IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM

THE HON'BLE Mr. JUSTICE N.ANAND VENKATESH

Crl.R.C. No.1713 of 2011

and

M.P.No.1 of 2011

S.Manikandarajan ..Petitioner

-vs-

1. The District Revenue Officer
   Namakkal District,
   Namakkal.
2. The Inspector of Police
   Civil Supplies CID, Salem.
3. L.Ravichandran(owner of the vehilce)
4. C.Rajendran (driver of the vehicle) ..Respondents

Prayer: Criminal Revision Petition under Section 397(1) r/w 401 Cr.P.C., to call for the records pertaining to the order dated 22.07.2011, passed in C.A.No.87 of 2007, under Section 6 of EC Act, on the file of the Principal District Judge at Namakkal in which confirming the order passed by the first respondent vide Na.Ka.No.Ci.Pa.215/2007 (F-3) dated 28.09.2007, and set aside the same and consequently direct the first respondent to release the rice confiscated by him.

For Petitioner	:	Mr.S.Makesh
For R1 and R2	:	Mrs.S.Thankira Government Advocate
For R3	:	Ms.VR.Annagandhi
For R4	:	No appearance

O R D E R

This Revision is filed against the order passed by the Principal Sessions Court, Namakkal, in C.A.No.87 of 2007 dated 22.07.2011, wherein, the order passed by the District Revenue Officer, Namakkal, confiscating the rice bags belonging to the petitioner, was confirmed. It is the case of the prosecution that the Civil Supply Inspector, Namakkal, with his team members carried out inspection on 03.06.2007 and during their routine vehicle check near Paramathi check post, the vehicle No.TN-04-B-9990, was found to be carrying 210 bags of rice each weighing 50 kg and when it was inspected, rice bags that was available in the vehicle were seized. Following the seizure of the rice and the vehicle, enquiry was conducted with the lorry owner and the driver.

2. A show cause notice dated 12.08.2007 was issued by the District Revenue Officer to the driver, lorry owner and also the petitioner herein, who was the rice owner. The show cause notice proceeds on the basis that without any supporting bills or any permission given by the Government, 210 kgs bags of rice each weighing 50 kg were found to be PDS rice meant for Public Distribution. Thereafter, the vehicle and the rice bags were seized and the First Information Report was registered in Cr.No.292/2007 against the driver and the vehicle owner. In the said show cause notice, the petitioner was called upon to show cause as to why the entire rice bags should not be confiscated and why the accused person should not be punished. The show cause notice also called upon the lorry owner and also the rice owner to attend the enquiry.

3. During the course of an enquiry, the petitioner took a stand that he is a broken rice trader and he usually purchase the broken rice from the Rice Mills and sell the same to poultry farms at Namakkal. On receiving the orders from the poultry farms, the petitioner purchased the broken rice from Sri Krishna Modern Rice Mill, Badhusha Rice Mill and Arunalakshmi Modern Rice Mill, all mills situated at Dindigul. In order to substantiate the same, three bills were also produced before the authority. The petitioner also took a stand that the broken rice was purchased from the Hulling Agency of Tamil Nadu Civil Supply Corporation and there is absolutely no ground to prove that what was transported in the lorry was PDS rice meant for Public Distribution. The petitioner took a further stand that he did not commit any offence punishable under Section 6 (4) of the Tamil Nadu Essential Commodities (Schedule Commodities) Order.

4. The District Revenue Officer, by his proceedings dated 28.09.2007 has taken into consideration, the entire submissions that was made by the petitioner. However, there was absolutely no finding, on the submissions made by the petitioner nor there was any finding on the bills that was produced by the petitioner before the authority. On the other hand, the Competent Authority proceeds on a completely different reasoning that out of the rice bags that were seized, 26% of it is PDS rice. This finding was based on a certificate said to have been given by the Regional Lab.

5. The petitioner was not given an opportunity to question the certificate that was relied upon by the District Revenue Officer. The opportunity to the petitioner become essential due to the fact that the initial charge against him was that the entire bags contained PDS rice but all a sudden this stand has been completely diluted and a new stand was taken to the effect that out of the rice bags only 26% was found to be PDS rice. It is not known as to how the Competent Authority came to a conclusion only based on the certificate without taking into consideration, the fact that the petitioner had submitted materials to show that he had produced broken rice from three Hulling Agents who are the agents of the Tamil Nadu Civil Supply Corporation. Non consideration of this essential factor is fatal to the very order passed by the Competent Authority. The Competent Authority has straight away come to a conclusion that the offence have been proved only based on the certificate given by the Regional Lab. Admittedly no sample was preserved nor the appellant had an opportunity to independently test that sample.

