HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.2364 OF 2016

ORDER:

Impugning the order of the 6-C of the Essential Commodities Act, 1955(for short, 'the Act') in Crl.A.No.217 of 2014 dated 27.10.2014 which is passed by the District Sessions Judge, Guntur, in modification of the order of the District Collector, Guntur in Proceeding No.140/2014-S7 dated 07.07.2014 of the 6-A of the Act, this revision is maintained by the petitioner.

2. The grounds of the revision vis-à-vis oral submissions of the learned counsel for the revision petitioner are that the impugned order of the learned Sessions Judge is contrary to law and improper and having found that the stocks were not properly weighed, ought not to have passed confiscation order and should have seen the variation found beyond the permissible limit is very less and should have released the entire stock without any confiscation and also erred in calculating the value of the confiscated stock at Rs.3,32,619/- and having found out of 4 items, there is variation regarding to stock of rice only and thereby no confiscation of any part of excess stock should have been ordered thereby sought for setting aside the impugned order of the learned Sessions Judge.

3. Whereas, it is the submission of the learned Public Prosecutor for the respondent that amount ordered for confiscation as value of stock for the variation found in clandestine dealing by the revision petitioner/dealer no way requires interference but for cross-revision to impugn and thereby sought for dismissal of the revision.

4. Heard and perused the material on record.

5. As per Section 6-A of the Act from the powers exercised by the District Collector in the course of inspection by the officials of the rice premises of the revision petitioner, on 28.06.2014, there is a seizure of 20063.00Qtls. of paddy, 800.00Qtls. of rice, 405.00Qtls. of broken rice and 260.00Qtls. of Cheer of worth of Rs.2,95,30,500/- from the revision petitioner for he failed to maintain the records and accounts properly and from the variation in stock from the irregularities and clandestine dealings and even from available material, there is excess stock of 272.32Qtls. excess paddy, 69Qtls. excess rice besides 83kgs., shortage in broken rice and 75kgs. shortage of cheer from available book balance and ground stock realities however in considering the variation in paddy and broken rice are within permissible limits and from the explanation of the revision petitioner also through advocate by its consideration holding mere possessing of license and existence of B-Register, Bill books and way bill books or any other registers, not suffice for its not maintaining properly that too when the mill is running even at the time of inspection for not a closed mill and from his failure to maintain the records properly led to the no explanation to the excess paddy of 20063.00Qtls. apart from the excess stock of rice, shortage of broken rice and shortage of Cheer, even taken from the allowable variations clause 18(2)© of the A.P.Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 so far as rice is concerned, it is beyond permissible limits of variation, failure to maintain records and accounts properly by violation of condition 3(i) of the license issued under clause 3(ii) of the Order 2008, and even from the lenient view, just to confiscate 25% of the rice stock wherein the variations beyond are the permissible limits and to release only remaining 75% of the rice stock besides release of entire seized paddy, broken rice and

brawn/cheer stock and it is observed by the learned Collector directing the Branch Manager, State Bank of India, Ponnuru to cancel the enclosed Bank Guarantee value of Rs.2,00,000/- and to send the value of 25% of the rice stock comes to Rs.4,48,000/- to send in favour of District Supply Officer, Guntur by way of Demand Draft for adjusting the same to the Civil Supplies Head of Accounts and to pay the remaining amount to the revision petitioner under proper acknowledgment.

6. The learned District Judge having considered the order supported by reasons of the District Collector supra in answering point formulated by agreeing with the conclusions arrived so far as the excess stock of rice which is beyond allowable variation observed that as per book balance it shall be 730.38Qtls. whereas, 880Qtls. found on the ground and excess is 69.69Qtls. and the officials valued the excess stock at Rs.17,92,000/-(mistaken mention as if excess stock) and the same is which is beyond permissible variation as observed, stated at para-9 of the appeal judgment in the considered view of the appellate authority (learned District Judge), the imposition of penalty of 50% on excess stock of 25.87Qtls. of rice and its value thereof would meet the interest of justice. Therefore, penalty of confiscation of 25% of entire seized stock, mistakenly mentioned as if only 69.69Qtls. instead to mention for 800Qtls. found on the ground though as per book balance 730.31 Qtls. to say it is only the variation therefrom of 69.69Qtls. The total value mentioned in the panchanama of 730.31Qtls., the value of 25% therein as ordered by the Collector of Rs.4,48,000/- and 50% of excess stock after giving allowance is the value of Rs.3,32,609/- and thereby allowed the appeal in part while confirming the findings however by modifying and reducing the order of penalty of confiscation of 25% of excess stock found of 69.69 quintals to that of 50% of excess stock of rice after giving

allowance, which comes to as noted in the impugned order as 25.87Qtls, to that of 12.935 Qtls, with a direction to adjust the amount of Rs.3,32,609/- out of the bank guarantee for a refund of the remaining.

7. It is in the scenario, the revision arisen from the arguments of both sides. Heard and perusal of the impugned order of the learned District Judge which is outcome of mis-application of facts by wrong appreciation and apparently outcome of confusion, though the total ground stock of rice is 800Qtls., whereas, the book balance is 730.31 Qtls. and the variation is 69.69 Qtls. and the learned District Collector ordered in fact, 25% of the entire rice stock (and not 25% of stock variation) for the variations are beyond permissible limits, it is to say out of the 800 Qtls. found on ground, 25% comes to 200 Qtls. It was not properly appreciated the crucial facts by the learned District Judge in passing of the order particularly at para-11 (operative portion), reflected in saying modifying the order of penalty of confiscation of 25% of entire stock found however by wrongly mentioning as if 69.69 Qtls. instead of 800 Qtls., for saying to that of 50%only and in saying as if the same on excess stock beyond 6% variation. This confusion in saying in spite of the seized stock of 800 Qtls., available as if of 69.69 Qtls. only or the learned Collector found as if 25% of 69.69quintals; though the Collector's order is very clear of 25% of the 800 Qtls. The order of the learned Sessions Judge, is thus unsustainable and is liable to be set aside by remanding the matter for disposal afresh on re-hearing of the appeal.

8. No doubt, it is not the result in fact the learned counsel for the revision petitioner is inviting, but for saying the value of Rs.3,32,609/- arrived for 12.935 Qtls. is incorrect thereby to fix the value. Said request cannot be considered as the entire order of the learned Sessions Judge as discussed supra is an outcome of confusion in misreading of

facts from the material on record without proper analysis and appreciation. The order impugned herein is thus liable to be set aside for re-determination and not a case to permit to fix the value of 12.935 Qtls., for the petitioner is not willing even to pay the amount of Rs.3,32,609/- ordered even from that erroneous observation in the impugned order of the learned District Judge.

9. Accordingly and in the result, the revision is allowed in part by setting aside the order of the learned Sessions Judge and remanding the matter for fresh determination of the appeal lis after opportunity to both sides on the scope as observed above.

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

Dr. B. SIVA SANKARA RAO, J

Date:27.01.2017
Vvr