

A M/S. STANDARD ESSENTIAL OIL INDUSTRIES & ANR.

v.

FOREST RANGE OFFICER KASARGOD & ORS.

(Civil Appeal No. 1747 of 2008)

B APRIL 19, 2018

[R. K. AGRAWAL AND SANJAY KISHAN KAUL, JJ.]

C *Kerela Forest Act, 1961: ss. 61A and 69 – Confiscation by forest officers in certain cases – On facts, order of confiscation of 125 kgs of sandalwood oil by the Divisional Forest Officer – Said order dismissed by the Single Judge, however, the Division Bench of the High Court upheld the order of confiscation u/s. 61A – Correctness of – Held: Order by the Divisional Forest Officer sufficient to show that the order of confiscation was passed u/s 69 and not u/s. 61A – Perusal of the order of Single Judge of the High*
D *Court shows that Single Judge rejected the idea of confiscation of sandalwood oil u/s. 61A and held that though the order of confiscation cannot be passed u/s. 61A but by virtue of s. 69, unless a fact to the contrary is proved, it can be presumed that the seized property belongs to the Government and it enables the Government to possess the same – Thus, the Division Bench misdirected itself in framing the issue and upholding confiscation u/s. 61A and, hence, the order is bad in law – Furthermore, s.69 operates only as a tool to help the government in proving its title to the property but the said Section cannot be read as to give any power of confiscation of the property – Power of confiscation of sandalwood oil get vested*
E *in the authorities through s. 61A only after the Kerala Forest (Amendment) Act, 2010 when certain specific provisions relating to Sandalwood were inserted through Chapter VI A and Section 47H – Instant case being related to the situation prior to the time of amendment in 2010 was made, the amended provisions do not apply – Thus, the order of confiscation of sandalwood oil set aside.*
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Allowing the appeal, the Court

HELD: 1.1 The order passed by the Divisional forest Officer is in itself sufficient to show that the order of confiscation is passed under Section 69 of the Kerela Forest Act, 1961 and not under

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Section 61A. Further, a perusal of the order of Single Judge of the High Court shows that Single Judge rejected the very idea of confiscation of sandalwood oil under Section 61A of the Act and held that though the order of confiscation cannot be passed under Section 61A of the Act but by virtue of Section 69 of the Act, unless a fact to the contrary is proved, it can be presumed that the seized property belongs to the Government and it enables the Government to possess the same. Further, the Division Bench misdirected itself in framing the issue and upholding confiscation under Section 61A and, hence, on that account, the order is bad in law. [Para 13] [538-B-C]

1.2 Section 61A of the Act was inserted to prevent the illicit removal of timber, charcoal, firewood and ivory belonging to the government from the forests. The said provision confers power of confiscation on Forest Officers authorised by the Government in certain cases. The essence of the Section lies in the fact that when forest offence is satisfactorily believed to have been committed in respect of timber, charcoal, firewood and ivory which is the property of the Government then the authorized officer may confiscate the property irrespective of the pendency of any criminal proceedings in this regard. [Para 15] [539-C-D]

1.3 A perusal of the definition of forest produce, as given by Section 2(f) of the Act, shows that other than timber, charcoal, firewood it includes wood oil, gum, resin, natural varnish bark, roots of sandalwood etc. However, the use of the specific words “timber, charcoal, firewood and ivory” under Section 61A instead of “any forest produce or ivory” makes it clear that the intention of the legislature in providing armory under Section 61A is only with regard to certain category specified therein and not for every forest produce as defined under Section 2(f) of the Act. Undoubtedly, sandalwood oil is a forest produce but Section 61A of the Act is limited only to the categories specified therein and does not give power of confiscation of sandalwood oil. [Para 16] [539-F-G]

1.4 Section 69 of the Act is only a rule of evidence which raises a mandatory presumption that a forest produce, unless proved otherwise, is a property of the government in case where any proceedings are going on under the Act or anything is done

