

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4958 of 2015

and

M.P.No.1 of 2015

M/s.Chromachemie Laboratory Private Limited,
Rep. By Director Mr.Ajey S.Rao,
163, Nagesh Building, No.1&2, 1st Floor,
Sheshadripuram, Bangalore – 560 020.

... Petitioner

Vs.

1.The Authorized Officer,
Chennai Seaport & Airport,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
C-1-D, Rajaji Bhavan, Besand Nagar,
Chennai – 600 090.

2.The Assistant Commissioner of Customs (Group 2A),
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 06.01.2015 in F.No.C-08/FSSAI/CHN/IMPORTS/2014, issued by the first respondent and quash the same and further direct the first respondent

to send appropriate report under the Foods Safety and Standards Act, 2006, and the Rules and Regulations made thereunder to the second respondent to enable the petitioner to clear the goods covered by Bill of Entry No.7053313, dated 13.10.2014 for home consumption.

For Petitioner : Mr.Hari Radhakrishnan

For R1 : Mr.K.Surendranath,
Standing Counsel

For R2 : Mr.Xavier Felix,
Standing Counsel

ORDER

Challenging the impugned order dated 06.01.2015 passed by the first respondent / the Authorized Officer, Chennai Seaport & Airport, Food Safety and Standards Authority of India (FSSAI), Chennai, in rejecting the request of the petitioner for drawing the samples from the consignment for analysis, the petitioner has filed the present writ petition on the ground that the provisions of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, will not apply to the subject goods viz. ERYTHRITROL, as it is admittedly a raw materials used in the manufacture of artificial sweetener. The petitioner has also sought a direction to the first respondent to send appropriate report under the Foods Safety and Standards Act, 2006, and the Rules and Regulations made thereunder to the second respondent /

the Assistant Commissioner of Customs (Group 2A), Chennai, to enable the petitioner to clear the goods covered by Bill of Entry No.7053313, dated 13.10.2014.

2.The petitioner Company had imported 80 packages of 'Erythritol' from China, vide Bill of Entry No.7053313, dated 13.10.2014. Thereafter, the second respondent referred the goods to the first respondent for ensuring compliance of the provisions of the Food Safety and Standards Act, 2006 and the Rules and Regulations made thereunder. However, the first respondent refused to draw the samples for testing on the ground that the product in question did not contain the label with the required declaration as per the provisions of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 (in short "Labelling Regulation"). According to the first respondent, these defects were non-rectifiable. Therefore, the petitioner submitted a representation to the Deputy Director, FSSAI, stating that the imported goods contain a label and it specifies the lot number, net weight and the name of the manufacturer and it further stated that the import documents filed along with the Bill of Entry, in particular the Certificate

of Origin and the Certificate of Analysis contain the details such as the manufacturing date, expiry date, product description, lot number and manufacturer details. However, in spite of the said representation, there was no response from the said official, therefore, they submitted a representation dated 05.12.2014 to the FSSAI Headquarters at New Delhi. The first respondent, vide the impugned order dated 06.01.2015, refused the request made by the petitioner for testing of the samples imported on the ground that the date of manufacture, best before date and name and address of the manufacturer are not mentioned on the label which is mandatory. Thus, the present writ petition with a prayer cited supra.

3.Assailing the impugned order passed by the first respondent, Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner submitted that the goods in question, namely, 'Erythritol' is a sugar alcohol, therefore, by referring to Section 3(k) of the Food Safety and Standards Act, 2006 (in short "Act"), he further submitted that the goods are admittedly not meant for direct consumption, but, the same are intended for industrial use in manufacturing of the goods. A plain

reading of the definition of the expression 'Food Additive' indicates that the said expression means a substance which is not normally consumed as food or used as a typical ingredient of food, but is a substance which is added to food for the purpose of manufacturing, processing, preparation, etc. and the same would result in it either becoming a component of the food or otherwise affecting its characteristic. By citing so the above said definition, learned counsel further contended that the goods imported by the petitioner clearly fall within the definition of food additive and thus, the same cannot be termed as an item which meets personal needs of consumers. He further submitted that the subject goods viz. Erythritol are admittedly used for manufacture of artificial sweetener and the final product is subjected to rigorous testing and compliance under the Act, therefore, the final product can be labelled before it is ultimately sold to the end consumer. Thus, no prejudice will be caused to the public safety, if the imported goods are allowed to be tested and if the samples are found to be fit for human consumption, the goods could be released, he pleaded.

