

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2015

Date of Reserving the Order	Date of Pronouncing the Order
18.02.2015	19.02.2015

CORAM

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No. 29859 of 2014

Yedakadu Tea Manufacturing Co. (P) Ltd.,
Rep., by its Managing Director - K.Sadhiq
Yedakadu Post,
Nilgris - 643 282

.... Petitioner

Vs

1. Government of India,
Rep., by its Secretary,
Ministry of Commerce & Industry,
Department of Commerce,
New Delhi.
2. Tea Board of India,
Rep., by its Secretary,
No.14, BTM Sarani, (Barbone Road),
P.O.Box No.2172, Kolkata - 700 001.
3. Mr. Hari Prakash
Deputy Director,
Tea Board, Shellwood, Coonoor - 01
4. Mr. K. Vivek
Factory Advisory Officer,
Tea Board, Shellwood,
Coonoor - 01.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records of the respondent Board pertaining to the impugned communication dated 15/9.10.2014 bearing ref.No.12(23)/LC/P-XV-

2012/RC-927/1704, quash the same and direct the respondent Board to release the entire 10104 Kgs tonnes of tea belonging to the petitioner as sealed by the respondent Board and now lying in the godown of Annapurna Transport Agencies.

For petitioner : Mr.V.Prakash Senior counsel
for Ms.Shubharanjani Ananth

For Respondent : Mr.V.Parthiban
for M/s.Paul & Paul Advocates for RR2to4

O R D E R

The petitioner is a manufacturer of tea and they have filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent, dated 15/9.10-2014 and to direct the respondent Board to release the entire 10104 kgs of tea, which has been sealed by the respondent Board and lying in the godown of M/s.Annapurna Transport Agency.

2. Heard Mr.V.Prakash, learned Senior counsel assisted by Ms.Shubharanjani Ananth, the learned counsel appearing for the petitioner, Mr.V.Parthiban, learned counsel appearing for the second respondent.

3. The petitioner is a Tea Factory at Yedakadu in Nilgris, it procures bought leaves, processes the same and sell it to whole sale buyers who in turn sell it to retailers. The petitioner is a manufacturer within the meaning of Section 2(i) of the Tea (Marketing) Control Order, 2003, (hereinafter referred to as 'Control Order'). The petitioner has been registered as a manufacturer with the respondent Tea Board, by order dated 23.11.2012, the petitioner's registration was cancelled, which was challenged by the petitioner by filing W.P.No.34603 of 2012, and an order of interim stay was granted by this Court on 18.03.2013, which was subsequently extended by order dated 13.04.2013 and the Writ Petition is pending. It is submitted that the petitioner was shocked to read from the newspaper that on 20.08.2014, the godown of their transporter M/s.Annapoorna Transport Agency, Coimbatore was inspected and the inspection revealed the tea bags belonging to the petitioner factory and the same was sealed as substandard and adulterated.

4. The learned Senior counsel appearing for the petitioner submitted that the officials have stage managed the entire episode of the so called search by inviting the attention of the media for reasons best known and to cause extreme harassment to the petitioner and it is on account of their vindictive attitude, since the petitioner had given complaint against the officials of the Board to the Vigilance and Anti-Corruption Department. It is submitted that therefore the petitioner has impleaded the P.A., to the Executive Director as a respondent in his personal capacity in the earlier Writ Petition. It is submitted that in spite of the order of stay was granted by this Court, there was continuous harassment and action was taken against the petitioner vide order dated 27.09.2013 for alleged non-submission of returns and alleged violation of clause 5(d) of the Control Order, 2003. It is submitted that once again another order was passed on 30.09.2013, cancelling the registration of the petitioner's factory and sealing the factory. Further, it is submitted that while passing the impugned order in this Writ Petition, samples were not drawn in accordance with clause 29 of the Control Order 2003, which mandates that the representative of the owner concerned should be present when the samples are drawn and his signature should be obtained. Therefore, the samples alleged to have been drawn in the absence of the representative of the owner concerned, renders the entire proceedings as illegal and vitiated. Further, it is submitted that there are other procedural irregularities committed by the authority in the matter of drawl of samples.