A **under the Act. The Section operates only as a tool to help the government in proving its title to the property but the said Section cannot be read as to give any power of confiscation of the property. The power of confiscation of sandalwood oil get vested in the authorities through Section 61A only after the Kerala Forest (Amendment) Act, 2010 when certain specific provisions relating to Sandalwood were inserted through Chapter VI A and Section 47H. The instant case being related to the situation prior to the time of amendment in 2010 was made, the amended provisions do not apply. Hence, the order of confiscation of sandalwood oil is liable to be set aside. The High Court erred in upholding the order of confiscation. The order of confiscation is set aside. [Paras 17, 18, 19] [539-H; 540-A-B; E-G]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1747 of 2008.

D From the Judgment and Order dated 01.03.2005 of the High Court of Kerala at Ernakulam in WA. No. 1458 of 2004.

Sanjay R. Hegde, Sr. Adv., Panjal Kishore, A. Raghunath, Ms. M. G. Yogamaya, Advs. for the Appellants.

E Pallav Sisodia, Sr. Adv., G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, Vijay Shankar V. L., Advs. for the Respondents.

The Judgment of the Court was delivered by

F **R. K. AGRAWAL, J.** 1. The present appeal has been filed against the impugned judgment and order dated 01.03.2005 passed by the High Court of Kerala at Ernakulam in W.A. No. 1458 of 2004 whereby the Division Bench of the High Court dismissed the appeal preferred by the appellants-herein while confirming the order of confiscation of sandalwood oil which was upheld by learned single Judge of the High Court in O.P. No. 15114 of 1998, vide order dated 19.05.2004.

G **2. Brief facts :-**

(a) The appellant-firm is engaged in the business of purchase and sale of sandalwood oil. N. A. Abdulrahiman (Appellant No. 2) and N.A. Abdulla Haji are partners in the firm and also running a factory at Vidyanagar, Kasargod, for the extraction of sandalwood oil. On

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16.04.1993, at about 10:30 P.M., the Kasargod Police conducted a search in the premises bearing door No. C.P. 31/786 called “Rahmith Manzil” and seized 125kgs of sandalwood oil kept in five barrels and removed the same to the local police station. A

(b) The above premise also happens to be the residence of the managing partner of the appellant firm and his family members. The seizure of the oil was reported to the Superintendent, Central Excise, Kasargod apprehending violation of the Central Excise Rules in removing the oil from the factory to the residential premises. B

(c) Consequently, the partners of the appellant-firm were served with show cause notice by the Authorized Officer under the Kerala Forest Act, 1961 (hereinafter referred to as ‘the Act’) proposing to confiscate 125 kgs of sandalwood oil seized from the aforementioned residential building. C

(d) The appellants replied to the show cause notice and contended that the above quantity is the accounted stock of the firm i.e., 75 kgs. of sandalwood oil was manufactured in the factory premise itself as supported by stock register whereas 50 kgs of sandalwood oil was purchased from M/s Punjab Aromatic, A.G Road, Calicut-2 on 15.04.1993 and in support of this claim, invoice of the said purchase was also produced. D

(e) It is the case of the appellants herein that this quantity of 125 kgs of sandalwood oil has been removed to the residence of the managing partner on account of maintenance work carried out in the factory which is in the adjacent compound. After considering the objections put forward in reply to the show cause notice, the Divisional Forest Officer, vide order dated 03.07.1998, ordered confiscation of the 125 kgs of sandalwood oil. E F

(f) The appellants being dissatisfied with the order dated 03.07.1998 filed a writ petition before the High Court bearing OP. No. 15114 of 1998 which came to be dismissed vide order dated 19.05.2004. G

(g) The appellants, being aggrieved by the order dated 19.05.2004, preferred an appeal to the Division Bench of the High Court being No. 1458 of 2004. The Division Bench, vide order dated 01.03.2005 upheld the order of confiscation and dismissed the appeal. H

A (h) Consequently, the appellants have filed this appeal by way of special leave before this Court.