4.By referring to Section 3(1)(f) of the Act, learned counsel

submitted that an industrial user or an entity, which purchases food items for utilizing the same in their production process, would be excluded from the definition of the expression 'consumer', therefore, it goes without saying that the product, which fall under the definition of food, meant not for direct human consumption but for sale to industrial consumers for use in manufacture of articles of food, would be excluded from the definition of 'pre-packaged' or 'pre-packed' food. As long as packaged food contains food items, which are ready for personal consumption, the same would fall within the definition of 'pre-packaged' or 'pre-packed' food and that the items, that are meant for direct consumption by individual would fall completely outside the definition of 'pre-packaged' or 'pre-packed' food. Therefore, by applying the provision, he pleaded that since the goods in question are not 'pre-packaged' or 'pre-packed' food, the provisions of the Labelling Regulations are inapplicable to the case on hand.

5. In support of his submissions, he has also relied upon a judgment of the Delhi High Court in the case of *Danisco (India) Private Limited v. Union of India and another* (CDJ 2014 DHC 2063) to contend

that the provisions of the Labelling Regulations are inapplicable to food additives which are meant for industrial use. With these submissions, he sought for setting aside the impugned order.

6.Per contra, Mr.K.Surendranath, learned Standing counsel appearing for the first respondent submitted that the product of the petitioner Company, being a food additive, is also covered under the definition of food as per Section 3(j) of the Act, therefore, the product, being admittedly food additive, is a food product in itself. Moreover, it is pertinent to note that the documents submitted by the petitioner as well as the contents on the label do not state that the products are meant for industrial use only and there is no disclaimer on the label barring retail sale of the product, therefore, the products of the petitioner meant for retail as well as industrial sale and thus the contention of the petitioner that the same are meant solely for industrial use are without any merit. It is further submitted that the product in question within the definition of 'food additive' cannot have any exemption and therefore, the petitioner product ought to have complied with the labelling, since the labelling has to be done by the Food Safety

Department. Evidently, the products in question are for sale, and for human consumption also, therefore, repugnance, if any, between different parts of the definition under Clause (8) has to be construed by harmonious construction, in order to arrive at the true meaning of the words therein, hence, the contention of the petitioner that the Labelling Regulations do not apply on the consignment as the same are for industrial use is without any reason, he pleaded. Besides, neither the label nor any document issued by the exporter states that the same is for industrial use only.

7.Learned counsel for the first respondent, by referring to Section 25 of the Act, contended that no person shall import into India any unsafe or misbranded or sub-standard food or food containing extraneous matter, therefore, since the product of the petitioner is covered under the Act, the petitioner has to mandatorily comply with the requirements under the Act, Rules and Regulations laid down thereunder. Therefore, the contention of the petitioner that the Food Safety and Standards Act, 2006 and the Rules and Regulations made thereunder are not applicable on the product in question is completely

devoid of merit. With these submissions, he prayed for dismissal of the writ petition.

Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8.The only controversy needs to be addressed is whether it is only pre-packaged food required to be labelled as per the Food Safety and Standards (packaging and Labeling) Regulations, 2011 but also any kind of food?

9.The subject food namely, 'Erythritol' is admittedly a raw material used in the manufacture of artificial sweetner. 80 packages of Erythritol were imported by the petitioner from China vide Bill of Entry No.7053313 dated 13.10.2014. The 2nd respondent/Assistant Commissioner of Customs (Group 2A), Customs House, Chennai, referred the goods to the 1st respondent/Authorised Officer, Chennai Seaport & Airport, Food Safety and Standards Authority of India, Chennai, for ensuring compliance of the provisions of the Food Safety

and Standards Act, 2006, and the regulations made thereunder, but the 1st respondent refused to draw samples for testing on the ground that the product in question did not contain the label with the required declaration as per the provisions of the Food Safety and Standards (packaging and Labeling) Regulations, 2011 and that these defects were non rectifiable, whereas the case of the petitioner is, imported goods contain a label and specifies the lot number, net weight and the name of the manufacturer. The imported documents filed along with the bill of entry in particular the certificate of origin and the certificate of analysis contain the details such as, the manufacturing date, expiry date, product description, lot number and manufacturer details, therefore, the samples imported could be sent for testing. In this regard, it is necessary to extract Section 23 of the Food Safety and Standards Act, 2006 because Section 23 of the Act prohibits any person from manufacturing, distributing, selling or exposing for sale or dispatch of any packaged food product which are not marked and labelled in the manner as specified by the regulations.

"23. Packaging and labelling of foods.(1) No person shall manufacture, distribute, sell or expose for sale or despatch or deliver to any agent or broker for the purpose of

sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations;

Provided that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

(2) Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers."

10.Keeping this provision apart for the time being, it is also necessary to see Regulation 2.2.2.9 of the Labelling Regulations which refers to the requirement of providing 'date of manufacture or packing' on the label and it provides that if "Best Before Date" of the product is more than three months then the month and year of manufacture, packing or pre-packing of the commodity shall be provided in the label and if the life span of commodity is short and less than three months

then the date, month and year in which the commodity is manufactured, packed or pre-packed, shall be given on the label.

