

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19-03-2015

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.33478 OF 2014 and

M.P.Nos.1 and 2 of 2014

M/s.Amrut Distilleries Limited,
rep. by its Company Secretary,
K.Viswanathan .. Petitioner

Versus

1. The Authorized Officer,
Chennai Seaport & Airport,
Food Safety and Standards Authority of India,
O/o.the Deputy Director,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

2. The Deputy Commissioner of Customs (Docks-Seaport),
Customs House,
No.60, Rajaji Salai,
Chennai-600 001. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 15.10.2014 passed by the first respondent, in F.No.R12/2014/FSSAI/CHN-IMPORT and quash the same and consequently 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 2nd respondents to enable the petitioner to clear the goods covered by the Bill of Entry No.6898217, dated 26.9.2014 for home consumption.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.K.Surendranath for R1
Mr.A.P.Srinivas for R2

ORDER

Aggrieved by the order, dated 15.10.2014 passed by the first respondent, the petitioner has come forward with the present writ petition.

2. It seems that the petitioner had imported Active Dry Yeast vide Bill of Entry No.6898217, dated 26.9.2014, which was referred to the first respondent by the Customs Department for compliance under the Act. By the impugned order, dated 15.10.2014, it was informed to the petitioner that one of the food items, viz., Active Dry Yeast, does not meet the labelling requirement under Food Safety and Standards Act, 2006 (in short, the Act, 2006) and hence, the samples could not be drawn. The reason mentioned was that as per the guidelines issued by the Food Safety and Standards Authority of India (in short, FSSAI), dated 24.1.2013, in wholesale package if 'Best Before Date' and 'Expiry Date' are given, then two should be different and clearly specified, however, as regards the above said food item of the petitioner, both 'Expiry Date' and 'Best Before Date' are mentioned as one and the same, i.e. 2016/04/30.

3. According to the petitioner, a representation was made on 3.11.2014 to the first respondent, stating that as per Regulation 2.2.9 of the Food Safety and Standards (Packaging and Labeling) Regulations, 2011 (in short, the Regulations, 2011), it is sufficient that the date of manufacture and the best before date is given and that the said regulation was complied with and hence, refusing to draw the samples is arbitrary. Since no response evoked, the petitioner has filed the present writ petition.

4. A counter affidavit has been filed on behalf of the first respondent, wherein, it is stated that as per the guidelines issued by the FSSAI, in case of wholesale packages if contain both 'Best Before Date' and 'Expiry Date', the two should be different and clearly specified and not one and the same. On verification of the consignment of the petitioner, it was found that both the dates mentioned on the labels of the product, are one and the same, i.e. 30.04.2016 and therefore, it is in violation of the above said regulation. Hence the impugned order has been passed. In fact, on earlier occasion, though the petitioner had committed similar violation, in the interest of business and facilitation of trade, the petitioner was given one time relaxation and granted NOC to import the consignment, subject to the undertaking given by the petitioner to the effect that in all future consignments, the petitioner will comply with the requirement of mentioning both the dates differently. Therefore, having obtained relaxation, the petitioner is estopped from challenging the impugned order and hence, the writ petition is not maintainable.

5. Challenging the impugned order, Mr. Hari Radha Krishnan, learned counsel appearing for the petitioner would contend that the requirement as per the Regulation 2.2.9 of the Regulations, 2011 is only to give date of manufacture and the best before date, which admittedly, the petitioner has complied with. He also contended that there is no requirement to declare 'use by date' or 'expiry date', mentioning the same date for 'expiry date' and 'best before' cannot be said to be objectionable one and is in violation of the regulation. He has also contended that the guidelines dated 24.01.2013 issued by the FSSAI based on which, the claim of the

petitioner was rejected by the first respondent, have no statutory force and it goes beyond the scope of the Regulations.

6. The learned counsel appearing for the first respondent would contend that there is a distinction between 'best before date' and 'expiry date', whereas, the 'best before date' signifies the duration for which the product shall remain marketable and retain its specific qualities if stored in appropriate conditions and on the other hand, 'expiry date' is the date on which the product shall completely cease to have the specific qualities associated with it and shall not remain marketable. He pointed out that a product may be best before a specific date, but shall expire only on another specified date. In view of this distinction, the FSSAI has issued guidelines dated 24.1.2013, specifically directing that in case of wholesale packages which contain both 'best before date' and 'expiry date', they should be different and not one and the same. Though the petitioner was well aware of this since on earlier occasion, in similar situation arose, he has tendered an undertaking to the effect that he would not repeat the same, however, again he violated the regulation. Hence, the learned counsel for the first respondent sought for dismissal of the writ petition.