5. The learned Senior counsel referred to the averments in the affidavit filed in support of the Writ Petition to demonstrate that the officials of the respondent Board were acting in vindictive manner against the petitioner and this is only on account of the fact that the petitioner lodged a complaint to the Vigilance and Anti-Corruption Department and earlier he had filed a Writ Petition and obtained an order of stay. The learned Senior counsel referred to the letter written by the petitioner to the Executive Director of the respondent Board calling upon him to stop spreading false propaganda against the petitioner company. Further, it is submitted that in the impugned order, it has been stated that 17 samples were drawn, out of which 8 samples passed the norms fixed under the Food Safety Standards Act and these may be directed to be released to the petitioner to enable them to sell the same in the market and the remaining quantity of tea from which 9 samples are said to have been drawn may be directed to be kept with the petitioner with the adequate safeguards till the matter is finally decided.

6. The learned counsel appearing for the respondents 2 to 4 by referring to the counter affidavit submitted that the Managing Director of the petitioner has been violating the provisions of the Tea Act and the various Rules under the Control Orders for a long period of time and therefore, they are perpetual violators of the statutory provision and therefore, the Registration Certificate was cancelled on 23.11.2012 and the petitioner without preferring any appeal as provided under clause 24 of the Control Order filed a Writ Petition before this Court and the same is pending and on account of stay granted by this Court, the petitioner was allowed to operate the unit. It is submitted that the Joint Controller of Licencing, Tea Board, Cochin, issued show cause notices on 16.04.2013, 17.04.2013, 22.04.2013 and 23.04.2013 to 134 tea factories, who were found to have not submitted the mandatory Form-E monthly e-returns continuously for more than six months and the petitioner was one among the 134 Tea Factories. In spite of the show cause notice, the petitioner did not respond, consequently the licence was cancelled vide proceedings dated 30.09.2013. According to the respondent, the petitioner has been indulging in manufacturing material resembling like tea in an unethical manner during odd hours, therefore, a surprise inspection was conducted on 18.08.2014, by the team of Officers attached to the Regional Office, Kundha on information be received and the Inspecting team found a truck fully loaded was parked in the premises of the petitioner Tea factory. The truck which was loaded finally reached M/s.Annapoorna Transport Agency, Coimbatore. It is submitted that on inspection of the contents of the truck, it was confirmed that the tea like material was transported which belonged to the petitioner and therefore, the entire stock of 308 bags were sampled and sealed and it was observed that there were 273 bags in the godown of the Transport Agency belonging to the petitioner. It is submitted that totally 17 samples of different grades and invoices were taken on the suspicion that they are sub-standard tea and therefore, the total quantity of 19470 kgs were sealed and all samples were sent for analysis. The report received on 01.09.2014, shows that out of 17 samples, 9 samples measuring 13292 kgs failed to pass the test and 8 samples of 6178kgs passed the test. The samples which failed the test, are liable to be treated as "tea waste". Further, it is submitted that since the licence granted to the petitioner has been cancelled on 30.09.2013 and the said order having not been cancelled or revoked till date the products cannot be returned to the petitioner. Further, the petitioner has not sought for revocation of cancellation of registration and never submitted the Form-E monthly returns, which is mandatory as per the Control Order.

