HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No. 1335 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent-State.

The present criminal revision case is filed questioning the judgment dated 19.02.2018 on the file of the Principal Sessions Judge, East Godavari District at Rajamhendravaram confirming the orders of the Collector and District Magistrate, at Rajamahendravaram dated 07.11.2015 in Ref.V12/699/2013, confiscation of 100% on the value of the stocks to the government under Section 6-A of the Essential Commodities Act, 1955.

The facts of the case in brief are that the petitioner is an IOC dealer. The Assistant Supply Officer, Ramachandrapuram and the vigilance enforcement officials on reliable information, proceeded to the petitioner-Enterprises on 9.12.2013 at 2.30 P.M. When inspection was made, one Sri Tetali Veera Raghava Reddy was attending the business transaction and he stated that he is working as clerk since last 3 years. On demand, he produced the following records:

1. From 'B' licence bearing No.25/2003 valid up to 31.12.2014.
2. Explosive licence bearing No. P/SC/AP/14/2893 (P23572) – Xerox copy.
3. Stock Register -1 No.
4. Unauthorised stock Register – 1 No.
5. Bills Books (Running) – 2 Nos.
6. Bills Book used – 1 No.

On verification, they found variations in the stock. The basic violation was in respect of storing of H.S.D. without any permission or licence from the licensing authority and explosive licence and hoarding of 4,657 Liters of H.S.D. in unauthorized tank indulging in clandestine business. After inspection, it was found that the stock variation comes under 18.65% i.e. more than the government permitted storage tank variation at 4%. The stock was seized and handed over to one Sri Mallipudi Venkat Rayudu, Proprietor, M/s. Sri Venkataraya Agencies, IOC Dealer, Rayavaram. Basing on the above said allegations, a show cause notice was issued as to why the entire seized stock should not be confiscated to the government under Section 6-A of the Essential Commodities Act. The petitioner submitted an explanation. In the explanation, it is stated that the petitioner was originally running the business from the year 2003 onwards under the control and supervision of I.B.P. bunk. In the year 2006, the said I.B.P. merged with I.O.C. and thereby the business operations were carried on under the guidelines of I.O.C. only. For the last 13 years, the petitioner did not involve in any offence or violate any of the conditions. At the time of opening the bunk in the year 2003, the I.B.P. officials initially advised the dealer to install underground tanks and they will be replaced after supply by the Company and in pursuance of the same, the underground tank was inserted in the year 2003 itself. However, after merger with the I.O.C., the company installed separate tanks at a distance of 5 feet without any connection to the new tanks separated by carbon wall. Since then, the stocks were received in the new tanks and carried out the business operations. In the month of November, 2013 about 60 KL of H.S.D., was lifted from the company keeping in view of demand and also due to agitation. On 30.11.2013 when 12 KL of HSD was received from the company, the petitioner temporarily used the unused tank and stored excess of 4 KL in the said tank. In fact, the entire stock was covered in stock book and DSR. The learned District Collector, after considering the report and the explanation, passed orders on 7.11.2015 whereunder he ordered confiscation of 100% on the value of the stocks found in unauthorized tank to the government under Section 6-A of the Essential Commodities Act. Aggrieved by the same, the petitioner filed Crl.A.No.656 of 2015 on the file of the Principal Sessions Judge, at Rajamahendravaram. The learned Sessions Judge, after hearing, was pleased to dismiss the appeal by judgment dated 19.02.2018 by observing that inference can be drawn about the clandestine business of the petitioner since the petitioner diverted the stock into an unauthorized and unlicensed tank and conducted sales. Aggrieved by the said judgment, the present criminal revision case is filed.

The learned counsel appearing for the petitioner, strenuously contended that the judgment of the learned Sessions Judge is erroneous and contrary to the evidence. There is no violation of the provisions of the Essential Commodities Act or any of the control orders made thereunder. In fact, the H.S.D. stock seized and confiscated was stored in an underground tank installed by the I.B.P. Company and the same was not in use on account of the fact that the present I.O.C. Company installed two other underground tanks. Since the stock purchased and available in the underground tanks, are covered by the bills and invoices, it cannot be treated as unauthorized. Learned counsel further contended that the Court below failed to consider the explanation in a proper perspective and therefore, the reasoning given is perverse and liable to be set aside. The learned Sessions Judge miserably failed to appreciate that there is no clandestine business and the petitioner has not committed any irregularity and as such, confiscation is totally unjustified.

Per contra, the learned Public Prosecutor appearing for the respondent-State, supported the impugned judgment.

Having heard both the counsel and from the perusal of the material on record, the point that arises for consideration is 'whether using of unauthorized underground tank for storing the H.S.D., amounts to dealing in clandestine business and would attract the penal provisions so as to confiscate the entire stocks of the dealer.

In the explanation submitted to the show cause notice, the petitioner has categorically stated that the entire stock was covered in the stock book and DSR. In fact, in November, 2013 about 60 KL of H.S.D. diesel was lifted from the company keeping in view of demand and also due to agitation. On 30.11.2013 when 12 KL of H.S.D. was received from the company, the petitioner temporarily used the unused tank and stored excess of 4 KL in the said tank. On this the learned Collector and District Magistrate in his orders dated 7.11.2015, though ordered 100% confiscation on the value of the stocks to the government under Section 6-A of the Essential Commodities Act, has not appreciated any fact except narrating the contents of the show cause notice and the explanation given by the petitioner. What all the Collector and District Magistrate stated is as under:

> *"Heard the case, perused the records. As per the letter written by the Sales Officer, IOCL, the tank installed was uninformed and no explosive licence was available. The case of prosecution was established.*
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> *In view of the above, I hereby order for 100% on the value of the stocks found in unauthorized tank for confiscation to the government under Section 6-A of the Essential Commodities Act, 1955."*

