(2013) 09 OHC CK 0040

In the Orissa High Court

Case No : Writ Petition (C) No. 58 of 2003

Hindustan Lever Limited and Another APPELLANT

Vs

The Collector and District Magistrate, Sundargarh RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Essential Commodities Act, 1955 — Section 6(A), 6(B)
Sales of Goods Act, 1930 — Section 51

Citation : (2014) 117 CLT 99 : (2013) 2 OLR 803

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Advocate : S.C. Lal and S. Panda, for the Appellant;

Final Decision : Allowed

Judgement

C.R. Dash, J.—This writ petition is directed against the order of confiscation dated 07.12.2002 passed by the Collector & District Magistrate, Sundargarh u/s 6(A) of the Essential Commodities Act, 1956 (for short ''the Act'') vide Annexure-9, in Misc. Case No. 40 of 2001, directing confiscation of the value of the seized commodities, , i.e. by encashing Bank Guarantee furnished by petitioner No. 1 to the tune of Rs. 3,00,000/- (three lakhs) while taking interim release of the seized stock of ''Dalda'' and calling upon petitioner No. 1 to deposit the differential amount of Rs. 88,876/- (eighty-eight thousand eight hundred and seventy-six) and the truck bearing Registration No. OSU-3915. The brief fact of the case relevant for disposal of this writ petition is as follows:-

Petitioner No. 1 is a company having one of its depots at Mahanadi Clearing House, Gopalpur, NH-5, Cuttack. It is engaged in manufacturing and distribution of consumer goods and food articles like Vanaspati, Jam, Jelly and other products. Petitioner No. 1-company never does any retail business and it used to supply goods from its Cuttack depot to the dealers/distributors all-over Odisha. By two invoices dated 16.08.2001 (Annexure-1) the petitioner dispatched 485 cases or 87 quintals 900 grams of Vanaspati Dalda, Mixed Fruit Jam in 24 cases and Tomato Sauce in 25 cases to M/s. Santosh Traders, Vedavyas. The consignee M/s. Santosh Traders at Vedavyas had paid for the aforesaid consignment through Cheque No. 548627, dated 16.08.2001. The aforesaid goods were entrusted to the Transporters and the transportation was effected in Truck No. OSU-3915 on 16.08.2001.

At about 5.30 P.M. on 17.08.2001 the Marketing Inspector, Enforcement Squad, Panposh intercepted the aforesaid truck in Vedvyas Chowk in front of Bhagabati Weigh Bridge and seized the aforementioned articles and the truck vide Seizure List dated 17.08.2001 on the ground that the said Marketing Inspector had reason to believe that there has been contravention of Orissa Pulses and Edible Oil Dealers'' Licensing Order, 1977 (''Licensing Order'' for short). The Marketing Inspector also seized the Way Bill, Challan-cum-Consignment Note, two invoices (copies of which have been filed as Annexure-1) and other documents vide Seizure List (Annexure-2). On 18.08.2001 the Marketing Inspector submitted report before the Collector, Sundargarh (opp. party) and made a prayer for confiscation and interim disposal of the seized commodities. Learned Collector (opp. party) passed order for issuance of notice to the driver of the vehicle to show cause. He also directed the Marketing Inspector to release the Jam and Sauce in favour of the persons from whom seized, as those articles were not essential commodities. Petitioner No. 1 however appeared suo motu before the Collector (opp. party) for release of the seized goods in favour of petitioner No. 1 pending enquiry in the proceeding u/s 6(A) of the Act. In lieu of the release of the seized commodities and the truck in favour of petitioner No. 1, the Bank Guarantee of Rs. 3,00,000/- (three lakhs) was given after intervention of this Court in O.J.C. No. 15613 of 2001 filed by the petitioner challenging the order of interim release passed by the Collector (opp. party) directing furnishing of security of Rs. 3,00,000/- (three lakhs) in the shape of TDR in a nationalized Bank pledged in favour of the Collector, Sundargarh. Subsequently on 08.02.2002 petitioner No. 1 filed a petition praying therein to drop the confiscation proceeding u/s 6(A) of the Act on various grounds.