7. Further, it is submitted that the tea amounting to 6178kgs, may be confiscated and auctioned through public auction and proceeds may be credited to the Government of India account. Further, it is submitted that 19470kgs of tea lying in the godown may be directed to be transferred to a Tea Board Licenced warehouse near Coimbatore with a condition that the petitioner should bear the costs. With regard to the allegation that clause 29 of the Control Order was not followed while drawing samples, it is stated in the counter affidavit that the tea stored at the warehouse, transported etc., the Manager of the place concerned is the custodian of the tea and become responsible for holding it and Inspecting officials always inform the tea factory through the Manager concerned whenever the samples were drawn and this is the standard procedure followed for several years. Further, as per the Control Order, samples could be drawn from various unit and according to the clause 29, samples were drawn and all the seized documents were signed by the Manager of M/s.Annapoorna Transport Agency, who is the custodian of the material. Hence, it is submitted that there is no violation of the Control Order. Further, it is submitted that Mr.Nishad Babu son of the owner of the petitioner's factory was very much available at the spot when the seizure and samples were taken and when he was requested to sign the documents, he refused to do so, but the Manager of M/s.Annapoorna Transport Agency who was the custodian of the material has signed all the documents. Therefore, it is submitted that the action of the respondent is perfectly legal and valid and there is no illegality in their action.

8. The allegations of malafide made against the officials of the Board have been denied and the second respondent has stated that the owner of the petitioner factory and his son threatened the officers that they would face dire consequences and this was informed to the Thudiyalur Police Station and the after Police intervened, the problem was cleared and sealing process was continued and completed by 4.00 p.m. It is further submitted that as early as on 03.04.2014, the petitioner was advised to produce the Green Leaves records and other records pertaining to the factory and the petitioner failed to produce the records and none of the records were made available to the Inspecting Officer which is in violation of clause 8(1) and clause 20 of the Tea Marketing Control Order, 2003 and this lead to the suspicion and thereafter samples were taken.

9. After hearing the learned Senior counsel for the petitioner and perusing the materials placed on record, the short issue which falls for consideration is as to whether pending further process, pursuant to the impugned order whether the petitioner is entitled to get back the custody of the tea which has been sealed by the

respondent Board on the basis of suspicion of being sub-standard and whether the impugned order calls for interference.

10. In the preceding paragraphs, the factual position has been elaborately set out, from which it is seen that the first order of cancellation of registration was passed against the petitioner on 23.11.2012. This order is impugned in W.P.No.34603 of 2013 and an order of interim stay has been granted. The allegation which lead to passing of the order dated 23.11.2012, is on the ground that the suspected tea (matter resembling tea) along with tea waste was mixed with rice obtained from public distribution system and sugar and the mixer was grinded and fed along with un-withered Green Leaves as recycled material; the withering troughs were found removed from the factory and the Green Leaves were fed directly into CTC with the above mentioned mixer to match the combination; the hygienic condition of the factory was not upto the mark especially in and around the pulveriser room causing the poor quality of tea. This order is subject matter of challenge in the earlier Writ Petition. Subsequently, a show cause notice was issued to the petitioner on 17.04.2013, calling upon the petitioner to explain as to why action should not be initiated for suspension/cancellation of registration for non-compliance of the Tea (Marketing) Control Order, 2003, and non-filing of Form-E returns etc. It is stated that 134 Tea Factories were issued such notices. Though the petitioner was granted opportunity to show cause against the said proposal, the petitioner did not file their response. Once again another notice was issued to the petitioner on 27.09.2013, pointing out that the provisions of the Control Order were not adhered to. Further in the show cause notice, it was pointed out that though the petitioner has obtained stay of the earlier order of cancellation dated 23.11.2012, that does not exempt the petitioner from the provisions of the Act and Control Orders and they are bound to strictly comply with the same while manufacturing Tea. The petitioner did not respond to both the show cause notices and consequently by order dated 30.09.2013, the Registering Authority of the Tea Board cancelled the petitioner's registration for manufacturing tea. The petitioner was advised that if they intend to restart/commence manufacturing again, they are requested to apply for fresh registration with all required documents.

11. It is not in dispute that the order of cancellation of registration dated 30.09.2013, has not been challenged by the petitioner till date, though they have received the same on 24.10.2013. Thus, as on date, the petitioner factory does not hold a valid licence for manufacture of tea, though there is an interim order of stay of the earlier order of cancellation dated 23.11.2012, which was based on entirely different set of facts.