7. Before proceeding with the issue involved in this writ petition, it is appropriate to describe what is 'best before' and 'expiry'.

8. In Regulations, 2011, Regulation 1.2 denotes 'definitions', wherein, clause (1) defined 'best before' which reads under:

"Best before" means the date which signifies the end of the period under any stated storage conditions during which the food shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date, the food may still be perfectly safe to consume, though its quality may have diminished. However the food shall not be sold if at any stage the product becomes unsafe.

Clause (10) defined "Use-by date" or recommended last consumption date" or "Expiry date", which reads as under:

"Use - by date" or "Recommended last consumption date" or "Expiry date" means the date which signifies the end of the estimated period under any stated storage conditions, after which the food probably will not have the quality and safety attributes normally expected by the consumers and the food shall not be sold."

9. A plain reading of the above, it is understood that there is a distinction between "best before" and "expiry". The meaning attached to phraseology- "best before" is that the period during which the product shall remain fully marketable and shall retain in specific qualities for which tacit or express claims have been

made. It is further clarified that beyond the prescribed date also the food article may still be perfectly satisfactory. Whereas, the meaning attached to the "expiry date" signifies the end of estimated period under any stated storage conditions, after which product probably will not have the quality and safety attributes normally expected by the consumers and further that the food shall not be sold. Therefore, it is clear that even after the date of 'best before', product can be consumed as safety would be still in tact, however, it may not be best as what it would have been if used within specified time limit, since after it passes the date of 'best before' every day counts and the shelf life of the product will gradually decrease in all respects, such as, quality, taste, potency and it may lose its nutritional value, freshness, flavour, etc. There is no confusion as regards 'expiry date', which is a clear cut and once it passes, the product will lost its value in all respects and cannot be consumed and it is harmful if used. Therefore, it can be analyzed that 'expiry date' will come after expiration of 'best before date'. If a product contains both the dates, normally, best before date will be shown first exhausting than to that of 'expiry date'. For example, if a product contains 'best before - 30.03.2014; and expiry date - 15.04.2014, it would mean that the product can be consumed till 15.4.2014, of-course may not be good in its quality on and after 30.3.2014, but it is to be noted that even after best before date, it is marketable till expiry date. While so, if both dates, viz., best before and expriy are given one and the same, i.e. 15.4.2014, the manufacturer can sell the product till 15.4.2014 by projecting the impression in the minds of the consumers that the product will be best till its expiry date. This is quite illogical since any packaged product will always diminish its quality in all respects day by day from the date of its manufacture and cannot be best till its expiry date. Therefore, in my opinion, when such a distinction is there between 'best before' and 'expiry date', the manufacturer of the product cannot be allowed to mention both 'best before' and 'expiry date' as one the same date. It may create perplexity in the minds of the consumers.

10. At this juncture, it is worthwhile to extract Section 23 of the Act, 2006, which reads as under:

"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.

11. A perusal of the above, it is clear that the manufacture shall not sell or distribute any packaged food products which were not marked and labelled in the manner as specified by regulations and the labels shall not contain any statement, claim, design, device, etc., which is false or misleading in any particular concerning the food product contained in package or concerning the quantity or nutritive value. Therefore, the label should contain with specific information by which, the consumer should not be misled. As already stated above, if both the dates, viz., 'best before' and 'expiry' are mentioned with same date, it would certainly mislead the consumers since the consumers would be under impression that till the expiry date, the product will be best in all respects, which is practically unacceptable. Therefore, it would certainly amount to contravention of the above provision of the Act.

12. In the present case, the petitioner has mentioned both 'best before date' and 'expiry date' as one and same, i.e. 30.04.2016, which cannot be acceptable one. It is the specific contention of the petitioner that there is no regulation mandates that the 'best before date' and 'expiry date' should be different and hence, there shall not be any objection in declaring the expiry date same as that of 'best before date'. In the absence of any specific provision in the Act or Regulations, prohibiting the mentioning of 'best before date' and 'expiry date' as one and same, the first respondent ought have drawn the sample and facilitate the petitioner to import the goods.

