

In the High Court of Judicature at Madras

Reserved on : 04.02.2015

Dated : 12.02.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.1491 of 2014
and
M.P.Nos.1 & 2 of 2014

M.Mohammed .. Appellant
Vs.

- 1.Union of India
rep. by its Secretary,
Ministry of Health & Family Welfare,
Government of India,
New Delhi-110 001.
 - 2.The Authorised Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
Government of India,
Office of the By. Director,
C.I.D. Rajaji Bhavan,
Besant Nagar, Chennai-600 090.
 - 3.The Commissioner of Customs,
Customs House,
60, Rajaji Salai,
Chennai-600 001.
- Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 10.10.2014 and made in W.P.No.24999 of 2014 by the learned Judge of this Court.

Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified mandamus calling for the records of the 3rd respondent proceeding order No. BE No. 5853707 BE dt 19.6.2014 CC N Type H imposing a condition to issue No Objection Certificate (NOC) from the 2nd respondent and quash the same directing the 3rd respondent to release the consignment covered under bill of entry No.5853707 dt 19.6.2014.

For Appellant : Mr.J.Sivanandaraaj
For Respondent-1 : Mr.Su.Srinivasan
For Respondent-2 : M/s.Tasneem Ahmadi
for K.Surendranath
For Respondent-3 : Mr.S.Xavier Felix
(SCGSC)

J U D G M E N T

M.VENUGOPAL, J.

The Appellant/Petitioner has projected the instant intra Court Writ Appeal before this Court as against the order dated 10.10.2014 passed by the Learned Single Judge in W.P.No.24999 of 2014.

2.The Learned Single Judge while passing the impugned order on 10.10.2014 in W.P.No.24999 of 2014 (filed by the Appellant/Writ Petitioner) in para 18 among other things it is observed that "Admittedly, the Areca Nut (Betel-Nuts) is an agriculture product include to fall within the definition of primary food and such primary food is covered in the definition of food as contained in Section 3(2) of the Food Safety and Standards Act. The definition of 'food' as contained in the provisions of the Prevention of Food Adulteration Act, 1954 is quite different from that of the definition under the Food Safety and Standards Act, 2006 referred supra and for better appreciation, the relevant definitions under the Prevention of Food Adulteration Act are quoted herein below:-

'2(v) food' means any article used as food or drink for human consumption other than drugs and water and includes:-

(a)any article which ordinarily enters into, or is used in the composition or preparation of, human food;

(b)any flavouring matter or condiments and

(c)any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act.

2(xii a) 'primary food' means any article of food, being a produce of agriculture or horticulture in its natural form" and further, in para 21 held that "the definition of 'Food' as contained under Section 3 (j) of the Food Safety and Standards Act is an inclusive provision including any substance whether processed, partially processed or unprocessed, which is intended for human consumption and also includes primary food to the extent defined under clause (zk) of

Section 2 and also includes any substance used in the food during its manufacture, preparation or treatment to be an article of food as defined under the Food Safety and Standards Act" and consequently came to the conclusion that the Appellant/Petitioner failed to make out any case for granting the relief sought for in the Writ Petition and dismissed the same without costs.

3.The Learned counsel for the Appellant/Petitioner contends that the Appellant is engaged in the business of import, processing and wholesale of raw areca nut commonly called as Betel Nuts in ungarbled form and that the Firm had imported 688 bags of Srilankan Betel Nuts weighing 50,942 kgs from M/s.Commodities Importers, Sri Lanka, as per 'Bill of Entry' No.5853707 dated 19.06.2014. Also, the Appellant/Firm filed its 'Bill of Entry' in Cochin Port on 19.06.2014 and subsequently, the Third Respondent/Commissioner of Customs, Chennai on 19.06.2014 passed an 'Examination Order' on 19.06.2014, in and by which, a direction was issued to the Appellant/Firm that in order to obtain customs clearance for the consignment, it must obtain a test report and a No Objection Certificate from the Second Respondent/Authorised Officer, Food Safety & Standards Authority of India, Ministry of Health and Family Welfare, Chennai.