12. The learned senior counsel for the petitioner would contend that similar order of cancellation was passed in respect of several factories and all of them were running the factories without challenging the cancellation order and no action has been taken by the second respondent. The correctness of the said submission is not gone into in this Writ Petition, but it would suffice to observe that wherever orders of cancellation have not been challenged or set aside, it goes without saying that those industries cannot operate and it is for the second respondent to initiate action in that regard after following due process of law.

13. Be that as it may, as the petitioner did not have a valid licence, the question of them being able to manufacture tea does not arise. If they have manufactured then the issue assumes more seriousness, since the petitioner has engaged in manufacturing activity without valid licence and that by itself would attract action under the provisions of the Act and Control Orders.

14. The case of the second respondent is that when surprise inspection was conducted on 18.08.2014, a fully loaded truck with tea like material bearing registration No.TN-40-8716, was found in the factory premises. The truck left from the factory and reached M/s.Annapoorna Transport Agency at Coimbatore. The Inspecting officials appear to have followed the truck and it is in the premises of the transport agency, the samples have been drawn and thereafter, the entire quantity have been sealed.

15. The learned Senior counsel for the petitioner submitted that clause 29 of the Control Order provides that the owner of the goods should be present while samples are drawn. Admittedly, the samples were not drawn in the premises of the petitioner nor while it was in transit, but samples were drawn in the godown of the transport agency. Therefore, the respondents are justified in contending that the Manager of the Transport/Agency was in custody of the goods and he being the custodian, samples were drawn and the Manager of the Transport Agency has signed all the documents. The copies of the declarations pursuant to which the samples were seized have been filed in the typed set of papers by the respondents from which it is seen that the Transport Agency has signed in all those documents in the presence of witnesses. Therefore, this Court is of the view that there is no violation of clause 29 of the Control Order, since the samples have been drawn from the premises of the Transport Agency who was the lawful custodian of the goods. Though an allegation has been made by the respondent stating that son of the owner of the petitioner factory was present at the time of drawing of samples and

preparation of the documents and that he refused to sign, is not gone into for the present as this Court is of the view that the samples were drawn in accordance with clause 29 of the Control Order and in the light of the factual position and taking note of the place where the samples were drawn the Manager of the Transport Agency is the representative of the owner concerned, as he is the custodian of the goods lying in the godown. Furthermore, there was also another 273 bags belonging to the petitioner tea factory, which was also present in the same godown.

16. Having held that the procedure followed by the respondent Board in the matter of drawing samples is in accordance with the Control Order, the only issue which remains to be considered is whether the petitioner is entitled to custody of the goods pending further action under the provisions of the Food Safety Standards Act, 2006. As per the impugned order, 17 samples were drawn out of which, 9 samples have failed the test and the quantity being 13292kgs and the remaining 8 samples have passed the test and the quantity being 6178kgs. So far as the samples which have failed to pass the requisite test cannot be returned to the petitioner. However, before it is declared as "tea waste", the petitioner is entitled to an opportunity to put forth his objections. So far as the quantity, which have cleared the test namely 6178kgs, the question would be as to whether the petitioner could have manufactured the tea, when they did not have a valid licence. To ascertain this fact, it has to be seen as to what could have been the probable date of manufacture and whether the manufacture was done by the petitioner when they were said to be operating the factory based on the order of stay granted by this Court on 18.03.2013 or subsequently prior to the order of cancellation of registration dated 30.09.2013. This could be ascertained only if the petitioner produces all records and statutory declarations to support their stand that their manufacture of 6178kgs of tea was when they had been operating by virtue of the interim order of stay granted by this court in an earlier Writ Petition. If the manufacture had taken place after 30.09.2013, obviously it would mean that the manufacture was made when the licence was not in vogue. Therefore, this also requires adjudication prior to passing an order of confiscation in which the petitioner should be afforded an opportunity. Therefore, for the present the quantity of 6178Kgs of tea also cannot be returned to the petitioner.

