(2009) 10 UK CK 0024

In the Uttarakhand High Court

DSM Group of Industries APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Constitution of India, 1950 — Article 19
Essential Commodities Act, 1955 — Section 3

Citation : (2009) 10 UK CK 0024

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Judgement

V.K. Bist, J.—Heard learned Counsel for the parties.

2. The petitioner is a manufacturer of sugar having its one of the factories within the State of Uttarakhand. It has four other factories in the State of Uttar Pradesh.

3. The Central Government for the purposes of equitable distribution and availability of sugar at fair price has been fixing levy sugar quota from time to time. At present, keeping in view the requirement of sugar to be sold to the Central Government or its nominees, as levy sugar, under Sub-section 2(f) of Section 3 of the Essential Commodities Act (for short the Act) is 10%. Remaining 90% of the production is free for sale by the producer. The Central Government has been imposing condition/restriction on sale of 90% non-levy sugar under Sub-section 3 of Section 3 of the Act. This restriction started from the year 2006. In the event of default of sale within the specified period, the unsold quantity is converted into levy sugar. On 16.04.2009 the respondent No. 1 issued release order in favour of various sugar mills including the petition by which 4421.1 quintal sugar was to be sold by the petitioner in the open market during the month of April, 2009 and in the event of non selling of sugar the remaining sugar was directed to be converted into the levy quota. The petitioner is aggrieved by the condition by which it has been directed that after expiry of validity period the non- levy sugar (free sugar) shall be converted into the levy quota to the extent of quantity remaining unsold.

4. This petition was filed in the month of May, 2009 challenging the condition of the release order in which it was provided that unsold, undispatched quantity of non-levy sugar shall stand converted into levy sugar. According to the petitioner in the month of March, April and May of 2009, on account of non-availability of transport system and due to general election of Lok Sabha quantity of free sales sugar released in favour of the Chini Mills could not be sold. The Indian Sugar Mills Association on behalf of sugar factories including the petitioner made representation to the Sugar Directorate on 21.04.2009, 19.05.2009 and 28.05.2009. Thereafter the validity period of non-levy sugar was also extended. The respondent No. 2 vide order dated 18.06.2009 withdrew the earlier order dated 16.04.2009. By this order every producer of sugar is directed to sell and dispatch of non-levy sugar quota within the month to which the quota relates and report the particulars of sale and dispatches of sugar made by him during each month within seven days from the date of expiry of that month. It is further provided in the order that the quantity remaining unsold, undispatched, at the end of the respective month and where the report is not received by the Directorate of Sugar, the full non-levy sugar quantity to be sold/dispatched during the month shall stand converted to levy sugar.

5. After withdrawal of the order dated 14.04.2009 the respondent No. 1 again issued an order on 03.09.2009 of the month and 7directing the sugar factories to sell/deliver and dispatch entire released quantity for the month of September by 30.09.2009 subject to the condition that the sale and dispatch of non-levy quota released for the month of September, 2009 shall be made on fortnightly basis in two equal installments and any quantity which remains unsold/undispatched in each fortnight would stand converted into levy sugar. By this order the Sugar Mills were also requited to report actual sale and dispatch of sugar each fortnight, which should reach the Directorate of Sugar within 7 days i.e. by 22ndth of the following month. It was also provided in the order that violation the condition mentioned in the order would constitute an offence and shall be punishable under the Essential Commodities Act, 1955.

6. Shri Arvind Verma, learned Senior Advocate submitted that the condition imposed by the respondents for converting the non-levy sugar into levy sugar after a very short period is unreasonable as respondents themselves have been extending validity of non-levy sugar. He argued that quota of non-levy sugar is released after considering all the relevant factors and respondents are free to pass release order in respect of non-levy sugar but once the quota of non-levy sugar is released in favour of the petitioner, same cannot be taken back by converting the same into levy quota and such action of respondents is not only unreasonable but is also violative of Article 19(1)(g) of the Constitution.

7. On the other hand Sri S.S. Chauhan, learned Standing Counsel for the respondents submitted that the respondents can always impose reasonable restrictions for keeping effective control over essential commodities and restriction imposed in respect of non-levy sugar cannot be said as unreasonable

restriction.

8. After hearing learned Counsel for the parties it appears that questions involved in the present petition require hearing.

9. Writ petition is admitted.

10. Liberty is given to the petitioner to approach the Central Government for extension of time in respect of non- levy sugar. In case representation is made within a period of seven days, the Central Government shall consider issuance of fresh release order with respect to the free sale sugar within a period of two weeks from the date of production of certified copy of the order.

11. List this petition for hearing on 13th November 2009.

12. Till the next date of listing, no coercive measure shall be taken against the petitioner.