6. The petitioner aggrieved by this order of confiscation filed an appeal before the Principal Sessions Court, Namakkal. The learned Sessions Judge, after extracting all these submissions made by the counsel for the appellant, which is a mere reiteration of stand taken before the Competent Authority, has confirmed the order of the District Revenue Officer, Namakkal, only based on the quality certificate issued by the Regional Lab. Aggrieved by the same, the petitioner filed the present revision before this Court.

7. The learned counsel for the petitioner would submit that sufficient materials were placed before the Competent Authority as well as the Appellate Court to substantiate his defence that the entire 210 bags of broken rice was purchased from the Hulling Agents recognized by the Tamil Nadu Civil Supply Corporation. The said purchase was also borne out by valid bills given by those Hulling Agents and the transport was made from the Mills from which these bags were produced.

The learned counsel would further contended that eventhough, a sample is said to have been taken and certificate is said to have been given by the quality control of the Regional Office, no opportunity has given to the petitioner to effectively challenge the certificate, since it came to be filed in the course of proceedings. In other words, the learned counsel would state that a document which was the basis for order of confiscation was filed in the course of proceedings, without the petitioner being given an opportunity to test its veracity. The learned counsel for the petitioner further contended that if really the rice is meant for Public Distribution, the fact that rice mingled to an extent of 26% with the broken rice, then, the Hulling Agents, who are recognized by the Tamil Nadu Civil Supply Corporation should have been questioned and a statement should have been taken from them before coming to any conclusion. Finally, the learned counsel for the petitioner would contended that there is absolutely no clue from which fair price shop 26% of the rice got mixed up with the bags.

8.The learned Public Prosecutor reiterated the stand that was taken by the petitioner was considered by the Appellate Court and there is no ground to interfere with the order of the Competent Authority, as confirmed by the Sessions Court.

9. This Court has considered the entire materials. It is clear stand taken by the petitioner that he is a broken rice trader and he has purchased broken rice from three Hulling Agents recognized by the Tamil Nadu Civil Supply Corporation. In order to substantiate the same bills which was given by the Hulling Agents at the time of taking delivery of the broken rice from their Rice Mills was produced. It is also the further case of the petitioner that this broken rice is sent to poultry farms in the regular course of his business.

10. The case of the prosecution started with a charge that the entire bags that were seized contained PDS rice. In the course of proceedings before the Competent Authority, this charge got considerably diluted by virtue of obtaining a certificate from the Regional Lab. A case was projected to the effect that among the bags that were seized, 26% of PDS rice were mingled along with the broken rice bags. Both the Competent Authority as well as the Sessions Court purely went by this certificate and there is absolutely no appreciation on the facts that were put forth by the petitioner and the bills that were submitted by the petitioner in proof of purchase of broken rice from the Hulling Agents. If at all 26% of PDS rice was found to be mixed along with the broken rice bags, the authority should have questioned,

the Hulling Agents and it would have been impossible for the petitioner to have mixed PDS rice along with broken rice during transit.

11. That apart, if really PDS rice was mixed along with the broken rice bags, a further enquiry should have been made to find out from which fair price shop this PDS rice was taken.

12. This Court is convinced that the entire confiscation order, as confirmed by the Sessions Court in the Appeal, suffers from illegality and deserves to be interfered with.

13. In the result, this Criminal Revision is allowed. Setting aside the order of the learned District and Sessions Court, Namakkal, confirming the order of the District Revenue Officer, Namakkal. Since the rice has already been confiscated from the petitioner long time back, it will no more be available. The petitioner is entitled to work out his remedies, seeking for refund of the cost of the confiscated rice. In fine this revision petition stands allowed. Consequently, connected miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dna
To
1. The Principal District Judge,
   Namakkal.

2. The District Revenue Officer
   Namakkal District,
   Namakkal.

3. The Inspector of Police
   Civil Supplies CID, Salem.

+1cc to Mr.S.Makesh, Advocate, S.R.No. 37814
+1cc to Ms.V.R.Anna Gandhi,Advocate, S.R.No.37764

Crl.R.C. No.1713 of 2011 and
M.P.No.1 of 2011

SVN(CO)
BM 29/06/2018