13. In this context, while assailing the contentions of the learned counsel for the petitioner, the learned counsel for the first respondent would contend that the FSSAI has issued guidelines, dated 24.1.2013, specifically directing the manufacturers to mention both best before date and expiry date differently in case of wholesale packages, if both dates are given and it has to be followed and that strict compliance principle is the requirement of the regulations dictated by public interest that would always prevail over any private interest of an importer. In support of his contentions, the learned counsel for the first respondent relied upon decisions reported in "Badsha versus Urmila Badshah Godse and another" reported in (2014) 1 SCC 188; "Ram Chander versus Nagar Nigam and others" reported in (2014) 1 SCC 199 and "Jai Prakash Singh versus State of Bihar and another" reported in (2012) 4 SCC 379. The sum and substance of the contention of the learned counsel for the respondent is that where alternative constructions are possible, the court must give effect to that

which will be responsible for smooth working of the system for which statute has been enacted and the Court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them and the Court must not yield to spasmodic sentiment to unregulated benevolence.

14. In fact, in the guidelines, dated 24.1.2013 as well as in the Regulations, 2011, as contended by the learned counsel for the petitioner, there is no requirement to mention both 'best before date' and 'expiry date'. It is not in dispute that wholesale package can have either 'best before date' or 'expiry date'. But in case if the manufacturer intend to give both dates, then two dates should be different and clearly specified. Therefore, the choice is left to the manufacturer either to give expiry date or best before date or to give both dates, but when both dates are given, they should be mandatorily mentioned with different dates and not as same date. As already discussed above, since there is a distinction between 'best before date' and 'expiry date', the manufacturer cannot be allowed to mention with same date. As regards the contention that when there is no regulation or provision mandates that the 'best before date' and 'expiry date' should be different and hence, there shall not be any objection in declaring the expiry date same as that of 'best before date', is concerned, I am of the view that the said contention is misconceived and untenable since merely because there is no specific provision or regulation prescribing requirement of mentioning both dates differently, the petitioner cannot be permitted to take advantage of it for the purpose of mentioning the dates as per his whims and fancies in order to get the maximum marketable period, i.e. till the date of expiry by mentioning that the product will be best till its expiry. It is settled law that while interpreting a statute, we should not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. Any deficiency in the provision of the Act or regulations itself does not give a right to the party to invoke the same to suit his claim or his purpose which, on its result, would have a considerable negative impact on others. In this regard, it is worthwhile to refer a decision of the Hon'ble Supreme Court reported in "Badsha versus Urmila Badshah Godse and another" (cited supra), wherein, it was held as under in para 16:

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must

change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."

15. Purpose of labelling is not to be ascertained by any one for diluting the rigorous of the regulations and importing the concept of substantial compliance therewith. It is not that validity of any provision is in issue. Strict compliance principle seems to be the requirements of the regulations dictated by public interest that must prevail over any private interest of an importer.

16. In view of the above discussion, I am of the view that the Authorized Officer was fully justified in not taking samples of the articles of food for the NOC purpose on the ground that the label on the product did not fulfil requirement of the Regulations, 2011. In fact, there is no impediment under the Regulations, 2011 for the petitioner either to mention best before date or expiry date, however, when he prefers to mention both, he has to fulfill the requirement that both dates should be different and mentioned specifically.

17. For the foregoing reasons, the Writ Petition is liable to be dismissed with costs. Here it is appropriate to mention about the attitude of the petitioner. On earlier occasion, in the year 2013, the petitioner imported a consignment vide Bill of Entry No.3554443, dated 17.10.2013 which was found with the same deficiency since the dates regarding 'best before' and 'expiry' were mentioned as one the same, however, the FSSAI officials, in the interest of business and facilitation of trade, has granted one time relaxation and accorded NOC to import the consignment, subject to the undertaking tendered by the petitioner. While availing such relaxation, the petitioner has given undertaking, dated 30.10.2013 to the following effect:

"We undertake that in all our future consignments, the requirements of best before and expiry date will be complied as specified in FSSAI (Packing & Labeling) Regulations, 2011, since the meaning of best before and expiry date are different."

18. In order to get the clearance to import the previous consignment, the petitioner tendered undertaking, however, having availed relaxation, contrary to the said undertaking, the petitioner has violated the regulation for the present consignment and when it has been rightly objected by the respondent, the petitioner has challenged by way of present writ petition.