Learned Collector, Sundargarh (opp. party) on 07.12.2002 passed the impugned order vide Annexure-9 directing confiscation of the value of the seized commodities, i.e. by encashing the bank guarantee furnished by petitioner No. 1 to the tune of Rs. 3,00,000/- (three lakhs) and calling upon petitioner No. 1 to deposit the differential amount of Rs. 88,876/- and the truck bearing No. OSU-3915. The petitioner has, therefore, been obliged to move this Court in the present writ petition challenging the aforesaid order of confiscation passed vide Annexure-9.

2. Mr. S.C. Lal, learned senior counsel appearing for the petitioner impugns the order of confiscation passed vide Annexure-9 on the following grounds:-

(i) There being no reason to believe about any contravention of any specific provision of the Control Order, the seizure is illegal and initiation of the proceeding u/s 6(A) of the Essential Commodities Act is without authority of law and without jurisdiction;

(ii) The goods having been seized in transit, which does not amount to storage, no contravention of the licensing order can be held to have been occasioned, and initiation of the proceeding is, therefore, without any jurisdiction.

(iii) The articles having not been delivered to M/s. Santosh Traders though an unlicensed dealer and the articles having been seized during transit, there cannot be said to be any contravention of the Control Order, as the transit continues till delivery according to Section 51 of the Sale Goods Act, 1930;

(iv) Learned Collector, Sundargarh (opp. party) has violated the mandatory provision of Section 6(B) of the Essential Commodities Act by not issuing any notice to the petitioner, who is the owner of the goods, and the petitioner having not been provided with opportunity of submitting its version on the ground of seizure and confiscation, there is violation of the principle of natural justice;

(v) The incident of sale having not been completed for non-passing of consideration, the petitioner continues to be the owner of the goods as per Section 45(1)(b) of the Sale of Goods Act, 1930 and there cannot be said to be any contravention of the Control Order; and

(vi) Learned Collector; Sundargarh (opp. party) committed error of law in holding that "Removal of (Licensing requirements, Stock limits and Movement Restriction) on Specified Foodstuffs Order, 2002 has no retrospective effect since seizure was made on 17.08.2001. Learned Collector thereby has failed to appreciate the ratio of different decisions cited before him.

3. Learned Addl. Standing Counsel on the other hand supports the impugned order and submits that all the contentions raised now by the learned counsels for the petitioners were raised before the learned Collector, Sundargarh, who, by a well discussed order, has taken care of all the submissions made before passing the impugned order.

4. The 485 cases or 97 quintals 900 grams of Vanaspati Dalda were seized on 17.08.2001 by the Marketing Inspector Enforcement Squad, Panposh while the same were being ferried to M/s. Santosh Traders, Vedavyas in truck bearing No. OSU-3915 on being dispatched by petitioner No. 1 company from the depot of its C & F agent at Mahanadi Clearing House, Gopalpur, N.H. 5, Cuttack. At the relevant time Orissa Pulses and Edible Oil Dealers'' Licensing Order, 1977 was in force, which prohibited dealing with Vanaspati Dalda by an unlicensed dealer, and it is alleged that M/s. Santosh Traders, Vedavyas was an unlicensed dealer so far as dealing in Vanaspati Dalda is concerned. On the basis of the report of the Marketing Inspector, Panposh, proceeding u/s 6(A) of the Essential Commodities Act, 1956 was initiated before the Collector, Sundargarh (opposite party) vide Misc. Case No. 40 of 2001. While the matter stood thus, the "Removal of (Licensing requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002 (''2002 Order'' for short) came into operation. It was

published in the official gazette on 15.02.2002 and it was to come into force after 30 days from the date of publication in the official gazette. The aforesaid 2002 Order allowed the dealers to freely buy, stock, sell, transport, distribute, etc. specified foodstuffs, namely, wheat, paddy/rice, coarse grains, sugar, edible oils and edible oilseeds. Pursuant to the aforesaid 2002 order, Government of Odisha in the Food Supplies and Consumer Welfare Department letter No. 7908 dated 19.3.2002 issued the following instructions to all the Collectors:-

To

All Collectors

Sub: The Removal of (Licensing requirements, Stock limits and Movement Restriction) on Specified Foodstuffs Order, 2002.

