

Case No.238/2015

10.08.2015

Present : Shri S. K. Sharma, Counsel for Appellant.
 : Shri Kinshuk Srivastava, FSO for Respondent.
 : Shri Jayanand, Reader to DM(North).

1. Representative of the DM(North) files reply/comments on behalf of DM(North) and shares the copy with Counsel for Appellant.
2. Counsel for Appellant states that there is no requirement of his being importer of pulses under Section 3 of the Essential Commodities Act, 1955 and different orders have been issued from time to time with the approval of the Lt. Governor, and none of these orders specify that stock of the imported pulses is not be taken into consideration. He further states that any stock lying in the godown of Appellant on consignment basis is not to be calculated in the limit of 2000 quintals as per orders of Lt. Governor under EC Act.
3. Counsel for Appellant further stated that the order dated 5.1.1996 at Annexure P-4, specifies only "imported pulses" and does not "importer of pulses".
4. Counsel for Appellant further states that auction notice was issued without passing an order of auction which was necessary and without taking into account his submission that under Section 6(B)(b)&(c) of the EC Act.
 - i. An appeal is pending in the Court of FC.
 - ii. He may not be an importer but these were imported pulses and he produced documents before the DM(North) to that effect.

5. It is also an admitted fact that in an identical case of M/s. Kanshi Ram Laxmi Chand, stay has been obtained from the High Court and is still in operation wherein a larger quantity of 21000 quintal of pulses is involved. Representatives of Food & Supplies Deptt. and District Magistrate(North) confirms this.
6. Counsel for Appellant also states that under Section 6(B)(b) & (c), reasonable time and opportunity is to be given before an order of confiscation is passed. He further states that under Section 6(A)(2), an order of confiscation should have been passed before putting the goods for auction, under intimation to the owner.
7. In view of the above, the auction scheduled to be held on 12.08.2015 is kept in abeyance. The case is remanded back to the District Magistrate(North) with the direction to take into account the documents submitted by the Appellant herein in support of his claim that these are imported pulses and after giving him due opportunity of being heard before passing reasonable order as per Essential Commodities Act preferably within a period of one week.
8. The case is disposed of accordingly.
9. Copy of this order be serviced 'Dasti'.
10. File be consigned to record room after completion.

(Naini Jayaseelan)
Financial Commissioner
Delhi