(2013) 07 AP CK 0091

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 1103 of 2013

Kyasa Narayana APPELLANT

Vs

The State of A.P. RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:
Essential Commodities Act, 1955 — Section 6A

Citation : (2013) 2 ALD(Cri) 358 : (2013) 3 ALT(Cri) 170

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : V. Jayasree, for the Appellant;

Judgement

K.G. Shankar, J.—The petitioner attacks the judgment in Criminal Appeal No. 152 of 2012 on the file of the Principal Sessions Judge, Karimnagar. The District Collector, Karimnagar, ordered confiscation of 30% of the stock worth Rs. 7,32,646/-, whereas the appellate court reduced the quantum of confiscation to 10%. Smt. V. Jayasree, learned counsel for the petitioner, contended that there was no contravention of the provisions of the Andhra Pradesh Scheduled Commodities Dealers (Licensing, Storage and Regulation) Order, 2008 (the Control Order, 2008, for short) and that the order of confiscation at 30% or at 10% is incorrect.

2. The facts, which by and large are admitted, may now be narrated:

The petitioner is the owner of M/s. Kyasa Narayana Rice and Oil Mill, Huzurabad. The Assistant Supply Officer, Manthani, conducted a raid on the Rice Mill of the petitioner on 01-8-2012 and verified the stock and the registers. It was found that ''B'' Register shows that 1890 quintals of raw rice was delivered to the Food Corporation of India towards Mill levy. However, the representative of the petitioner could produce the acknowledgements for 1620 quintals of raw rice only. Acknowledgement could not be produced for the balance of 270 quintals. The representative of the petitioner contended before the Inspecting Authority that 270 quintals of raw rice was rejected by the Food Corporation of India, so much so, acknowledgement were not available for the same.

3. Further, when the stocks were verified, there was variation of 116.40 quintals of paddy and 12 quintals of rice. In both the cases, the available quantity was less than the book balance. The representative of the petitioner contended that on account of evaporation of moisture, the weight of the paddy and rice was reduced. There is permissible variation according to rules to an extent of 6%. If due credit is given for 6%, the net variation came to 86.62 quintals of paddy and 8.76 quintals of rice. Added to it, 10.15 quintals of groundnut oil was found in the possession of the Mill without any documents. Considering that there was variation between the book balance and ground stock, the total value of the stock found in the possession of the petitioner was valued at Rs. 7,32,646/-. The entire stock was seized.

4. The District Collector, Karimnagar, held enquiry under the provisions of Section 6-A of the Essential Commodities Act, 1955. Holding that the petitioner violated Clause 2K(2) and Conditions 3(1)(a) to (d), 7(1), 9 and 10 of "B-Form" under the Control Order, 2008, the learned District Collector ordered confiscation of 30% of the seized stock. The learned Principal Sessions Judge, Karimnagar, confirmed the confiscation but held that the confiscation deserves to be reduced to 10%.

5. As already pointed out, the learned counsel for the petitioner submitted that the petitioner did not indulge in any illegal activity and that he did not violate any provisions of the Control Order, 2008. She placed reliance upon Dilip Kumar Vs. The State, . This Court held in that case that in the absence of a finding that the dealer was indulging in clandestine purchase or sale of essential commodities, confiscation cannot be ordered merely on the ground that there are variations in the book balance and ground stock.

6. In the present case, the only allegation is that there are variations between book balance and ground stock in respect of paddy and rice and that in respect of groundnut oil, the oil was found though not accounted for. Thus, the primary allegation is that there is variation between book balance and ground stock. In Dilip Kumar (supra), a learned single Judge of this Court held that mere variation between book balance and ground stock cannot be a ground to order confiscation.

7. Regarding the clandestine business, barring for the reference by the Assistant Supply Officer, Manthani, that he received credible information that the petitioner was indulging in clandestine business, there was no other reference or proof that the petitioner was indulging in any clandestine business. In view of the fact that the prosecution failed to prove that the petitioner was indulging in clandestine business, mere variation between book balance and ground stock cannot be a ground to order confiscation.

8. I may also point out another discrepancy in this case. It is the case of the appellate court that there was variation of 93.61 quintals of paddy and 9.48

quintals of rice as well as 10.15 quintals of groundnut oil. The stock actually found in the possession of the Mill was 379.85 quintals of paddy, 42 quintals of rice, 54 quintals of broken rice and 10.15 quintals of groundnut oil. There was no variation between book balance and ground stock in respect of broken rice. The book balance and ground stock was 54 quintals. Further, the variation in respect of other stocks was only 93.61 quintals, 9.48 quintals and 10.15 quintals of paddy, rice and groundnut oil respectively. However, the value of the whole of the stock that was found in the possession of the petitioner was valued and the learned District Collector proposed to confiscate 30% of the total value of the stock found in the possession of the petitioner''s Mill. I am afraid that this action would not be correct assuming that the petitioner was guilty of violating the provisions of the Control Order, 2008. What can be confiscated is the variation of the stock or the value thereof but not the entire stock that is found in the possession of the mill. However, in the present case, the facts and circumstances show that there was no violation of the Control Order, 2008. Consequently, the very order of confiscation of 30% of the seized stock or 10% of the seized stock, as the case may be, is void. Accordingly, the criminal revision case is allowed. The confiscation order of the learned Principal Sessions Judge, Karimnagar, is set aside. The petitioner is entitled to the entire seized stock or the value thereof.