Regulation 2.2.2.10 of the Labelling Regulations refers to the 'Best Before and Use By Date' on the label. The relevant portion of Regulation 2.2.2.9 and 2.2.2.10 of the Labelling Regulations are extracted hereunder:-

9.Date of manufacture or packing---

The date, month and year in which the commodity is manufactured, packed or pre-packed, shall be given on the label:

Provided that the month and the year of manufacture, packing or pre-packing shall be given if the “Best Before Date” of the products is more than three months;

Provided further that in case any package contains commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or pre-packed shall be mentioned on the label.

10.Best Before and Use By Date

(i) the month and year in capital letters upto which the product is best for consumption, in the following manner, namely:--

“BEST BEFORE.....MONTHS AND YEAR”

OR “BEST BEFORE.....MONTHS FROM PACKAGING”

OR "BEST BEFORE.....MONTHS FROM
MANUFACTURE"

11.In the light of the contentions raised by the petitioner that the imported documents filed along with the Bill of Entry in particular, the certificate of origin and the certificate of analysis which contain the details such as manufacturing date, expiry date, product description, the above regulations are perused. A plain reading of the aforequoted regulations clearly indicates that it is mandatory for a label to indicate the date of manufacture or packing of the commodity and even where the 'best before or use by date' is mentioned on the label, the date of manufacturing or the month and year of manufacturing is necessary depending upon whether the best before date is more than three months or less than three months.

12.As a matter of fact, it is not the case of the petitioner that the date of manufacture or packing of the commodity are mentioned on the non-removable label which are mandatory as per the Regulations 2.2.2.9 and 2.2.2.10. Whiles, merely saying that the imported documents filed along with the Bill of entry are showing the manufacturing date, expiry

date, product description lot number and manufacturing details therefore accepting the petitioner's undertaking to affix the necessary label on the imported goods, as it is only mere transferring the details from the imported documents to the label, the petitioner may be allowed to do so, is far from acceptance, because, the heavy contention putforth by the learned counsel appearing for the respondents that manufacturing date and expiry date had not been mentioned on the labels which are most essential in order to ascertain whether 60% of the shelf life of the product remains unexpired, hence, the samples could not be sent for further testing deserves to be accepted.

13.The second contention putforth by the petitioner is that the goods in question namely, 'Erythritol' is used for food additive in manufacture of foods, therefore, the same cannot be termed as item which meets personal needs of the consumer. In addition thereto, as per Section 3(j) of the Act, the goods are admittedly not meant for direct consumption but are intended for industrial use in manufacture of the goods which fall within the category 99 of the Indian Food Code that includes substances added to food which are not for direct consumption

as food, is also to be repelled as a misconceived contention for the following reason.

14.The subject food 'Erythritol' is admittedly used for manufacture of artificial sweetener however finally the same is consumed as a food by the consumers, therefore, it cannot be argued that 'Erythritol' is used as a food additive in manufacture of food which would fall outside the definition of pre-packaged or pre-packed food, hence, it is again a misconceived contention. In this regard, it is relevant to extract Section 3(j) and 3(k) of the Food Safety and Standards Act, 2006.

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), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products,

cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

3(k) "food additive" means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food but does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities."

15.A close reading of the above provision clearly shows that the goods in question namely, 'Erythritol' whether it is a food or food additive is admittedly a food product and finally eatable, therefore, even the remote argument of the petitioner that the product of the petitioner are indeed meant for retail as well as industrial sale, hence, they need not be labelled, is highly unacceptable as per the regulation

2.2.2 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 which states that every package of 'food' shall carry the information on the label as required by the regulation, therefore, it is not only for the pre packaged food but also all kinds of foods whether it is going to be sent to retail outlet or directly to the market for consumption, the labelling regulations will apply. As a matter of fact, all goods are likely to perish, hence, to avoid undue delay in clearance that may result in degradation of the product making it useless of the food item, labelling has been made mandatory, therefore, the contention advanced by the petitioner that the goods in question 'Erythritol' is used as a food additive in manufacture of the foods and cannot be termed as item which meets the personal needs of the consumers, is liable to be rejected outright, therefore, the impugned order rejecting the request for drawing of sample from the consignment for analysis cannot be interfered with.

16. Yet another request of the petitioner giving undertaking to affix necessary label on the imported goods as all the details required by the respondents are available in the imported documents such as

certificate of origin and certificate of analysis, since it is a question of transferring the details from the imported documents to the label so as to facilitate the goods to be sent for testing, is also bereft of any merits. The reason is, when the petitioner failed to affix necessary label on the imported goods with all details, namely, 'Best before use', 'Use by date', and date of manufacture, it is not known whether the goods in question is having the life time for further future use, therefore, this Court finding that the product in question namely, 'Erythritol' has miserably failed to satisfy the labelling requirements, is not able to see any merits in this writ petition, hence, the same fails and is dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

25.09.2015

Index : Yes/No
Internet : Yes/No
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To

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Ministry of Health and Family Welfare,
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