4.The Learned counsel for the Appellant/Petitioner strenuously submits that the Appellant's consignment comprises of 'Ungarbled Betel Nuts' which are neither intended for, nor commonly used for human consumption and in order to transform it into marketable commodity, 'Ungarbled Betel Nuts' required to undergo a series of multi-stage processes over a period of time that include, inter-alia, cleaning, drying and boiling and in fact, the consignment of import of 'Ungarbled Betel Nuts' would be subjected to the Plant Quarantine Test (PQ Test) in terms of the provision of Clause 3 (16) of the Plant Quarantine (Regulation of Import into India) Order, 2003 which is issued under Sub Section (1) of the Destructive Insects and Pests Act, 1914 and it is needless to state that if the consignment passes the test, it is cleared by the Customs Authorities.

5.The Learned counsel for the Appellant/Petitioner brings it to the notice of this Court that after clearance of the customs authorities, when the 'Ungarbled Betel Nuts' reach the appropriate maturity, the importer washes, cleans, dries and sorts the betel nuts after which they are soaked in water for ten days and subsequently, betel nuts are boiled, cleaned and dried again. Later, the outer shells are to be removed and only after completion of this process, the 'betel nuts' become consumable and marketable as a Food item.

6.The Learned counsel for the Appellant/Petitioner takes a

categorical stand that in the 'Ungarbled Form' in which the betel nuts are imported, they did not qualify as a food item as they are not mentioned for human consumption in that way. As a matter of fact, the consumable betel nuts are sold to betel nuts vendors by the importer.

7.The Appellant with a view to secure clearance of the assignment at the earliest possible time, applied for approval through FICS system based on the reasonable expectation that No Objection Certificate would be granted by the Second Respondent on the footing that the relevant food standards are inapplicable to 'Ungarbled Betel Nuts' since it is not an article of food and therefore, it does not fall within the ambit of Food Safety and Standards Act.

8.The Learned counsel for the Appellant/Petitioner contends that the Second Respondent, acting outside the ambit of the Food Safety and Standards Act, 2006. Furthermore, it is represented on behalf of the Appellant that Second Respondent under FSS ACT applied the food standard for 'dry nuts' and the same would be applicable only after the betel nut i.e., dried and cleaned and after it has reached proper maturity and it is not meant for raw betel nuts in ungarbled form, the current form, in which it has been imported.

9.The Learned counsel for the Appellant emphatically submits that the decision of the Division Bench of the Kerala High Court in Al Marwa Traders Vs. Assistant Commissioner of Imports [2007 (1) K.L.T. 381] squarely applies to the facts of the present case and the same is pending before the Respondents. Added further, as the test is the same under both the Acts, the change in law does not change the settled principle that 'Ungarbled Betel Nuts' cannot be tested in its current form.

10.The Learned counsel for the Appellant forcefully contends that the Referral Laboratory in the present case reported that the samples that from the Appellant's consignment did not conform to the standards set in the FSS Regulations and the report identified two defects in the Appellant's sample-the presence of mold on the split of the betel nuts and a higher percentage of damaged pieces can be allowed under regulations. Apart from that stand of the Appellant that since 'Ungarbled Betel Nuts' are not meant nor commonly used for human consumption in any market in our country, there is no question of a food safety concern arising on account of clearance being granted for the Appellant's shipment.

11.The core contention advanced by the Learned counsel for the Appellant is that even assuming but not conceding 'Ungarbled Betel Nuts' do fall within the ambit of food for the purposes of the Food Safety And Standards Act, they are certainly within the purview of primary food, being agricultural produce.

12.In this regard, the Learned counsel for the Appellant/Petitioner adverts to the ingredients of Section 48(2)(b) of the Food Safety and Standards Act, where the quality or purity of the article, being primary food, has fallen below the specified standard or its constituents are present in quantities not within the specified limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be unsafe or sub-standard or food containing extraneous matter.

13.The Learned counsel for the Appellant submits that the Learned Single Judge had committed a grievous error in interpreting Section 3(1)(j) of the Food Safety and Standards Act, 2006. At this stage, the Learned counsel for the Appellant submits that a purposeful and meaningful reading of the definition of Section 3(1)(j) of the Food Safety and Standards Act, 2006 makes it crystal clear that an essential element for an article to be 'Food' for the purposes of this Act is that the Article must be 'intended for human consumption' in that very form and further, article may be processed, unprocessed or partially processed and selling it to human consumption included within the ambit of 'Food' for the purpose of Food Safety and Standards Act. Apart from that, the Learned Single Judge failed to properly appreciate the reasoning in the Division Bench of the Kerala High Court in case of Al Marwa Traders Vs. Assistant Commissioner of Imports [2007 (1) KLT 381].

