
(1982) 08 CAL CK 0005

Calcutta High Court

Case No: Criminal Rev. No. 467 of 1982

Shyam Sundar Khaitan

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 25, 1982

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 6(A), 6(C), 7(1)

Citation: 86 CWN 1002

Hon'ble Judges: Amitabha Dutta, J

Bench: Single Bench

Advocate: R.N. Jhunjhunwalla and Amit Bhattacharjee, for the Appellant; Sarajesh Mukherjee and A K Paul, for the Respondent

Judgement

Amitabha Dutta, J.

This revisional application Is directed against an order dated 22nd January 1982 passed by the learned District Judge, Purulia, as judicial authority u/s 6(C) of the" Essential Commodities Act, 1955 in Masc. Appeal No. 28 of 1981 affirming the order to the Collector, confiscating the entire stock of 213 tins of Vanaspati as seized by the police by his order u/s 6(A) of the said Act. It appears that on April 20, 1981 the, officers of the Enforcement Branch of the West Bengal Police, raided the shop cum godown of the petitioner between 9 30 A.M. and 3 P.M. and found that although the stock-cum-rate beard of the petitioner showed an opening balance of 206 tins of Vanaspati the actual stock on physical verification, was found to be 213 tins of Vanaspati. So, there was an excess of 7 tins of Vanaspati for which, it Is alleged that the owner failed to give any account So, the police seized the entire stock of Vanaspati along with some documents and, subsequently, applied before the Collector for confiscation of the seized 213 sins of Vanaspati for violation of the provisions of Pulses, Edible Oils seed and Edible Oi"s Licensing (Control) Order, 1978 and paragraph 3(2) of the West Bengal Decoration of Stocks and Prices of Essential Commodities Order, 1977.

2. At the hearing before the Collector the petitioner took the plea that he (sic) 7 tins of vanaspati from a dealer in Bankura which was despatched from Bankura by a Lorry on April 18, 1981, that the Lorry broke down on April 19, 1981 on the way. that it reached the shop of the petitioner on April 20, 1981 when the said 7 tins of vanaspati were delivered and that the petitioner's employee who had been sent to Bankura for purchase of the articles fell in and arrived with the credit memo of the Bankura dealer on April 21, 1981 So, according to the petitioner, the excess stock of 7 tins of Vanaspati in question was received in course of the day of April 20, 1981 and he was under no obligation to include the same in recording the opening stock of Vanaspati on April 20, 1981.

3. Both the Collector and the learned District Judge, as Judicial Authority, have not accepted the explanation given by the petitioner regarding the procurement of the excess 7 tins of Vanaspati in course of the day on April 20, 1981 in the manner alleged by the petitioner. So, the Collector passed the order confiscating the entire stock of 213 tins of Vanaspati u/s 6(A) of the Act and this order of confiscation has been affirmed by the learned District Judge as Judicial Authority, in appeal u/s 6(C) of the Act It has been pointed out by the learned advocate for the petitioner that there is no existence of any such order as Raises. Edible Oil Seeds and Edible. Oils Licencing (Control) Order 1978 although the collector purported to hold that there was violation of the said order as well as paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977. the learned District Judge, as Judicial Authority has however, found that the petitioner has however found that the petitioner has violated paragraph 3(2) of the said order of 1977 and so the order of confiscation made by the Collector has been upheld.

4. It has been submitted by the learned Advocate firstly that the extra 7 tins of vanaspati which were not shown in the opening balance of the stock cum price. Board of the petitioner on 20 4 81, were procured by the petitioner during the day and, therefore, there was no violation of paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 and secondly. In any event the order of confiscation of the entire stock of 213 tins of Vanaspaties not justified as the contravention of paragraph 3(2) of the aforesaid order of 1977 is in respect of only 7 tins of Vanaspati, which were found to be In excess of the quantity shown as opening balance in the stock cum rate board of the petitioner on 20 4 81 in this connection, he has referred to paragraph 5 of the said order of 1977 which empowers seizure of stock of an essential commodity in respect of which the police or empowered officer has reason to believe that any provisions of the said order has been contravened. On the other hand it has been submitted by the learned Advocate for the state that the police is empowered to seize the entire stock of the commodity in relation to which there is contravention of any order made u/s 3 of the Essential Commodities Act and the collector is competent to confiscate the entire stock of such commodities seized by the Police.

5. After hearing the learned Advocates for the parties and considering the materials placed before me, I find that as both the Collector and the Judicial Authority have not accepted the plea of the petitioner regarding bona fide acquisition or petitioner's procurement of the excess quantity of 7 tins of Vanspati in course of the day on April 20, 1981 this Court sitting in Revision will not interfere with such a finding of fact which is not arbitrary or capricious.

6. But on the question of legality of confiscation in respect of the entire stock of Vanspati comprising 213 tins although the opening balance shown in the block cum rate board of the petitioner on April 20, 1981 showed the stock as 200 tins of vanspati, I find that it cannot be said that there was contravention of the provisions of paragraph 3(2) of the West Bengal Declaration of Maximum and Minimum Prices. of Essential Commodities Order of 1977 in respect of 206 tins of Vanspati which were shown as the opening balance in the stock cum rate board of the petitioner on April 20, 1981. the quantity of such articles in respect of which it can be said that the Police Officer, who searched the Shop cum Godown premises of the petitioner had reason to believe that paragraph 3(2) of the said Order had been contravened consists of 7 tins of Vanspati and only such quantity can be legally confiscated by the Collector u/s (sic)(A) of the Act. This view is supported by a decision of the Division Bench of this Court in the case of Jayanta Kumar Vs- The State reported In AIR 1955 Calcutta, 631. Although the said decision relates to forfeiture of property on a conviction u/s 7(1) of the Act. in my view, the same principle should apply also in the case of confiscation u/s 6(A) of the Act. It may be mentioned that the Supreme Court in the case of Motibhai F.P. & Co. vs. Collector Central Excise AIR 1970 SC 828 has held that where a dealer has contravened Rule 40 of the Central Excise Rules (1944) by unlawfully mixing duty paid tobacco with non-duty paid tobacco, the entire mixture can not be confiscated but only so much of the mixture as can reasonably represented the value of the non duty paid tobacco can be confiscated The view taken by the Supreme Court in the aforesaid case also largely supports the view taken by me in this case that power of confiscation cannot extend to articles for which there has been no contravention of the Central Order in question I, therefore, hold that the order of the learned District Judge as Judicial Authority, In so far as it affirms the Collector's order of confiscation of entire stock of Vanspati consisting of 213 tins should be modified and that the order of confiscation would be valid only in respect of the excess quantity, comprising 7 tins of Vanspati, seized from the petitioner's shop cum godown. The remaining quantity of 206 tins of Vanspati are to be returned to the petitioner. The application, therefore, succeeds in part to the extent indicated above The application is disposed of accordingly. The observations made In this judgment will not, In any way, be applicable to any decision that may be made In the Criminal Case u/s 7(1) of the Essential Commodities Act pending against the petitioner.