BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 7861 of 2020
and
W.M.P.(MD)Nos. 7333 & 7334 of 2020

The Managing Director,
M/s.Naga Phyto Chem (P) Limited,
Represented by A.Manoharan. ... Petitioner

Vs.

1. The Chairman,
   Tea Board of India,
   No.14, BTM Sarani (Brabourne Road),
   KoKata – 700 001

2. The Executive Director,
   Tea Board of India,
   Department of Commerce,
   Government of India,
   Shelwood, Club Road,
   Post Box No.6, Coonoor,
   Nilgiri District - 643101,
   Tamil Nadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to all for the records on the file of the 2nd respondent vide proceedings No. 5(100)/ TWCO/CNR/12/195, dated 06.07.2020 and quash the same.

For Petitioner : M/s.Raja Karthikeyan

For Respondents : Mr.Muthukumar, for
M/s.Paul & Paul J.Hudson Samuel & Partners

ORDER

This writ petition is filed to quash the impugned order, dated 06.07.2020.

2. The petitioner is a registered Company under Companies Act, dealing with the raw materials for manufacturing process of Instant Tea Product. The company has obtained a Certificate of Registration for carrying on business as buyer under Tea (Marketing) Control Order 2003 and obtained a tea waste license under the Tea waste Control Order 1959. Both the certificates are issued by the Tea Board.

3. On 20.02.2020 and on 10.03.2020, the Tea Board officials have inspected the place of petitioner's business, thereafter, issued two Show Cause notices, dated 06.03.2020 and 20.03.2020 for violation of Tea Waste (Control) Order 1959. As per the Show Cause Notice, three deviations were pointed out based on the inspection report and they are as follows:

i. The petitioner failed to intimate within 24 hours in writing, after arrival of consignment of Tea waste.

ii. The next deviation is that the petitioner has manipulated the sales invoice which were not found to be genuine and furnished incorrect accounts.

iii. On scrutiny of purchasing invoice, the details of purchase of Tea waste were found to be not matching with the details available in the both portals. Huge quantity of extract from the tea waste to the tune of around 30 tons was found piled up inside the premises, without any accountability and the petitioner has failed to produce any supporting documents for the disposal of the same.

4. The petitioner has submitted an explanation, wherein, it is stated as far as the belated information is concerned, the petitioner stated that for a long period such practice is not followed from the date of license i.e., 2004. Moreover, the petitioner has not received any such instructions or directions from the license holder, hence, the petitioner has submitted an apology. But the petitioner further submitted that he had filed return in Form 'F' regularly to the respondents Tea Board for all the purchases and sales without any deviation. For the allegation of manipulation of purchase invoice, the petitioner submitted he has sent monthly returns as per regulations and the petitioner has explained the queries raised by the inspecting officials and submitted split up of transactions and explanation. Further, the petitioner has enclosed all the details of purchase and sales documents and invoices with the objection letter. Even after the said documents presented before the respondents, the respondents are alleging manipulation of documents which is wrong understanding of the facts. The enquiry was conducted on 17.06.2020 by the respondents through video conferencing during COVID-2019 and hence the petitioner could not effectively submit its case. As far as the 3rd defect of purchase mismatch, the petitioner submitted that he has submitted Form 'F' to the Tea Board to the Officers every month. One office is in Peermeadu, Idukkki District, Kerala and the 2nd office is at Cochin, Kerala. Apart from that the petitioner had filed GST returns.

5. The petitioner further submitted that Tea Board Web portal is not functioning and if at all any mismatch based on the intra web report between vendor/manufacturer and buyer, the respondent has to conduct enquiry on other end dealer by physical verification in terms of the Judgment rendered in ***JKM Graphics Solutions Vs. The Commercial Tax Officer (2017) 99 VST Pg 343.*** The further contention of the petitioner is that the respondent had relied on the statement of National Bio Fertilizer one of the dealers, who is selling the tea waste and confirmed the mismatch against the petitioner which is against the principles of natural justice. For all these reasons, the petitioner submitted that the impugned order is liable to be quashed.