The learned Sessions Judge, while appreciating the matter, was pleased to observe that by the time of inspection, the stock in the unauthorized tank was 4657 liters which is beyond pleaded 4 KL of temporary storage. Further, the recorded sale of 247 liters from that tank is explaining the sale operations by the petitioner. It is not the case of the petitioner that he has put on notice to the IOC about the use of the unauthorized tank and the government has permitted the petitioner to store and sell the H.S.D. from the said unauthorized tank. It is relevant that except stating that the petitioner has violated the conditions under the Orders, 2005 and 1980, nothing is mentioned with regard to the aspect that the stock found in the bunk physically is not matching with the stocks purchased by the petitioner and contrary to the stock book and DSR. Unless it is established that the petitioner, was indulging in a clandestine business with specific reasoning and particulars, it cannot be said that storage of 4 KL H.S.D. can lead to an inference that the petitioner was doing clandestine business. Even if any variations are found and unless it is established that the dealer resorted to doing clandestine business, the penal provisions cannot be invoked. In fact, as per the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, "malpractice" shall include the following acts of omission and commission in respect of Motor Spirit and High Speed Diesel:

(i) Adulteration;
(ii) Pilferage;
(iii) Stock variation;
(iv) Unauthorized exchange;
(v) Unauthorised purchase;
(vi) unauthorised sale;
(vii) Unauthorised possession;
(viii) Over-charging;
(ix) Sale of off-specification product, and
(x) Short delivery.

Clause 3 of the above said Order, 2005 contemplates the product supply and transportation. The said clause contemplates the product from the supply point shall be transported by the transporter in a container or tank-truck certified to be fit by the explosives authorities, transport authorities and oil company to carry the product with accurate calibration as certified by the weights and measures authorities and supported by delivery documents and deliver the same to the storage or dispensing point in the same condition as delivered to him by the originating supply point both in respect of quality and quantity etc.

In the case on hand, the allegation is the unauthorized storage of H.S.D. However, the specific explanation given by the petitioner-Enterprise is that the stock purchased was covered in the stock book and D.S.R. The allegation of the respondent is that the petitioner-Enterprise stored the H.S.D. in the unauthorized tank and conducted the sales. As far as the said aspect is concerned, it cannot be inferred that the petitioner resorted to clandestine business when admittedly purchase of H.S.D. is covered by stock book and DSR. In a decision reported in **DILIP KUMAR v. STATE**[1], this Court held as under:

> "The learned advocate appearing for the revision petitioner relied on a decision in Samudrala Venkateshwar Rao v. Government of India, 2002 (6) ALD 389, wherein it was held that the confiscation of entire stocks is illegal and unjust where the contraventions of control orders are trivial and technical in nature. In the instant case, the vigilance inspector noticed that there were variations in the book balance and ground stock for which the revision petitioner submitted his explanation stating that his assistant could not bring out the up - to - date entries and that he was away and he retuned to the station only on the previous date of inspection.
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> The chief rationing officer did not record any reasons and there was no material that the dealer was indulging in purchase, sale or storage of any scheduled commodities in speculative manner so as to attract the penal provisions of confiscation. In fact, the learned metropolitan sessions judge recorded a finding that there was no material to show or infer that the appellant was indulging in black marketing or selling of adulterated commodities and in view of the fact that the appellant - revision petitioner was not indulging in such activities, the confiscation of broken rice and basmathi rice was set aside by the metropolitan sessions judge. In view of the fact there was no material for the chief rationing officer to come to the conclusion that the revision petitioner failed to maintain proper and current accounts and that the storage of stocks was with a view to indulge in clandestine purchase or sales and that the metropolitan sessions judge having recorded such a finding committed error in not setting aside the confiscation of seized stocks of rice also. For the above said reasons, the chief rationing officer committed error in ordering confiscation of 30% of value of the stocks seized and absolutely there was no material for the chief rationing officer

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[1] 2004 (1) ALD (Crl.) 360 (AP)

> or for the metropolitan sessions judge to come to the conclusion that the revision petitioner - dealer was indulging in clandestine business so as to attract the penal provisions of confiscation and for the above said reasons, the order of confiscation of 30% of the stocks seized are liable to be set aside by allowing the revision following the decision reported in Samudrala Venkateshwar Rao v. Government of India, 2002 (6) ALD 389."

In the case on hand, the storage of 4657 liters in an unauthorized tank allocated by the original I.B.P. Company cannot at any stretch of imagination come within the definition of 'malpractice' as contemplated under Clause 2 (f) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. More so, when it is established that the entire stock purchased is covered by the stock book and DSR and merely it is stored in an unauthorized tank, cannot be said that the petitioner has indulging in clandestine business, more particularly, in the absence of any cogent evidence. In these circumstances, this Court is of the opinion that the learned Sessions Judge has committed an error in appreciating the storing of H.S.D. in an unauthorized tank in proper perspective. As such, the impugned order is liable to be set aside.

Accordingly, the criminal revision case is allowed setting aside the judgment dated 19.02.2018 on the file of the Principal Sessions Judge, East Godavari District at Rajamhendravaram confirming the orders of the Collector and District Magistrate, at Rajamahendravaram dated 07.11.2015 in Ref.V12/699/2013, ordering confiscation of 100% on the value of the stocks to the government under Section 6-A of the Essential Commodities Act, 1955 and the revision petitioner is entitled for refund of 100% of the value of the stocks confiscated to the government.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand dismissed.

P. KESHAVA RAO,J

Date:10.12.2018
ccm

HON'BLE SRI JUSTICE P. KESHAVA RAO

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