
(1988) 04 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17736 of 1986

Ram Sewak

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Citation : (1988) 12 ACR 346

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant;

Judgement

A.P. Misra, J.—The present writ petition is directed as against the orders dated 22nd September, 1986 (Annexure 5 of the writ petition) and 7-5-1985 (Annexure 4 to the petition) which are passed under the Uttar Pradesh Tea (Registration of Dealers and Declaration of Stocks) Order, 1984.

2. The brief facts of the case are that the Petitioner deals with the business of the tea and it is not in dispute that after coming into force the aforesaid Order, he cannot keep in possession for more than 1000 Kg. tea at the relevant time. It is also not in dispute that the Petitioner used to purchase tea from Tata Oil Mills Company Ltd. The case of the Petitioner was that on the date of raid by the authorities on 27th March, 1985 the excess quantity of tea found in possession of the Petitioner was on account of wrong despatch of 600 Kg. tea to the Petitioner by the said Company which was intimated to the said Company and the Company's representative on 28-3-85 informed that the Company had realised the mistake in this regard by means of a letter. However, since excess quantity of tea more than what was contemplated under the aforesaid Order was found on the day of raid, thereafter a confiscation order was passed by the authorities concerned which is impugned. Finally an appeal was preferred as against this order which is also rejected by the appellate authority. It is significant in this case that on 22nd March, 1985 was the date on which the Petitioner received the tea from the agent of Tatas. 23rd March, 1985 was the very next date when the

Petitioner intimated to the said Company regarding the 600 Kg. tea not belonging to him and had wrongly been received by him which was meant for some body else This fact was acknowledged by the said Company by means of its letter dated 28-3-85 in which the aforesaid Company expressed its regret of having despatched 600 Kg. tea which was not meant for the Petitioner. On these facts the question raised by the learned Counsel for the Petitioner is that could it be a case of which the Petitioner could have been said to have violated the Order of 1984. The relevant paras 3 and 4 of the aforesaid Order is quoted as under:

"3. No person shall after sixth day of February, 1984, if the stocks of tea, in his possession, exceed 1000 kilograms, carry on business as a dealer unless he is registered as such in the office of the District Supply Officer concerned on an application made in this behalf by him in the form annexed hereto.

4. Every dealer shall furnish fortnightly return to the District Magistrate concerned in respect of such stocks of tea held by him as are in excess of 1000 Kilograms, Every return for the fortnight ending on the fifteenth day and the last day of the month shall be personally handedover or sent by registered post so as to reach the office of the said District Magistrate by the twentieth day of the same month and the fifth day of the next month respectively in the following proforma."

Para 3 of the said Order says that no person shall keep stock of tea in his possession except 1000 Kg. for carrying on business, while para 4 says that every dealer shall furnish fortnightly return to the District Magistrate concerned in respect of such stocks of tea held by him which are in excess of 1000 Kg. It is true that on 27-3-88 the raiding party did find excess of tea but it is not in dispute that excess was on account of wrong despatch by the Tata Company, which was in possession of the Petitioner. Apart from wrong despatch the question raised is that whether the Petitioner violated aforesaid Order of 1984 or not.

3. Under para 4 of the said Order it is incumbent on such dealer to file return to the District Magistrate concerned fortnightly in respect of such stocks of tea held by him as are in excess of 1000 Kg. ending on the fifteenth day and the last day of the month. Thus the return which is filed by the Petitioner could have been on 15th March, 1985 or it could be only on 31st March, 1985. It is argued that the excess tea was received wrongly by the Petitioner and intimation regarding wrong despatch was also sent to the Company which also acknowledged its regret between 15th and 31st March, 1985 and within the same period the raid was also made by the authorities, therefore, it was not possible for the dealer to comply with the necessary provisions of Order, 1984. In view of this the finding to that effect recorded in the impugned order is patently erroneous and cannot be sustained. It is stated by means of the impugned order the dealer did not intimate the authority concerned regarding excess quantity of tea received by him but this could be done by the 15th and 31st day of the month. In the present case all the aforesaid acts were prior to the next viz. 31 March 1985 to

the District Magistrate, on which he would have intimated. Thus there is no fault of the Petitioner in such situation and the impugned order of confiscation of goods of the Petitioner is patently erroneous and illegal and cannot be sustained as Petitioner has not violated the aforesaid Order.

4. In view of the aforesaid observations, both the impugned orders dated 22-9-1986 and 7-5-1985 (Annexures 5 and 4 to the petition) are hereby quashed. In case the confiscated tea has not been either sold or returned to the Petitioner, the same shall be returned to the Petitioner within two weeks on the presentation of the certified copy of this judgment before the authorities concerned. The writ petition is allowed with costs.

5. Certified copy of this judgment may be issued to the counsel for the Petitioner on payment of usual charges within a week.