

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 8773 of 2015 (V)

PETITIONER(S):

**M/S.AL MM ENTERPRISES
REPRESENTED BY ITS PARTNER M. MOHAMMED, NO. 61
MUNISOMAPPA LAYOUT THINDLU, VIDYARANYAPURA POST
BANGALORE- 560097.**

**BY ADVS.SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH
SRI.M.D.JOSEPH**

RESPONDENT(S):

- 1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA, NEW DELLHI - 110 001.**
- 2. AUTHORISED OFFICER,
COCHIN SEA PORT AND AIR PORT
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF INDIA, 1ST FLOOR, MARINE BUILDINGS
NORTH END, WILLINGDON ISLAND, COCHIN - 682 009.**
- 3. COMMISSION OF CUSTOMS
CUSTOMS HOUSE, WILLINGDON ISLAND, COCHIN - 682009.**

**R1 BY ADVS. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
SRI.JAGATH. N., CGC**

**R2 BY ADVS.SRI.MEHMOOD PRACHA
SRI.PAUL JACOB**

**R3 BY ADVS. SRI.JOHN VARGHESE,SC,
SRI.THOMAS MATHEW NELLIMOOTTIL,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-04-2015, ALONG WITH WPC.NO.9549/2015 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE BILL OF ENTRY DATED 20-2-15 BEARING NO.8370098 FILED BY THE PETITIONER**
- P2: COPY OF THE EXAMINATION ORDER DATED 20/2/15**
- P3: COPY OF THE PLANT QUARANTINE CERTIFICATE DATED 3/3/15 (IMPORT RELEASE ORDER)**
- P4: COPY OF THE JUDGMENT DATED 15/10/14 IN WPC.20920/14**
- P5: COPY OF THE JUDGMENT DATED 3/12/14 IN WPC.32484/14**
- P6: COPY OF THE JUDGMENT DATED 19/12/14 IN WPC.34542/14**
- P7: COPY OF THE JUDGMENT DATED 28/1/15 IN WPC.2275/15.**

RESPONDENTS' EXHIBIT

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

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9787, 9812 & 10977 OF 2015**
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Dated this the 6th April, 2015

J U D G M E N T

The issue involved in all these cases is similar and as such all these cases are dealt with together. The petitioners are importers of betel nuts, who import the same mainly from country like Sri Lanka on the strength of valid documents . On reaching the goods in the Cochin Port Trust, they have submitted the Bills of Entry and have sought for clearance of the goods. It is stated that they have obtained necessary 'plant quarantine certificates' issued by the competent authority under the Government of India to the effect that the imported goods could be released. Despite this, the goods are retained by the authorities of the Customs Department for want of clearance from Food Safety and Standards Authority of India (FSSAI), which is not at all correct or proper and is rather high handed. Hence these writ petitions .

2. Heard the learned Counsel for the petitioners, the learned Asst. Solicitor General for the first respondent/Union of India, and the learned Standing Counsel for the respondents 2

and 3.

3. During the course of hearing, it is brought to the notice of this Court that the issue had come up for consideration in a number of cases earlier and a common judgment was passed vide Ext.P4. As per the said verdict, it is no more open for the Customs Authority to insist for production of clearance certificate from the Food Safety Authority. This is obviously for the reason that no standards are prescribed under the Foods Safety and Standards Act, 2006 in respect of betel nuts and the test which is applicable in the case of dry fruits cannot be made applicable in the case of betel nuts. Reliance is also sought to be placed on the decision rendered by a Division Bench of this Court in **AI Marwa Traders vs. Assistant Commissioner of Imports** (2007(1) KLT 801). The said decision has also been referred to, while passing the verdict by the learned single Judge vide Ext.P4.