14.The Learned counsel for the Appellant refers to the Regulation 2.3.47 of the Food Safety and Standards (Food Product Standards & Food Additives) Regulation 2011 in the caption 'Nuts and Raisins' and the relevant portion is as follows:

"1.Groundnut kernel (deshelled) for direct human consumption commonly known as moongphali are obtained from the plant arachis hypogols. The kernels shall be free from non-edible seeds such as mahua, castor, neem or argemone etc.

It shall be free from colouring matter and preservatives. It shall be practically free from extraneous matter, such as stones, dirt, clay etc. The kernels shall conform to the following standards, namely:-

Moisture Not more than 7.0 per cent

Damaged kernel
including slightly
damaged kernel

Not more than 5.0 per cent by
weight.

Aflatoxin content

Not more than 30 parts per
billion"

Also refers to ITC (HS), 2012 Schedule I of Import Policy, Section II, Chapter 8 and the relevant portion is extracted as under:

0802 80	Areca nuts:		
0802 80 10	Whole	Free	Import permitted freely provided cif value is Rs.35/- per kilogram and above
0802 80 20	Spilt	Free	Import permitted freely provided cif value is Rs.35/- per Kilogram and above.
0802 80 30	Ground	Free	Import permitted freely provided cif value is Rs.35/- per Kilogram and above.

15.The Learned counsel for the Appellant cites the order of W.P. (c) No.20920 of 2014(L) dated 15.10.2014 of High Court of Kerala between wherein in paragraphs 11 to 14 it is observed and held as follows:

"11.Thus, in the light of the above, betel nuts are of heterogeneous class from dry fruits and nuts. This Court is of the view that the standards prescribed in Sub Clause (5) of Regulation 2.3.47 of the FSS Regulations for fruits and nuts have no application for betel nuts which by very nature, form a different class.

12.Learned counsel for the petitioners also relied on the decision of this Court in Al Marwa Traders Vs. Assistant Commissioner of Imports [2007 (1) KLT 801] . Therein, this Court, while considering betel nuts under the Prevention of Food Adulteration Act, 1954 (for short, the "PFA Act") held that betel nut cannot be a dry fruit coming under the standards prescribed under PFA Act and further held that betel nuts imported cannot be subjected to the tests for the standards prescribed

for dry fruits and nuts. I am also of the view that though AL Marwa's case (supra) was under the Prevention of Food Adulteration Act (for short, the "PFA Act") there is no difference in prescription of standards in respect of dry fruits and nuts under the PFA Act or FSS Act. Therefore, for non conformity of the standards prescribed for dry fruits and nuts, betel nuts imported by the petitioners cannot be detained.

13. However, question that arises is whether goods imported for which no prescription of standards are prescribed under the FSS Act can be directed to be released if it is found that goods are contaminated or unfit for human consumption or injurious to human life. In the Centre for Public Interest Litigation case (supra), the Hon'ble Supreme Court reminded authorities of the constitutional principles to safe guard the interest of citizen and protect human life. Therefore, the authorities have a duty to protect interest of citizen from the potential danger of contaminated or adulterated food articles or substances. In Nilabati Behera Alias Lalit Behera Vs. State of Orissa and others [1993 AIR 1960], the Hon'ble Supreme Court after referring to the International Covenant on Civil and Political Rights, 1966 held that while considering fundamental right expressly granted in the Constitution, international covenants and norms can be relied on. In Vishaka and others Vs. State of Rajasthan and others [1997 (6) SCC 241], the Hon'ble Supreme Court held that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity and in Articles 14, 15, 19(1) (g) and 21 of the Constitution of India and further, held that any international convention, not inconsistent in the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. The World Trade Organisation (WTO) agreement on the application of sanitary and phytosanitary measures (SPS Agreement)

provides that in cases where relevant scientific evidence is insufficient, a Member State may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information. The above agreement is for providing measures to protect human/animal/plant life or health. SPS Agreement provides different types of precautionary measures and clearly permits the Government to take a final decision when sufficient scientific evidence does not exist on the safety of a product. Therefore, absence of standard does not prevent Government or Food Authority from exercising their power for bona fide reasons in terms of SPS Agreement, which in the light of the judgments in Nilabati and Vishaka's cases has to be considered as a part of domestic law. The Codex Alimentarius Commission is established by the Food and Agriculture Organisation (FAO) of the United Nations and WHO, wherein India is a Member State. The Codex Alimentarius provides international food standards, guidelines and codes of practice contribute to the safety, quality and fairness of this international food trade. The Codex Alimentarius provides standards for various food products. India, being a Member State, these standards are to be followed if there are no specific standards in FSS Act of India. Therefore, in the absence of any specific standards in FSS Act, the Food Safety and Standards Authority of India are bound to follow the standards of the Codex Alimentarius, if any, for determining the standards. In the absence of those standards as noted above, it is open for the Government and the authority to take precautionary measures, if any of the food articles that are being imported are dangerous to human or animal or plant life or health in India in terms of the SPS Agreement.

