
(1988) 05 CAL CK 0034
In the Calcutta High Court
Case No : Criminal Revn. No. 402 of 1988

State of West Bengal

APPELLANT

Vs

M/S. Sree Bramha Oil Mills and Others

RESPONDENT

Date of Decision : 11-05-1988

Acts Referred:

Citation : (1989) 1 CALLT 117

Hon'ble Judges : Padma Khastgir, J;A. C. Sengupta, J

Bench : Division Bench

Advocate : Pradip Kumar Ghosh, Mr. Amalendu Kumari Pal and Mr. Pijush Kanti Ray, for the Appellant;P. K. Dutta, Kamalendu Ghosh and Mrs. Jayashree Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

A. C. Sengupta, J.—This revisional application is directed against the Order, dated 11.3.88 passed by the learned Collector in respect of certain goods that were seized in pursuance of an order made u/s 3 of the E. C. Act , in relation thereto. The learned Collector in a proceeding under Sec. 6A of the E. C. Act, 1855, hereinafter to be described as the Act, held that the seized articles are to be released to the opposite parties, that is to say, the present respondents, from whom the goods were seized. Being aggrieved by the Order, the State of West Bengal has preferred this revisional application. The only point on which this matter is to be disputed of is whether the Collector had any power to release the goods so seized in exercised his power u/s 6A in a proceeding u/s 6A of the Act. Learned Counsel appearing for the respondents argued before us that the Collector had ample power to release the goods in a proceeding u/s 6A of the Act. In support of his contention, he drew our attention to the provision of the Section 6A as annexed by the amending Act 42 of 1982. The provision of the Section 6E of the Act is quoted below:

Whenever any essential commodity is seized in pursuance of an Order made u/s 3 in relation thereto....pending confiscation u/s 6A, the Collector or, as the case

may be, the State Government concerned u/s 6C shall have and, notwithstanding anything to the contrary contained in any other law for the time being in force any Court, Tribunal, or other Authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity"

2. He admitted that by this amended Section the Collector has been given the power to make Orders with regard to the possession, delivery, disposal, release or distribution of such essential commodities.

3. Now by the special Act certain powers had been given to the Collector as stated in Section 6A of the Act which is quoted below:

Where any essential commodity is seized in pursuance of an Order made u/s 3 in relation thereto a report of such seizure shall, without unreasonable delay, be made to the collector of the District or the presidency - Town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such Order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be proceed for inspection before him, and if he is satisfied that there has been a contravention of the Order may order confiscation of - (a) the essential commodity so seized.....".

4. The Section 6E literally means that pending confiscation u/s 6A the Collector shall have "jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity....". Thus according to the literal meaning of the section, these powers can be exercised before the confiscation. It may be noted here that this "Literal approach" of interpretation in this case fits in with the "purposive approach" of interpretation. The Act which is beneficial pieces of legislation has given some special jurisdiction to the Authorities referred to in the Act to achieve the purpose of the Act. The special Court constituted u/s 12A of the Act shall try all Offences under the Act. u/s 7 of the Act the Special Court convicting and sentencing and accused shall also pass orders forfeiting to the Government property in respect of which the Order has been contravened. On consideration of all these provisions, it is quite clear that by Section 6E the collector has been given the jurisdiction for making Orders with regard to possession, delivery, disposal, release or distribution of such essential commodities pending confiscation. u/s 6A of the Act the Collector has under certain circumstances been given power to confiscate the goods. By Section 6A, the Collector has not been given any power to release the goods. Section 6E is to be read in the prospective of the provision of Section 6A of the Act because of the phrase "pending confiscation" u/s 6A used in 6E. If the Collector has not been given any power to release the goods u/s 6A, it can never be assumed that by Section 6E which gives some interim power to the Collector with reference to the proceeding u/s 6A, the Collector has been given any power to release the goods after finding this the goods cannot be confiscated. u/s 6A, the Collector may order confiscation of the essential commodities so seized. He has not been given any power to release the goods. u/s 6A the Collector may

either pass an Order for confiscation or may not pass any such Order thereby dropping the proceeding. What the Collector cannot finally do in a confiscation proceeding u/s 6A can never be done by him after he holds that the goods are not liable for confiscation. If the Collector finds that the goods cannot be confiscated, he will stop giving any further Order u/s 6A and drop the proceedings leaving the Special Court to pass the final Order regarding forfeiture or release of the goods. As soon as he holds that the goods are not liable for confiscation he ceases to have any jurisdiction to pass any Order in respect of the goods in a proceeding u/s 6A of the Act which he shall then drop. He is not given the powers of Special Court in this proceeding

5. In the circumstances we hold that the Collector's Order is erroneous. We accordingly set aside the Order.

All other points taken in this revisional application are left open.

The application is accordingly allowed.

Oral prayer for stay of this Order on behalf of the respondents is refused.

Padma Khostgir, J.

6. I agree.