock book and likewise the processing seed has to be brought into the stock register. It is only a technical omission and not a violation thereby incompletion of account is not an offence since seed is not covered either by tax or by subsidy or otherwise. At the time of seizure, it is evident that entity is having the license and maintaining the records and submits stock statements and form of returns every month in Form-C that itself disprove the allegations leveled against the entity initially. Due to absence of the Managing Partner who is on business work at Warangal Plant, the accounts could not be updated and thereby there is a deviation. The case filed is on technical count only against the revision petitioner including two other Units(Total three units only in East Godavari District) which are shut down resulting heavy loss to the farmers for non-availability of seed. The processing Unit of the revision petitioner is not having any subsidy, no control, no tax and it is an agricultural produce, as such, the provisions of the above Acts, will not apply to them, hence prays to release the stocks.

3. On hearing and from perusal of the material, the learned District Collector, observed that there is a physical variation between the books maintained by the revision petitioner and the ground balance and the revision petitioner delivers the seed product without proper accounting, the revision petitioner also failed to rectify their mistakes though the officials booked a case earlier in the year 2013-14 on the similar charge and therefrom ordered 10% of the value of the seized stock for confiscation to the Government under the provisions of the E.C.Act.

4. Said order of the learned District Collector was when impugned before the lower appellate Court, the learned District Judge having considered the order of the District Collector and held that same is supported by reasons by agreeing with the conclusions arrived so far as

the variation in some items, by negating the contra contentions however by holding that out of 25 items seized by the complainant, for 15 items there is which have no variation as per the mediators report itself and thus the order confiscating those items also is against law and thereby confirmed the order of the learned District Collector to the extent of the confiscation of 10% of seized stock only in respect of there is variation and set aside to the extent of seized stock which is with no variation.

5. Impugning said order of the lower appellate Court, the revision petitioner preferred the revision with the contentions in the grounds of revision vis-à-vis the oral submissions during final hearing that the orders of both the lower Courts are contrary to law, weight of evidence, failed to consider that there is no violation of provisions of the Seeds Control Order or the provisions of the E.C.Act, or any other control order made thereunder and the seed is not a subsidized item and the petitioner is a seasonal processing seed unit, the variation is only invented one for the purpose of registering a case as the receipts and sales will be updated in the account books after closure of business for the day and not in the middle of the day, the explanation in this regard is not properly considered, the allegations of non-maintenance of accounts is a technical offence and not a clandestine operation and such there is no question of confiscation of any stock basing on only assumptions and presumptions and thereby sought for setting aside both the orders of the Courts below by allowing the revision for release of entire seized stock with no any liability for confiscation.

6. The learned counsel for the revision petitioner relied on the decision of this High Court in Dilip Kumar Vs. The State[1] in which it was held that in the absence of material so as to dealing of clandestine

[1] 2004 CJ (AP) 288

business, the penal provisions of the Act does not attract, further relied on Samudrala Venkateswar Rao, Managing Partner, Maruthi Traders, Khammam District Vs. Government of India, Ministry of Agriculture Department of Food, New Delhi[2] whereby referring to other expressions, held that confiscation of the entire seized stock is not proper and just for any and every contravention on the allegation that there is a clandestine business.

7. The learned Public Prosecutor representing the respondent-State supported the impugned orders of the Court below and sought for dismissal of the revision saying there is no illegality and impropriety or incorrectness to interfere, within the limited scope of law by sitting in revision.

8. Heard and perused the material on record.

9. The revision petitioner entity obtained license for paddy seed processing, marketing and distribution as per the Seeds (Control) Order 1983(for short, 'the Order'). The very Order speaks as made as per the powers conferred u/Sec.3 of the E.C.Act, 1955 and the definitions part speak the Act, Controller, Dealer, Inspector, Registering Authority etc., and the paddy processing seed is within the meaning of the Seeds Act, 1966. defined under Section 3 of the Order speaks as '*No person shall carry on the business of selling, exporting or importing seeds at any place except under and in accordance with the terms and conditions of licence granted to him under this order'*. It is not even the case of exemption from the purview of the Order in Gazette notification either of the seed in question or the entity of the revision petitioner as per Section 3 of the Order. Section 8 of the Order clearly speaks as '*Every dealer of seeds shall display in his place of*

[2] 2002 CJ (AP) 1174.

business (a) the opening and closing stocks, on daily basis, of different seeds held by him; (b) a list indicating prices or rates of different seeds'. Section 13 speaks of Inspection and punishment and clause(d) speaks of seizure or detention of any seed in respect of which as the Inspecting authority has reason to believe that the contravention of the Order has been committed or is being committed and under clause(e) can seize any books of accounts or documents in relation thereto by passing a receipt from whom seized and the procedure for search and seizure u/sec.100 CrPC, also apply and inspecting authority shall report of such seizure to a Magistrate under Section 457 and 458 CrPC, and Section 15 provides for suspension/cancellation of the license with right of appeal to the aggrieved within 60 days therefrom. Section 18 of the Order speaks that every dealer shall maintain such books of accounts and records relating to the business as may be directed by the State Government and shall submit monthly returns relating to the business for the preceding month in Form-C to the licensing authority by 5th of every month. No doubt from this, there is no procedure for confiscation but for seizure and detention and reporting to the learned judicial Magistrate of having jurisdiction of the area concerned. From this now coming to the order of the learned Collector, there is nothing referred of the same is 'essential commodity' and liable for confiscation in ordering confiscation from the said variation which is in fact one of the contentions even before the Collector vis-à-vis in the appeal before the lower Court raised by the revision petitioner of no provision for confiscation much less to pass the order by the Collector invoking Section 6(A) of the E.C.Act, 1955.

10. Having regard to the above and in the result, the revision is allowed by setting aside the order of the District Collector, Kakinada

dated 06.08.2015 in proceedings Ref.No.V9/CS/404/15 vis-à-vis the order in Crl.A.No.433 of 2015 dated 19.12.2016 passed by the District and Sessions Judge, Rajahmundravaram, and the matter is remitted back to the District Collector to re-consider the issue by deciding afresh with reference to any provision showing the same is 'essential commodity' and liable for confiscation so to do and otherwise to comply the Section 13(3) of the Order, by reporting to the learned Magistrate concerned by producing the seized and detained stock before Magistrate concerned for passing any order for final or interim disposal of the property as per the provisions of CrPC, or the like.

Consequently, miscellaneous petitions, if any pending in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04.04.2017
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