

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34472/2014 and
M.P.No.1 of 2014

M/s. Pon Pure Chem (P) Ltd.

Rep. by its Managing Director, 32 H-Block
15th Main Road Anna Nagar Chennai-40.

... Petitioner

Vs

1 The Commissioner of Customs
(Import) - Seaport Customs House Rajaji
Salai Chennai-1.

2 The Deputy Commissioner of
Customs (Docks) - Seaport Customs House
Rajaji Salai Chennai-1.

3 Food Safety and Standards
Authority of India Ministry of Health and
Family Welfare Government of India C-1-D
Rajaji Bhavan Chennai-90.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus directing the Respondents herein to permit the Petitioner to clear the consignment in B.L. No.HDMUBRIH 1388222 B.E. No.4602156 dated 11.02.2014 and IGM No. 2076827/19/01/2014 dated 21.01.2014 without insisting for the Certification under Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

For Petitioner :Mr.V.P.Sengottuvel
For R1 and R2 :Mr.V.Sundareswaran,
senior standing counsel
For R3 : Mr.K.Surendranath

ORDER

The writ petition is filed for the issuance of a writ of mandamus directing the respondents herein to permit the petitioner to clear the consignment in B.L. No.HDMUBRIH 1388222 B.E. No.4602156 dated 11.02.2014 and IGM No. 2076827/19/01/2014 dated 21.01.2014 without insisting for the Certification under Food Safety and Standards

(Packaging and Labelling) Regulations, 2011.

2. The petitioner company is a dealer and distributor of various types of chemicals and dyes. The company used to import Phosphoric Acid 85% MIN food grade from Brazil and this imported food grade chemical, is not meant for sale either as a food product or for direct sale to any consumer for consumption as a food item and it is meant for use in the food industry. The chemicals are usually imported in Plastic Jerrycans containing labels of the manufacturers and are accompanied by the Packing Lists, Test Certificates and other documents required for import.

3. According to the learned counsel for the petitioner that on 12.11.2013, the petitioner imported the said chemical in 3 containers along with analysis certificate and required details, and upon proper verification, out of total three containers, two containers were released and one is kept under the custody of Customs Warehouse. The reason for not clearing the same is non-fulfilling of the requirements under Regulations 2.2.2.6(iii) & 2.2.2.10 of the Food Safety and Standards (Packaging & Labelling) Regulations, 2011 and on the ground that certain objections raised with regard to labelling as well as other requirements related to manufacturer were not complied with by the petitioner.

4. The learned counsel for the petitioner further submitted that the said Regulation 2011 is not applicable to the Food Grade product imported by the petitioner company, as the same is only with respect to food items which are meant for human consumption by way of sale of such goods either directly to the consumer or through the dealer. Since the goods have not been permitted to be cleared, the petitioner by producing the relevant details as required by the regulations, made a representation dated 24.12.2014 and the same is refused to be considered by respondents. Hence, the learned counsel for the petitioner seeks appropriate directions.

5. The learned counsel appearing for the 3rd respondent filed a counter affidavit and opposed the contentions of the petitioner. In paragraph 8 of the counter affidavit, it is stated as follows:

"Contents of para 8 of the writ petition are wrong and denied save and except where they are a matter of Record. It is submitted that the product of the petitioner is not a "Wholesale Package" as defined in Regulation 1.2.1.12 of the FSS (Packaging and Labelling) Regulations, 2011. The product is "Pre Packaged" or "Pre-packed food" as defined in Regulation 1.2.1.8 of the FSS (Packaging and Labelling) Regulations, 2011. Further even if it is considered but not admitted that the product is a wholesale package, the term "wholesale package" have been substituted by the term "Multi piece Packages" in regulation 2.6.1.5 of the FSS (Packaging and Labelling) Regulations, 2011 vide

the Corrigenda on Food Safety and Standard Regulations, 2011 notified on 21st December, 2011. The corrected Regulation 2.6.1.5 of the FSS (Packaging and Labelling) Regulations, 2011 is reproduced hereunder:

"5. In case of 1[multi piece packages] the particulars regarding list of ingredients. Date of manufacture/ packing, best before, expiry date labelling of irradiated food and, vegetarian logo/non vegetarian logo, many not be specified."

In the light of the changes in the above regulation even if the product of the petitioner was a Wholesale Package it would not have been entitled to exemption from labelling requirements. Copy of the Corrigenda is annexed as Annexure R-3/4. Even so, the consignment in question also does not carry the mandatory information pertaining to the details of the importer which is in violation of the Pertinent Regulations."

Opposing the other contentions also, in the said counter affidavit, the learned counsel for the respondent sought to dismiss the writ petition.

6. At this juncture, the learned counsel for the petitioner confines his prayer to the limited extent that the representation dated 24.12.2014 may be considered and necessary orders be passed by the respondent on merits in line with the regulation, for which the respondents have no serious objections.

7. In view of the above, it would be suffice to direct the third respondent before whom the representation dated 24.12.2014 is said to be pending, to consider the same on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

8. The Writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

-Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Commissioner of Customs
(Import) - Seaport Customs House Rajaji
Salai Chennai-1.
- 2 The Deputy Commissioner of
Customs (Docks) - Seaport Customs House
Rajaji Salai Chennai-1.
- 3 Food Safety and Standards
Authority of India Ministry of Health and
Family Welfare Government of India C-1-D
Rajaji Bhavan Chennai-90.

+1 CC to MR. V.P.Sengottuvel Advocate. Sr.No.51671

+1 CC to MR.K.Surendranath Advocate. Sr.No.51624

W.P.No.34472/2014

CO-GR
JD(08/10/2015)



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