6. The respondents have filed counter and stated that as far as the first deviation, the petitioner has accepted and submitted an apology, hence the impugned order cannot be interfered. Moreover, based on the documents submitted by the Managing Director to the Board Officials on 20.02.2020 and the reply to the show cause notice along with the documents produced by way of letter dated 10.03.2020, it came to the light the petitioner knowingly manipulated the sales invoices and furnished incorrect accounts to the Board. As far as the manipulation of purchase invoice is concerned, as per the statement of the petitioner they had purchased tea waste from Kodanad Tea factory on 18.10.2019, vide invoice No.1011, dated 17.10.2019 for the quantity of 5040 Kg and the transaction amount was Rs.2,75,184/-. Whereas, the signed statement of the company against the invoice No.1011, dated 17.10.2019, for the same quantity of 5040 Kg, it is mentioned as the mixed tea was purchased from National Bio fertilizer. The above two statements which relates to the same single invoice merely shows the petitioner has manipulated the sales invoice. In order to ascertain this, the respondents have directed the Managing Partner of National Bio Fertilizer to appear before the Board and the statement of the documents shows no such transaction occurred between the petitioner and the National Bio Fertilizer. Therefore, the petitioner with malafide intention had manipulated the invoice No.1011 dated 17.10.2019. Due to the prevailing COVID-19 condition, the enquiry was conducted through Video conferencing and the same cannot be cited as a reason by violating of principles of natural justice.

7. Moreover, the said National Bio Fertilizer has produced the sales invoices details and the Managing Partner to know whether they had sold mixed tea. It is important to mention that the petitioner cannot use the "Mixed Tea" for manufacturing "Instant Tea", as the same would amount to an adulteration of tea. As per paragraph-2 (v) of the Tea Marketing Control Order, 2003 the instant tea is defined as "Instant Tea means a product derived from the aqueous extract of tea, tea waste and tea leaf and commercially known as instant tea". If anything has been used in the manufacturing process of instant tea other than **aqueous extract of tea, tea waste and tea leaf**, is an adulteration of tea. That apart the "National Bio Fertilizer" is not authorized to sell "mixed tea" under the Tea Act or the respective control orders, and they cannot also sell the tea waste as they do not have the required license. Further, the respondents have provided reasonable opportunity to explain, but the petitioner has failed to explain. Moreover, the petitioner has an alternative remedy to file an appeal before the Appellate authority. Therefore, the respondents have prayed to dismiss the writ petition.

8. The respondents "Tea Board" is an authority to controlling the manufacturing of Tea, Tea waste etc. It is an admitted fact that the invoice number, date of transaction and the quantity of tea all coincide, except for the purchaser's name. The respondents have conducted enquiry by taking a statement of the petitioner that they have purchased from National Bio Fertilizer. But the claim of the petitioner is that it is a typographical error. In the original order, it has been stated as Kodanad, but in the statement had stated as National Bio Fertilizer. In order to explain the respondent ought to have grant an opportunity to the petitioner, but the respondents have failed to do so.

9. Further the respondents have enquired the National Bio Fertilizer, wherein it is stated such transaction was not carried out by the National Bio Fertilizer. But the said statement and the evidence which the respondent relying on was not served to the petitioner and call for his objections. Therefore, the respondents have clearly violated the principles of natural justice.

10. It is seen that the said National Bio Fertilizer is selling Mixed Tea, which is adulteration as per the paragraph-2 (v) of the Tea Marketing Control Order, 2003. The respondent is the authority to control the selling of tea and control adulteration. During the hearing the respondents were directed to submit, whether any action was taken against the National Bio Fertilizer for selling the Mixed Tea as adulterated tea as stated supra. The Learned Counsel appearing for the respondents, on instructions submitted that the National Bio Fertilizer is not a license holder and hence, the respondents are not the controlling authority for the National Bio Fertilizer. Such submission of the respondents cannot be accepted, when the National Bio Fertilizer is dealing with tea or tea waste or mixed tea, the respondents ought to have brought the National Bio Fertilizer under its control. If license was not obtained by it, then the respondent ought to have taken steps to take license from it. When the respondent conducted enquiry in the petitioner's case, it came to the knowledge of the respondents that the National Bio Fertilizer was selling mixed tea, which is adulterated tea, but the respondent had not taken steps to take action against it.

11. The National Bio Fertilizer activities are coming within the purview of the respondents. If there is any violation by the National Bio Fertilizer, the respondents are bound to take action against them as well. The respondents are taking strict action against the petitioner, but the respondents have failed to take action against the National Bio Fertilizer, wherein it has violated and entered into transactions. Such transactions coming within the purview of the Board, hence, the initiation of any proceedings without including the National Bio Fertilizer cannot be considered as proper enquiry. Therefore, this Court is inclined to quash the impugned order.

12. Accordingly, the impugned order, dated 06.07.2020 is hereby quashed. The matter is remitted back to the respondents. The respondents are directed to furnish all the documents which they rely on in the transactions with the National Bio Fertilizer. If the petitioner has purchased any material from Kodnadu, the petitioner is at liberty to furnish all documents. The respondents shall conduct denova enquiry and pass a speaking order. The respondents shall take action against the National Bio Fertilizer also.

13. With these observations and directions, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

28.08.2023

KSA

S.SRIMATHY, J

KSA

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