4. The learned Counsel for the petitioners seeks to draw the attention of this Court with reference to the contents of paragraphs 6,11,12, 13 and 14 of Ext.P4 verdict pointing out that the learned Judge has made a specific observation that the

test under the FSS Act as such cannot be utilised as a standard for testing the nature of betel nuts imported, as no specific standards are prescribed under the Food Safety and Standards Act. The learned Judge has observed that, under such circumstance, the authorities are bound to follow the standards of 'Codex Alimentarius', if any for determining the standards. With regard to such proposition, the learned Counsel for the petitioners submits that no such standards are prescribed under 'Codex Alimentarius' as well and as such, the next course open is to go by the terms of SPS agreement as referred to by the learned single Judge in paragraph 13 itself. By virtue of SPS Agreement (The World Trade Organisation (WTO) agreement on the application of sanitary and phytosanitary measures), to which India is also a party, test has to be made under Plant Quarantine (Regulation of import into India) Order and that the petitioners have satisfied the said requirements as evident from Ext. P3 certificate issued by the competent authority to the effect that the goods could be cleared . This being the position, nothing else shall be looked into and goods are entitled to be released; but because of unreasonable restriction and continued

detention, much loss and hardships are being caused to the petitioners and hence the challenge.

5. The learned Standing Counsel for the respondents points out that the idea and understanding of the petitioners is quite wrong and misconceived . The Certificate to be produced under Plant Quarantine (Regulation of import into India) Order is only with regard to usage of pests and pesticides and that the same is applicable not only for food stuffs but also to all such other commodities as well, which include even river sand. The quality of food stuffs has to be tested on a different pedestal as it is likely to affect the health, life and limbs of individuals , if there is any adverse circumstances. The learned Counsel also points out that the learned Judge has not declared that, once the Plant Quarantine Certificate is obtained, no other test need to be conducted. It is however conceded that no test is provided either under the FSS Act or 'Codex Alimentarius' and as such, the matter requires to be considered with independent application of mind .

6. During the course of hearing, the learned Standing Counsel also made a reference to the contents of the counter

affidavit filed on behalf of the third respondent/Commissioner of Customs as to the facts and figures. It is also brought to the notice of this Court that the issue had come up for consideration of a Division Bench of this Court and a detailed judgment has been passed in W.A.No.1317 of 2014 . The said case was with reference to the import of coco beans. After hearing both the sides and considering the nature of the commodity and the relevant provisions of law, the Bench made some specific observations also with reference to **Al Marwa Traders vs. Assistant Commissioner of Imports** and concluded the matter. Paragraphs 24 and 25 of the said verdict are relevant, which are extracted below:

"24. Having regard to the aforesaid findings of ours, we are of the view that the learned Single Judge was not justified in permitting import of a consignment which, according to the Food Safety Officer, was unsafe or substandard. In the event of a like situation where no specific standard is prescribed for a particular imported food item, still the Food Safety Officer has to certify that the food item is not substandard or unsafe. Therefore the jurisdiction of the

Food Safety Officer to grant or reject clearance certificate of food items on sufficient materials cannot be disputed or doubted. Hence it was appropriate that the Food Safety Officer should have been directed to conduct analysis based on appropriate standards or even BIS standards to ensure that the product is neither substandard nor unsafe for import.

25. The goods having already been released and a direction has been issued to conduct test by the BIS, we are of the view that it is for the Food Safety Officer to give an opinion regarding the same. Hence we direct the Food Safety Officer to conduct appropriate tests and submit a report regarding the safety of food. The judgment of the learned Single Judge, therefore, requires modification to the following extent:

i) The appellant is directed to examine the product from the place where it is stored by the petitioner and the samples shall be tested to ensure that it is neither substandard nor unsafe for human consumption taking into consideration the standards prescribed by BIS as well.

ii) If the goods are found to be substandard or unsafe, appropriate steps shall

be taken in accordance with law. Such a procedure shall be adopted after giving notice to the petitioner.

7. After hearing both the sides, this Court finds that in view of the law declared by a Division Bench of this Court, as above and in view of the observation made by the learned Single Judge in Ext.P4, appropriate test has to be conducted in respect of foods stuffs which includes the betel nuts as well, though proper test is not mentioned under FSS Act. This has to be done by the competent authority, taking note of the observations as mentioned in the above judgment.

8. In the said circumstance, the writ petitions are disposed of, in terms of the verdict passed by the Division Bench of this Court in W.A.No.1317 of 2014. The third respondent/Commissioner of Customs shall forward the proceedings to the second respondent/Food Safety & Standards Authority of India forthwith at any rate, within 'one week' from the date of receipt of a copy of the judgment, with all the relevant particulars and arrange an inspection by the second respondent/Food Safety & Standards Authority of India, who in

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turn shall consider the matter in the light of the observation made by the Division Bench as above and issue necessary proceedings within 'two weeks' thereafter. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R.RAMACHANDRA MENON
JUDGE**

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