3. Heard Shri Sanjay R. Hegde and Shri Pallav Sisodia, learned senior counsel for both the parties and perused the relevant material placed before us.

B **Point(s) for consideration:-**

4. The issue arises for consideration is as to whether the High Court erred in upholding the order of confiscation under Section 61-A of the Act and whether confiscation of sandalwood oil can be ordered under Section 61A or 69 of the Act?

C **Rival contentions:-**

D 5. Learned senior counsel appearing for the appellants contended that the High Court has misdirected itself in framing the question which arises in the present case to the effect that the order of confiscation of sandalwood oil passed under Section 61A of the Act is illegal and without jurisdiction. It is further contended that the entire judgment proceeds on the basis that the confiscation is made under Section 61A of the Act, which is patently and factually incorrect. It is further contended that the confiscation has admittedly been made under Section 69 of the Act after the Authorized Officer finds that confiscation under Section 61A of the Act will not lie and the same was also confirmed by learned single Judge of the High Court.

E 6. Learned senior counsel further contended that the High Court erred in upholding the order of confiscation under Section 61A of the Act because the said Section authorize the confiscation where Forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory, which is the property of the Government. The Authorized Authority accepted the legal position that sandalwood oil is not a commodity included under Section 61A of the Act.

F 7. He further contended that the Division Bench of the High Court committed a grave error in not appreciating the fact that Section 69 of the Act is only a rule of evidence which facilitates the proceedings under the Act and the said Section nowhere gives the power to confiscate. Even otherwise, documentary evidence available are sufficient to rebut the presumption under Section 69 of the Act and to hold that sandalwood oil did not belong to the Central or the State Government and the same is the property of the appellants herein.

8. Learned senior counsel finally contended that the judgment and order of the High Court being adverse in law, is liable to be set aside. A

9. *Per contra*, learned senior counsel appearing on behalf of the respondents submitted that the High Court has rightly upheld the order of confiscation under Section 61A of the Act which empowers the authorized officer to confiscate the property in respect of which a forest offence is believed to have been committed. B

10. He further contended that the authorized officer was well within his powers to order confiscation even under Section 69 of the Act as Section 69 of the Act enables him to presume that the property belongs to the Government and the appellants have not forwarded any reliable evidence to support his claim to the seized quantity of the sandalwood oil and in the absence of any such evidence, the order of confiscation was well within the parameters of law and should not be disturbed. C

11. Learned senior counsel for the respondents finally submitted that the order and judgment of the Division Bench of the High Court is in accordance with law and no interference is sought for in this regard. D

Discussion:-

12. The very first issue that arises for consideration is whether the judgment and order of the High Court is bad in law for framing a wrong issue and to uphold the order of confiscation under Section 61A of the Act. The appellants herein contended that the High Court has misdirected itself in framing the question as to the validity of the order of confiscation under Section 61A of the Act in the present case when both the authorities below rejected the idea of order of confiscation under that Section and passed order under Section 69 of the Act only. E F

13. To address the said issue, it is worthy to reproduce the operating para of the decision of the order dated 03.07.1998 by the Divisional Forest Officer which is as under:-

“In the light of the decision of the Hon’ble Supreme Court in C.A. 423/93, sandalwood oil will also come within the purview of wood oil as per Sec. 2 (F)(1) of Forest Act. Hence sandalwood oil can be confiscated under Section 69 of the Forest Act. The accused have failed to prove the ownership of the 125 kgs of sandalwood oil seized in the above case. Hence, I, K.K. Chandran, the G H

A Authorized Officer, presume that it is illegally acquired and hence ordered for confiscated under Section 69 of the Forest Act.”

