

Heard Mr K Agarwal, learned counsel for the petitioner and Ms H Phukan, learned GA Assam.

The subject matter of challenge in the writ petition is the order dated 19.5.2009 passed by the Deputy Commissioner, Kamrup (Metro), directing to sell certain quantities of High Speed Diesel seized in the petrol pump of the petitioner and letter dated 15.6.2009 by which the petitioner was asked to hand over the sale proceeds of 3000 litres of HSD, 15400 litres of HSD and 6400 litres of Xtra-Mile Super Diesel within 18.6.2009 and vide order dated 27.7.2009, the Deputy Commissioner, Kamrup (Metro), addressed to the Superintendent of Police, BI(EO), Assam, with copy to the petitioner asking for his comment on the replies submitted by the petitioner and reiterating the direction contained in the order dated 19.5.2009.

Upon calling by the Court, the connected records were produced by the learned State counsel including the comments of the respondent authorities.

Mr Agarwal, learned counsel for the petitioner, mainly raised three contentions challenging the aforesaid orders.

(a) The impugned direction to sell the HSD oil seized from the petrol pump of the petitioner is not such article of speedy and natural decay and there is no public interest to sell the seized articles.

(b) The impugned order to sell and deposit the sale proceeds of the seized articles were passed without giving an opportunity of being heard.

(c) Although the authority found excess quantity of 3482 litres of HSD oil, but directed to deposit the sale proceeds of the entire seized articles which is not contemplated under the facts of the case as well as law, inasmuch as, the challan for purchase of 4000 litres of HSD oil had been produced before the Deputy Commissioner which was found to be correct and authentic one.

The records of the case indicate that upon necessary investigation, the Investigating Officer found after verification that Xtra-Mile HSD as per stock register, the opening stock of the depot found 2309 litres and sale of the day at the time seizure was found 2996 litres. The depot has purchased 12,000 litres of HSD. Therefore the total comes to 14309 litres and the remaining stock should have been 11313 litres. But on physical verification the stock was found in the depot 15400 litres and 3000 litres in tanker, ie, an excess stock of $(4087 + 3000) = 7087$ litres of HSD. The report further indicates that the stock of Xtra Mile diesel was also verified and found the stock of 6400 litres physically in the depot but as per depot's record it should have been 6633 litres. Hence there was a stock variation of $(6633 - 6400) = 233$ litres, ie, shortage of 233 litres was found. Accordingly, finding such deficiency, the entire stock amount of 3000 litres of HSD in tanker, 15400 litres of HSD in depot and 6400 litres of Xtra Mile super diesel seized by the Investigating Officer and prayed for disposal of the same. After disposal of the same the sale proceeds was directed to be deposited in the Government Treasury.

Under section 6A(2) of the Essential Commodities Act, 1955, where the Collector on receiving a report of seizure or on inspection of any essential commodity under sub-section (1) is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force or where no such price is fixed order the same to be sold by public auction.

The articles seized in the instant case is certainly subject to speedy and natural decay, inasmuch as, keeping in storage for longtime of such articles will not only reduce the quality but it may also reduce the quantity of such commodity. It is also in the public interest expedient to sell such commodity at the prevailing controlled price, as it is an item of heavy demand amongst the public in general.

Hence, the contention of the learned counsel that these articles are not

submit the speedy and natural decay and the sale of the same does not involve public interest stands rejected.

So far as other contentions of the learned counsel for the petitioner regarding providing of opportunity of hearing, in the instant case, the offence alleged to have committed by the petitioner as contemplated under the Essential Commodities Act is an economic offence and there no occasion arise for providing an opportunity of hearing to the petitioner as to whether the seized commodities would be put to sale or not.

This course is adopted only in the investigation stage so that the seized articles are not deteriorated in quantity and quality, the learned counsel for the petitioner appears to be justified in submitting that there has been sufficient explanation as regards another quantity of 4000 litres of HSD oil regarding which authentic purchase receipt was produced by the petitioner before the Deputy Commissioner which was found to be genuine by the concerned authority. In that view of the matter, this writ petition is disposed of with the direction that after selling of the seized articles in question, the sale proceeds of 3087 litres of HSD to be deposited to the respondent authorities for keeping in the Government Treasury to be dealt with as per the ultimate result of the proceeding. As regards the sale price of the remaining quantity, the same may be released to the petitioner after furnishing necessary indemnity bond. From the records of the case it is seen that the dealer has sold the entire seized quantity and has not deposited the sale proceed in the government Treasury, if the aforesaid fact is correct, it appears that the dealer has over stepped in the matter by violating the order of the authorities by not depositing the amount in question to the Treasury. However, I do not propose to make any comment therein, but the authority will take appropriate steps as it may deem necessary. The petitioner is directed to deposit the amount forthwith, if not already done.

The writ petition stands disposed of.