14. The learned Standing counsel for the Customs Shri John Varghese pointed out to para 17 of Al Marwa Trader's case wherein it is held by this Court as follows:

17. However, in public interest, we make it clear that although betel nuts imported by the appellants cannot be subjected to test for the standards prescribed under Item A.29.04, certainly, the respondents can ensure that the same is not adulterated in the sense mentioned in Section 2(b), (e) and (f) so as to see that the appellants are not

importing betel nuts which are not injurious to the health of the ultimate consumer, who may consume the product made of betel nuts imported by the appellants. We are told by the counsel for the appellants that the inspection under the provisions of the Plant, Fruits and Seeds (Regulation of Import into India) Order-1989 and the Plant Quarantine (Regulation of Import into India) Order, 2003, would ensure the same. However, we leave it to the Customs Authorities to ensure, but without causing any delay in clearance of the goods on account of that, taking into account the perishable nature of the goods."

16. In response, the Learned counsel for the Second Respondent contends that the Food Safety and Standards (Food Product Standards and Food Additives) Regulation 2011 under 2.3.47(5) provides for authorized laboratory analysis of the sample of imported betel nut (supari) and in reality, Section 3(j) of the Food Safety and Standards Act, 2006 defines 'Food' as under:

"3(j) Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk),, and any substance including water used into the food during its manufacture, preparation or treatment narcotic or psychotropic substances".

17. The Learned counsel for the Second Respondent adverts to Section 3(zk) of the Food Safety and Standards Act, 2006 of 'primary food' and the same enjoins as follows:

"primary food means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman."

18. The Learned counsel for the Second Respondent points out to Section 2(V) of the Prevention of Food Adulteration Act, 1954 deals with definition 'Food' which means "any article used as food or drink for human consumption other than drugs and water and includes:-

- a) Any article which ordinarily enters into, or is used in the composition or preparation of, human food,
- b) Any flavouring matter or condiments and [c]" and further, the definition under Section 2 (xii a) 'primary food' means "any article

of food, being a produce of agriculture or horticulture in its natural form.”

19.The Learned counsel for the Second Respondent takes a stand that the Learned Single Judge had correctly held that the consignment imported by the Appellant would fall within the definition of 'Food' and 'Primary Food' which would also include any substance used in the food during its manufacture, preparation or on treatment to be an article of food under Food Safety and Standards Act, 2006.

20.The Learned counsel for the Second Respondent contends that the Learned Single Judge had primarily appreciated that there is vast difference between the definition of 'food' and 'primary food' in the Prevention of Food Adulteration Act, 1954 and the Food Safety and Standards Act, 2006.

21.The Learned counsel for the Second Respondent submits that in the counter to the Writ Petition, the Second Respondent had in para 6 referred to the decision of the Hon'ble Supreme Court in Pyarali K. Tejani Vs. MahadeoRamchandraDange and others [1974 AIR 228, 1974 SCR (2) 154, 1974 SCC (1) 167] wherein it was held as under “It is commonplace knowledge that the word “food” is a very general term and applies to all that is eaten by man for nourishment and takes in subsidiaries. Is supari eaten with relish by man for taste and nourishment? It is. And so it is food”. Without carrying further on this unusual argument we hold that supari is food within the meaning of Sec.2 (v) of the Act.” Also in the decision of Al Marwa Traders Vs. Assistant Commissioner of Imports [2007 (1) KLT 381] the Division Bench of Kerala High Court has taken a similar view and further, it is represented on behalf of the Second Respondent that after inspection of the Consignment, the Second Respondent, as per practice took the sample of Betel Nuts from the consignment and transmitted the same to authorized laboratory for analysis and the sample of imported supari was tested/analysed as per Regulation 2.3.47(5) of the Food Safety and Standards (Food Product Standards & Food Additives) Regulation 2011 and it came to be known soon after receipt of analysis report that the sample of betel nuts was found to be damaged/dicoloured units beyond the prescribed limit and mould growth was observed on the split of areca nut. Therefore, the authorized officer of the Food Authority of India declined to issue No Objection Certificate for clearance of the betel nuts consignment, inasmuch as the consignment failed to confirm to the standards laid down by the notified laboratory and the referral laboratory.

