(2009) 11 DEL CK 0208

In the Delhi High Court

Case No : Writ Petition (C) 8121 of 2009

Lamba Kod APPELLANT

Vs

Financial Commissioner and Others RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0208

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Anil Panwar, for the Appellant; Aruna Tikku, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—M/s. Lamba Kod is a partnership firm who were granted licence to distribute kerosene oil under the Public Distribution Scheme.

2. On 25th November, 2005, 3000 lts. of kerosene oil was supplied to the petitioner-firm by Sheel Trading Company, an agent of Hindustan Petroleum. After about seven months, on 21st June, 2006, the Enforcement Directorate of Food and Supplies Department, Government of NCT of Delhi visited the shop of the petitioner-firm for inspection/verification. The shop was found to be closed and therefore sealed. The shop was subsequently desealed on 30th June, 2006 in the presence of Mr. Suresh Kumar, one of the partners of the petitioner-firm and inventories were recorded.

3. The petitioner-firm was asked to account for the sale of the kerosene oil supplied to them between 25th November, 2005 till 21st June, 2006 vide show cause-cum-suspension notice dated 3rd October, 2006 in view of the inspection report. There was no response to this notice. Another notice dated 24th November, 2006 was issued for appearance of the partners on 1st December, 2006. On the said date also there was no appearance and the matter was adjourned to 8th December, 2006. One of the partners-Mr. Raj Kumar appeared and submitted a short reply on 8th December, 2006. He denied receipt of 3000

Lts. of kerosene oil on 25th November, 2005. It was stated that he was on medical leave from 23rd November, 2005 for a period of three months. With regard to the second allegation of supply of 108 Lts. of kerosene oil to non-existing card holders, it was stated that the said card holders may have shifted from their old addresses.

4. Mr. Raj Kumar was asked to produce the other partner-Mr. Suresh Kumar. On 10th January, 2007, Mr. Raj Kumar and Mr. Suresh Kumar as well as Mr. Ajay Chawla, partner of Sheel Trading Company appeared before the Assistant Commissioner, Food and Civil Supplies Department. The original receipt book of delivery of 3000 lts. of kerosene oil was produced. Mr. Ajay Chawla, partner of Sheel Trading Company submitted that Mr. Raj Kumar had signed the approval sheet as well as the sale invoice in token of acceptance of delivery of 3000 lts. of kerosene oil. Mr. Raj Kumar denied his signatures on the said documents. Mr. Raj Kumar was disbelieved by the Assistant Commissioner, Food and Civil Supplies Department who compared signatures of Mr. Raj Kumar with the admitted signatures on other documents. It was also held by the Assistant Commissioner, Food and Civil Supplies Department that the petitioner was unable to explain the supply of 108 lts. of kerosene oil to non existing card holders whose addresses were not traceable during verification/inspection by the Enforcement Branch. The petitioner-firm had not made any attempt to trace out and locate the said card holders.

5. The said order has been upheld by the first Appellate Authority and by the Financial Commissioner in his order dated 11th December, 2008.

6. As noticed above, as per the stand of the respondents, 3000 lts. of kerosene oil was supplied on 25th November, 2005 and the inspection/verification by the Enforcement Department team was carried out on 30th June, 2006 i.e. nearly seven months after the date of said delivery. In this connection, the respondents in the counter affidavit have stated that quota of kerosene oil to be supplied is fixed on quarterly basis and in the present case the quota of the petitioner-firm was fixed much before the supply of kerosene oil on 25th November, 2005. It is difficult to believe that the petitioner would not have protested or written any letter in case he had not received their quota of supply of kerosene oil of 3000 Lts. which was due in the month of November, 2005 till the search/inspection was carried out by the Enforcement Department in June, 2006. Kerosene oil through Public Distribution System is to be supplied to persons who do not pay income tax or are below the poverty line at a subsidized price. These supplies are made on month to month basis. Quota is fixed on quarterly basis keeping in view the number of card holders to whom the supply is to be made. In these circumstances, it is difficult to accept the contention of the petitioner that he did not receive the 3000 lts. of kerosene oil on 25th November, 2005 but they had kept quite and did not protest. The said plea is an after-thought.

Writ Petition has no merit and is accordingly dismissed.