17. In the light of the above discussion, this Court is of the firm view that the petitioner has not made out any ground to interfere with the impugned order and accordingly, the prayer sought for in the Writ Petition is rejected and the Writ Petition is dismissed with the following direction:-

(i) The entire quantity which has now been sealed and lying in the godown of the transport agency shall be shifted to the nearest Tea Board Licenced Tea Warehouse in Coimbatore by the second respondent at their cost and to be retained as such until further proceedings are completed;

(ii) the second respondent is directed to afforded an opportunity to the petitioner to put forth their objections as regards the proposal to declare the quantity of 13292kgs as "tea waste" and the proposal to confiscate 6178Kgs of tea absolutely by issuing a show cause notice and after the petitioner submit their objection, the second respondent shall pass appropriate orders on merits and in accordance with the provisions of the Act and the Control Orders;

(iii) the second respondent is directed to complete the shifting process, within a period of two weeks from the date of receipt of a copy of this order and thereafter, issue show cause notice as directed above, within a period of two weeks thereafter. The petitioner is granted 15 days time to submit their reply along with all records to substantiate their claim. On receipt of the reply, the second respondent shall afford an opportunity of personal hearing to the petitioner and pass appropriate orders on merits and in accordance with the provisions of the Act and Control Orders.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst. Registrar

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Sub Asst. Registrar.

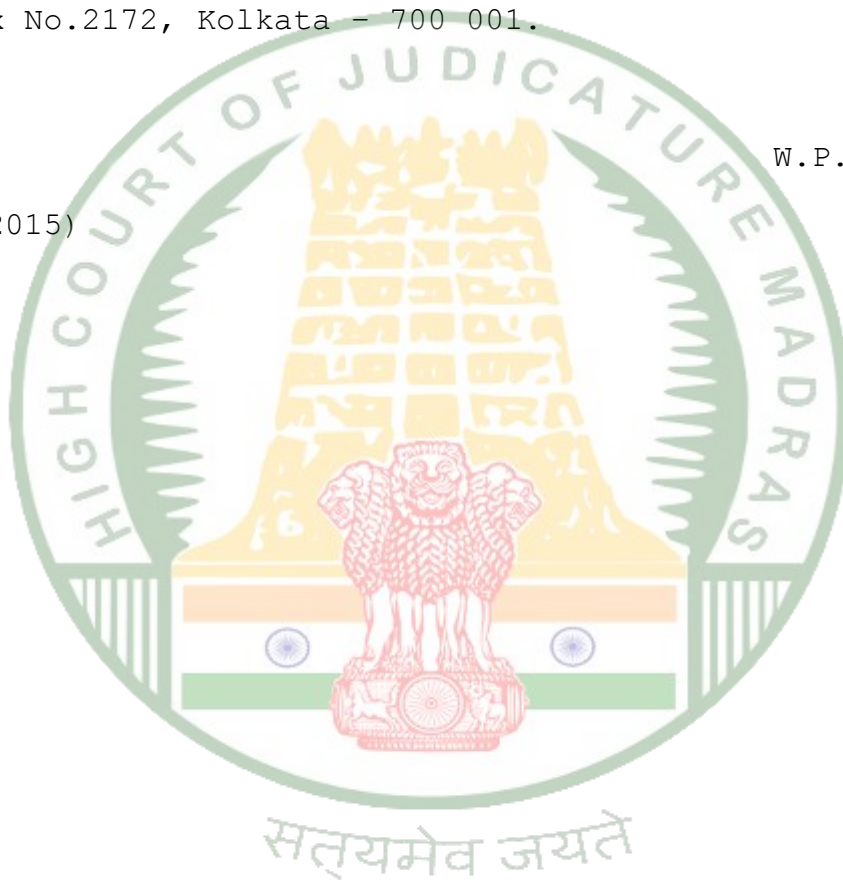
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To

1. The Secretary,
Ministry of Commerce & Industry,
Department of Commerce,
Government of India,
New Delhi.
2. Tea Board of India,
The Secretary,
No.14, BTM Sarani, (Barbone Road),
P.O.Box No.2172, Kolkata - 700 001.

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W.P.No.29859 of 2014



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