Considering these circumstances, I feel it appropriate to impose costs on the petitioner.

Accordingly, the Writ Petition is dismissed with costs of Rs.30,000/- (Rupees thirty thousand only). The petitioner shall pay the costs to the Registry, High Court, Madras-104, within 30 days from the date on which, the copy of this order is made ready. If the petitioner fails to pay the amount within the time stipulated supra, the Registry is directed to recover the said amount and pay Rs.15,000/- (Rupees Fifteen thousand only) each by way of Demand Draft to "Schizophrenia Research Foundation (India), a non-profit organization, involved in rehabilitation and research in disorders of the mind, situated at R/7A, North Main Road, Anna Nagar West Extension, Chennai-600 101" and "The Banyan Adaikalam", a non-profit organization, that cares for and rehabilitates homeless women with mental illness, 6th Main Road, Mugappair Eri Scheme, Mugappair West, Chennai-600 037. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Authorized Officer,
Chennai Seaport & Airport,
Food Safety and Standards Authority of India,
O/o.the Deputy Director,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

2. The Deputy Commissioner of Customs (Docks-Seaport),
Customs House,
No.60, Rajaji Salai,
Chennai-600 001.

3.The Section Officer,
Accounts Section,
High Court, madras.

4.The Secretary,
Schizophrenia Research Foundation (India)
R/7A North Main Road, Anna Nagar Extn.
Chennai-101.

5.The Secretary
Banyan Adaikalam
6th Main Road,
Mugappair Eri Scheme
Mugappair West,
Chennai.

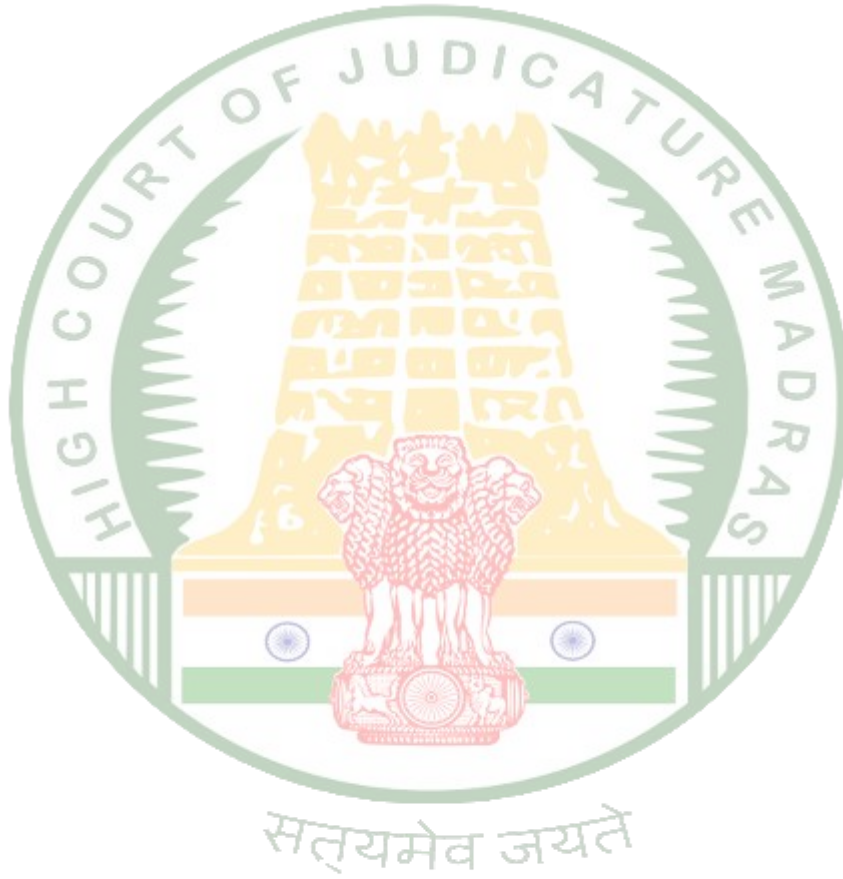
+1 cc to Mr.Hari Radhakrishnan, Advocate,SR.15589

+1 cc to Mr.A.P.Srinivas, Advocate,SR.15574

+1 cc to Mr.K.Surendranath, Advocate,SR.15524.

jsv(co)
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