Sir,

The Central Govt. has notified the Removal of (Licensing requirements, Stock limits and Movement Restriction) on Specified Foodstuffs Order, 2002 (Copy enclosed) in the Gazette of India on 15.02.2002 allowing the dealers to freely buy, stock, sell, transport, distribute, etc specified foodstuffs, namely, wheat paddy/rice, coarse grains, sugar, edible oils and edible oilseeds, consequently relevant clauses relating to licensing, movement under different state Control Orders issued under the Essential Commodities Act, 1956 will become infructuous from the date of coming into force of the above order, These are;

(i) the Orissa Rice and Paddy Control Order, 1965.

(ii) the Orissa Wheat and Wheat Products Control Order, 1988.

(iii) the Orissa Sugar Dealer''s Licensing Order, 1963 and

(iv) the Orissa Pulses and Edible Oils Dealers (Licensing) Order, 1977 so far as it relates to edible oils.

Permit on sale and movement of paddy under clause-10 of the Orissa Rice and Paddy Procurement (Levy) and Restriction on Sale and Movement Order, 1982 within and outside the State is, therefore, no longer required.

xx xx xx xx.

5. Mr. S.C. Lal, learned Senior Counsel appearing for the petitioner submits that, as during pendency of the confiscation proceeding 2002 order came into force, the beneficial provision there in the 2002 Order shall apply to the petitioner though the Vanaspati Dalda in question was seized on 17.08.2001, the date before coming into force of the 2002 Order. To substantiate his contention, Mr. S.C. Lal, learned Senior Counsel relies on the case of Rattan Lal Vs. State of Punjab, , Maya Prakash Vs. State of U.P. and Another, and a Bench decision of this Court in the case of Akola Oil Industries Limited Vs. Budhuram Marandi, Food Inspector and Others,

6. Learned Addl. Standing Counsel on the other hand submits that, on the date of seizure, i.e., 17.08.2001, the 2002 Order having not come into force, the 2002 Order cannot be applied retrospectively, as held by the Collector in the impugned order for the benefit of the petitioner.

7. Hon''ble Supreme Court in the case of Rattan Lal (supra) had applied provisions of the Probation of Offenders Act, 1958 retrospectively in respect of an accused who was convicted by the trial Court before the Act came into force.

8. Hon''ble Delhi High Court in the case of Municipal Corporation of Delhi v. Mal Ram alias Bhaya Ram, 1974 FAC 19 was in seisin over the matter on the issue of adulteration of Haldi powder. The already existing requisite standard of Haldi was substituted by a new one through a subsequent notification. The Delhi High Court relied upon decision of Hon''ble Supreme Court in the Rattan Lal''s case (supra) and it was held that the notification which substituted new standard in place of old must be given retrospective operation. Similarly in the case of Maya Prakash (supra), Hon''ble Allahabad High Court was in seisin over the matter on the issue of adulteration of ghee, i.e., presence of Synthetic Vitamin ''A'' to a particular extent in Vanaspati Ghee. The Allahabad High Court relying on the aforesaid decision of Hon''ble Supreme Court in Rattan Lal''s case and the Delhi High Court in Municipal Corporation of Delhi v. Mal Ram alias Bhaya Ram, (1974 FAC-19), took the same view and held that the notification which substituted new standard in place of old modifying extent of presence of Synthetic Vitamin ''A'' in Vanaspati Ghee must be given retrospective operation.

9. This Court in the case of Akola Oil Industries Ltd. (supra) was in seisin over the matter on the issue of melting point of Vanaspati by capillary slip method. Till 27.10.1984 one standard was there, but subsequently by amendment the standard was substituted. This Court, relying on a Division Bench decision of Allahabad High Court in Shyam Lal Vs. State, quoting crewford''s "construction of statute" held that the substituted standard must have to be given retrospective operation for the benefit of the accused.