22.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and another, 1989 (1) Supreme Court Cases

at page 420 and page 421 whereby and whereunder it is observed and held as follows:

"The object and the purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief. The construction appropriate to a social defence legislation is one which would suppress the mischief aimed at by the legislation and advance the remedy."

23.Also, in the aforesaid decision at page 426 in para 16, it is laid down as follows:

"The object and the purpose of the Act (Prevention of Food Adulteration Act, 1954) are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislation is on the topic 'Adulteration of Food Stuffs and other Goods' [entry 18 List III Seventh Schedule]. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief-an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well-being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. In Municipal Corporation of Delhi Vs. Kacheroo Mal [1976 (1) SCC 412] in para 5 Sarkaria, J. said:

The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well-settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention."

24.Further, this Court aptly cites the decision of the Hon'ble Supreme Court in Pyarali K.Tejani Vs. Mahadeo Ramchandra Dange and others, 1974 (1) Supreme Court Cases at page 167 & 168 wherein it is observed and held as follows:

"The Act (Prevention of Food Adulteration Act, 1954) defines 'food' very widely as covering any article used as food and every component which enters into it, and even flavouring matter and condiments. It is common place knowledge that the word 'food' is a very general term and applies to all that is eaten by men for nourishment and takes in subsidiaries. Is supari eaten with relish by men for taste and nourishment? It is. And so it is food."

25. Besides the above, this Court refers to the following decisions to prevent aberration of justice and to promote substantial cause of justice:

(i) In the decision of the Hon'ble Supreme Court in The State of Tamil Nadu Vs. R. Krishnamurthy [AIR 1980 Supreme Court 538] it is observed and held as under:

"In order to be 'food' for the purposes of the Act, (Prevention of Food Adulteration Act, 1954) an article need not be 'fit' for human consumption; it need not be described or exhibited as intended for human consumption; it may even be otherwise described or exhibited; it need not even be necessarily intended for human consumption, it is enough if it is generally or commonly used for human consumption or in the preparation of human food. Gingelly oil, mixed or not with groundnut oil or some other oil, whether described or exhibited as an article of food for human consumption or as an article for external use only is 'food' within the meaning of the definition contained in S.2 (v) of the Act. 1971 Cri LJ 1556 (SC) and 1975 Cri LJ 1868 (SC), Explained."

(ii) In the decision of the Delhi High Court in Bishan Das Mehta and others Vs. Union of India and others [Air 1970 Delhi 267 (V 57 C 58)] wherein it is held as follows:

"In order that an article should be food within the meaning of the Act (Prevention of Food Adulteration Act, 1954) it is not essential that it must be an article which is consumed by human being as such. Katha is admittedly used in composition of Pan and therefore, would be governed by the definition of food given in Section 2(v) of the Act. To constitute food what has to be seen is whether the article in question is usable and enters into the composition or preparation of food which is taken by human beings. The definition is worded in

a very wide language and would govern any article which enters into the composition or preparation of human food and would cover any flavouring matter and condiments. AIR 1955 NUC (All) 169 & (1918) 88 LJKB 441, Rel. on."

(iii) In the decision of the Hon'ble Supreme Court in Ramlal Vs. State of Rajasthan [AIR 2001 Supreme Court 47] and at special page 48 and 49 in para 5 it is observed as follows:

"Part III of the Prevention of Food Adulteration Rules (for short 'the Rules') contains 'Definitions and Standards of Quality' of various articles of food. Rule 5 which falls within the said part says that 'the standards of quality of various articles of food specified in Appendix B to these Rules are as defined in that appendix.' Milk is defined in Item A.11.01.01 of Appendix B as 'the normal mammary secretion derived from complete milking of healthy milch animal without either addition thereto or extraction therefrom.' But it shall be free from colostrum." The above definition does not differentiate between milk of different animals. Hence, it is clear that camel's milk also would fall within the amplitude of the said definition. The question whether the camel milk can be consumed by human beings as a food article need not vex us much, for the Food Inspector in this case took the sample on the assumption that it was a food article. If it was not a food article the Food Inspector had no power to take sample therefrom. Section 10 of the Act confers power on the Food Inspector to take sample of "any article of food." "Food" is defined in S. 2(v) as "any article used as food or drink for human consumption, other than drugs and water and includes....." (As the items included thereby are not very relevant for the purpose of this case the remaining part of the definition is omitted). We may observe that an article which is food does not lose its character as food by the fact that it was also used or sold for other purposes."

