

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Writ Petition No.18479 of 2015

&

M.P.Nos.1 and 2 of 2015

Mrs.Shanthi Hariharan

...Petitioner

Vs.

1. The Food Safety and Standards Authority of India, Rep., by its Director, (Product Approval), Ministry of Health and Family Welfare, FDA Bhavan, Kotla Road, New Delhi-110 002.
2. Food Safety and Standard Authority of India, C-1-D, Rajaji Bhavan, Besant Nagar, Chennai-600 090.
3. Commissioner of Customs (Chennai-V), Custom House, No.60, Rajaji Salai, Chennai-600 001.

...Respondents

Petition under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in respect of number F.No.15025/1026/2014-PA/FSSAI/856 dated May, 2015, quash the same and direct the first respondent to grant product approval for the Carl Jung brand of dealcoholized wine and pay to the petitioner a sum of Rs.Four lakhs as demurrage charges incurred by the petitioner between 24th March 2014 and June 2015.

For Petitioner : Mr.Rahul Unnikrishnan

For Respondents : Mr.K.Surendranath for R1 & R2
Mr.M.Devendran for R3
Sr.Standing Counsel

O R D E R

The petitioner applied for licence on 12.06.2012 which was accordingly given on 08.11.2012. It was further renewed and valid till 07.11.2013. The petitioner imported Carl Jung Brand of non alcoholic beverage. Treating the product produced by the petitioner as a new product, he was asked to make an application for product approval. Accordingly, the petitioner has made an application for product approval. By the impugned order, the request for approval was rejected. Now, the present position appears to be the very constitution of the product approval and Screening Committee itself was struck down by the Apex Court and the order impugned does not stand in good view of law.

2. The learned counsel appearing for the petitioner made an alternative submission placing reliance upon Clause 14(2) of the Indian Food Code, which speaks about alcoholic beverages including alcohol-free being included in the same category together. The learned counsel also submitted that the beverage product of the petitioner may be included in the said category.

3. The learned counsel appearing for the respondents submitted that the petitioner has not made such a request as the case was one of non alcoholic. Thus, it did not conform to the standard provided under Regulation 2.10.6 of the Food Safety and Standards (Licensing and Registration of Food Licence) Regulations, 2011. Therefore, no interference is required.

4. Incidentally, it is submitted that even the documents filed by the petitioner with respect to the Analysis Report would clearly show that the alcoholic content has 0.14% by value.

5. What the petitioner now wants is for a consideration under Clause 14(2) of the Indian Food Code. This is an issue which has to be considered by the first respondent. Therefore, the writ petition stands disposed of by giving liberty to the petitioner to make an application to the first respondent seeking consideration of the product under Clause 14(2) of the Indian Food Code. While doing so, the petitioner will have to include the relevant materials including scientific report. It is also open to the petitioner to contend that the alcoholic content is less than 1% and the consequences would follow. As

and when the petitioner makes an application to the first respondent, the said authority shall consider the same within a period of six weeks from the date of receipt of a copy of this order.

6. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Food Safety and Standards Authority of India,
(Product Approval), Ministry of Health and
Family Welfare, FDA Bhavan, Kotla Road,
New Delhi-110 002.
2. Food Safety and Standard Authority of India,
C-1-D, Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
3. The Commissioner of Customs (Chennai-V),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

1 CC to Mr.M.V. Swaroop, Advocate SR.No. 60536

1 CC to Mr.K.Surendranath, Advocate SR.No. 60443

1 CC to Mr.M.Devendran, Advocate SR.No. 60487

W.P.No.18479 of 2015

GR (CO)
PSI (05.11.2015)