The above order is in itself sufficient to show that the order of confiscation is passed under Section 69 of the Act and not under Section 61A. Further, a perusal of the order of learned single Judge of the High Court dated
B 19.05.2004 shows that learned single Judge rejected the very idea of confiscation of sandalwood oil under Section 61A of the Act and held that though the order of confiscation cannot be passed under Section 61A of the Act but by virtue of Section 69 of the Act, unless a fact to the contrary is proved, it can be presumed that the seized property belongs
C to the Government and it enables the Government to possess the same. Having gone through the judgment of the authorities below, it can be concluded that the Division Bench has misdirected itself in framing the issue and upholding confiscation under Section 61A and, hence, on that account, the order is bad in law.

D 14. Moving further to the next question, whether in the light of fact and circumstances of the present case, the order of confiscation of sandalwood oil can be passed under Section 61A or Section 69 of the Act. To appraise the said question, it is appropriate to discuss the contours of Section 61A and Section 69. Section 61A states as under:

E “**61A. Confiscation by Forest Officers in certain cases -** Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable
F delay, produce it, together with all tools, ropes, chains, boats, vehicles, and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

G (2) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer
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may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence. A

69. Presumption that timber or forest produce belongs to Government.- When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to be the property of the Central or State government, as the case may be, until the contrary is proved.” B

15. Section 61A of the Act was inserted to prevent the illicit removal of timber, charcoal, firewood and ivory belonging to the government from the forests. The said provision confers power of confiscation on Forest Officers authorised by the Government in certain cases. The essence of the Section lies in the fact that when forest offence is satisfactorily believed to have been committed in respect of timber, charcoal, firewood and ivory which is the property of the Government then the authorized officer may confiscate the property irrespective of the pendency of any criminal proceedings in this regard. The question is whether the said Section also gives the power to confiscate sandalwood oil. C D E

16. A perusal of the definition of forest produce, as given by Section 2(f) of the Act, shows that other than timber, charcoal, firewood it includes wood oil, gum, resin, natural varnish bark, roots of sandalwood etc. However, the use of the specific words “timber, charcoal, firewood and ivory” under Section 61A instead of “any forest produce or ivory” makes it clear that the intention of the legislature in providing armory under Section 61A is only with regard to certain category specified therein and not for every forest produce as defined under Section 2(f) of the Act. Undoubtedly, sandalwood oil is a forest produce but Section 61A of the Act is limited only to the categories specified therein and does not give power of confiscation of sandalwood oil. F G

17. Further, we find force in the contention of the appellants that Section 69 of the Act is only a rule of evidence which raises a mandatory presumption that a forest produce, unless proved otherwise, is a property of the government in case where any proceedings are going on under H

A the Act or anything is done under the Act. The Section operates only as a tool to help the government in proving its title to the property but the said Section cannot be read as to give any power of confiscation of the property.

B 18. The power of confiscation of sandalwood oil get vested in the authorities through Section 61A only after the Kerala Forest (Amendment) Act, 2010 when certain specific provisions relating to Sandalwood were inserted through Chapter VI A and Section 47H which specifically provides as under:

C **“47H. Seizure of sandalwood, sandalwood oil etc. and confiscation thereon.**—Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, where an offence is believed to have been committed in respect of any sandalwood, the sandalwood, the sandalwood oil, mill, distilling unit, boiler-plant, tools, ropes, chains, boats, vehicles or any other contrivance used in the manufacture or distillation of sandalwood oil, or in the process of sale of sandalwood or sandalwood oil shall be liable to be seized under section 52 and the provisions contained in sections 61A, 61B, 61C, 61D, 61E and 61F shall mutatis mutandis apply to the seizure and confiscation thereof”.

E (Emphasis supplied by us)

The present case being related to the situation prior to the time of amendment in 2010 was made, the amended provisions do not apply. Hence, the order of confiscation of sandalwood oil is liable to be set aside.

F 19. In view of the above detailed discussion, we are of the considered view that the High Court erred in upholding the order of confiscation. Accordingly, this appeal is hereby allowed and the order of confiscation is set aside. The parties to bear cost on their own.

G Nidhi Jain

Appeal allowed.