26. In so far as the present case is concerned, it is to be borne in mind that in the decision of the Division Bench of Kerala High Court in Al Marwa Traders Vs. Assistant Commissioner of Imports [2007 (1) KLT 381] 'Ungarbled Betel Nuts' was the subject matter in issue, but in case on hand, the Appellant in the 'Bill of Entry' had not mentioned the product as 'Ungarbled Betel Nuts'. However, in the

affidavit filed in support of the Writ Petition, the Appellant/Petitioner had endeavour to mention that the product is as 'Ungarbelled Betel Nuts'. It is not in dispute that the Appellant/Petitioner, in the 'Bill of Entry' for home consumption dated 19.06.2014 in B.E.No.5853707 and it described the item as areca nuts (betel nuts). Admittedly, the product was imported from Srilanka. When the Appellant/Petitioner had applied to FICS which

specifies inspection of the goods by drawing samples to find out/examination as to whether meets the required standards prescribed under Food Safety and Standards (Food Product Standards & Food Additives) Regulation 2011. In this connection, this Court very significantly points out that by Section 97(1) of the Food Safety and Standards Act (Prevention of Food Adulteration Act, 1954, was repealed) and only the ingredients of Food Safety and Standards Act, 2006 is applicable to all kinds of exports (including import made by the Appellant).

27.It is to be noted that the Division Bench judgment of Kerala High Court in Al Marwa Traders case pertains to definition under the earlier Prevention of Food Adulteration Act, 1954 but in the instant case, only the Food Safety and Standards Act applies. To put it succinctly, in the Division Bench Judgment of the Kerala High Court in Al Marwa Trader's case, the decision came to be rendered in interpretation of the Prevention of Food Adulteration Act, 1954 and the Rules made thereto.

28.Moreover, the term 'Food' defined under the Prevention of Food Adulteration Act, 1954 is certainly different from that of the definition of 'Food' mentioned under Food Safety and Standards Act. Viewed from that angle, this Court is of the considered view that the decision of Al Marwa Trader's case relied on by the Appellant/Petitioner is to no avail to the Petitioner. At the risk of repetition, this Court pertinently points out that the term 'Food' under the Prevention of Food Adulteration Act, 1954 is to include any article which is used as food or drink for human consumption other than drugs and water whereas word 'Food' as defined under Section 3 (j) of the Food Safety and Standards Act, 2006 is all inclusive and pervasive one dealing with any substance whether processed, partially processed or unprocessed which is intended for human consumption and include primary food to the extent defined in clause 3 (zk), genetically modified or engineered food etc.

29.In the light of qualitative and quantitative discussions and also, this Court on an entire conspectus of the attendant facts and circumstances of the present case in a cumulative fashion, comes to an irresistible conclusion that the view taken by the Learned Single

Judge in the impugned order dated 10.10.2014 in W.P.No.24999 of 2014 to the effect that the Appellant/Petitioner had miserably failed to make it any case for granting the relief claimed by the Appellant in the writ petition in W.P.No.24999 of 2014 suffers from no material irregularity or patent illegality in the eye of law. Consequently, the Writ Appeal fails.

30.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs and resultantly, the order dated 10.10.2014 in W.P.No.24999 of 2014 passed by the Learned Single Judge is confirmed by this Court for the reasons as assigned in the present Writ Appeal. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

DP

To

- 1.The Secretary,
Union of India
Ministry of Health & Family Welfare,
Government of India,
New Delhi-110 001.
- 2.The Authorised Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
Government of India,
Office of the By. Director,
C.I.D. Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

WEB COPY

3.The Commissioner of Customs,
Customs House,
60, Rajaji Salai,
Chennai-600 001.

1 cc to Mr.S. Xavier Felix, Advocate, Sr. 8146
1 cc to Mr.J.Sivanandaraj, Advocate, Sr. 7522
1 cc to Mr.K. Surendrnath, Advocate, Sr. 7538
1 cc to Mr.Su. Srinivasan, Advocate, Sr. 7695

W.A.No.1491 of 2014

VD (CO)
kk 23/2



WEB COPY