10. In the present case, the seizure was made on 17.08.2001. At the relevant time dealing in Vanaspati by an unlicensed dealer was a contravention of Orissa Pulses and Edible Oil Dealer''s Licensing Order, 1977. But during pendency of the confiscation proceeding the 2002 Order having come into operation, the provisions of 2002 Order has to be given retrospective operation for the benefit of the petitioner, who is alleged to have sold Vanaspati Dalda to an unlicensed dealer. On this score, the impugned order becomes vulnerable and the same is liable to be set aside

11. Coming to the next contention, it is submitted by Mr. S.C. Lal, learned Senior Counsel for the petitioner that the petitioner had dispatched the Vanaspati Dalda in question from the depot of its C & F agent on 16.08.2001 on acceptance of payment through Cheque. The goods were entrusted to the transporter and the transportation was affected in truck No. OSU-3915 on 16.08.2001. Before it

reached the consignee M/s. Santosh Traders of Vedavyas, the Vanaspati Ghee was seized by the Marketing Inspector in Vedavyas Chowk at about 5.30 P.M. on 17.08.2001. As the consignment was not received by the consignee, the consignee as it seems issued instruction of "stop payment" and the Cheque given by him towards sale price on 16.08.2001 was dishonoured. Petitioner No. 1 company having not yet received the consideration, it continued to be the owner of the goods as per Section 45(1)(b) of the Sale of Goods Act, 1930, and as the consignment had not reached its destination, the transit continued and petitioner No. 1 remained the owner of the goods according to Section 51 of the Sale of Goods Act, 1930. It is further submitted by Mr. S.C. Lal that the sale having not yet been completed and the goods being in transit in a truck, the said did not amount to storage and it could not have been held that petitioner No. 1 - company had sold the goods (Vanaspati Ghee) to an unlicensed dealer.

12. Learned Addl. Standing Counsel on the other hand submits that petitioner No. 1 having admitted sale of the Vanaspati to M/s. Santosh Traders of Vedavyas, which is an unlicensed dealer, it cannot now take the stand that it is not liable as the goods had not yet been delivered.

13. The relevant provision of Section 45(1) of the Sale of Goods Act, 1930 reads as follows:-

Unpaid seller" defined-(1) The seller of goods is deemed to be an "unpaid" seller within the meaning of this Act,-

(a) when the whole of the price has not been paid or tendered;

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

14. The aforesaid provision unerringly makes it clear that the seller, i.e., petitioner No. 1-company here was an unpaid seller at the relevant time of seizure as the Cheque given by the consignee M/s. Santosh Traders, Vedavyas was dishonoured before the Vanaspati Dalda and other consignments were delivered.

15. Section 51 of the Sale of Goods Act, 1930 reads as follows:-

Duration of transit.-(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his

agent, the transit is at end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) Where goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, that transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give an possession of the whole of the goods.

16. If the above provision is considered in the light of the fact obtained on record, it is to be seen that the truck was seized by the Marketing Officer at Vedavyas Chowk in front of Bhagabati Weigh Bridge and it had not yet reached the destination or none had acknowledged receipt of the consignment on behalf of the consignee. The transit therefore continued and the petitioner No. 1 company for all purposes was the owner of the goods at the time of its seizure by the Marketing Inspector. It is not required to refer to different judicial pronouncements to burden the judgment so far as proposition that carrying of goods in a vehicle does not amount to storage is concerned. In this regard reference may be made to Bijaya Kumar Agarwala Vs. State of Orissa,

17. Viewed from this perspective, as the petitioner No. 1 company, who had valid licence to deal with Vanaspati Dalda, continued to be the owner of the Vanaspati Dalda, no contravention can be held to have occasioned by the time of seizure and the consequent order of confiscation is not sustainable in the eye of law.

18. Mr. S.C. Lal, learned Senior counsel for the petitioner has raised some more contentions, discussion of which may become academic only in view of the findings (supra). In the result, the impugned order vide Annexure-9 is set aside. The bank guarantee furnished by petitioner No. 1-company to the tune of Rs. 3,00,000/- (rupees three lakhs) while taking interim release of the seized truck and Vanaspati Dalda be cancelled and the interim Zima of the truck bearing Registration No. OSU-3915 is made absolute.

The writ petition is accordingly allowed.

