

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

| Date of Reserving the Order | Date of Pronouncing the Order |
|-----------------------------|-------------------------------|
| 23.03.2015                  | 25.03.2015                    |

Coram

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

W.P. No.5285 of 2015

M/s.Gandour India Food Processing Pvt., Ltd.,  
Sy.No.172 & 173, Phase IV,  
IDA., Cherlapally, Rangareddy Dist.,  
Hyderabad, Telangana.

Represented by its authorized representative  
Sri.R.Srinivasan, S/o.N.Ramaswamy, Age 55 years,  
Occ; Head Supply Chain Manager,  
R/o.115, Mani Enclave, Yapral,  
Secunderabad - 500087 .....Petitioner

Vs

- 1.Union of India,  
Rep., by Principal Secretary, FSSAI,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kotla Road,  
New Delhi - 110 002.
- 2.The Director (Imports),  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kotla Road,  
New Delhi - 110002.
- 3.The Assistant Director (Imports),  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kotla Road,  
New Delhi - 110 002.

4.The Deputy Director/Authorised Officer,  
Food Safety and Standards Authority of India,  
C.1D., Rajaji Bhavan,  
Besant Nagar, Chennai - 600 090.

5.The Deputy Commissioner,  
(Customs-Docks) Seaport,  
Customs House, Rajaji Salai,  
Chennai - 600 001.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare the impugned rejection order issued by the fourth respondent vide letter No.F.No.R.301/2014/fssai/chn-import Dated 09.07.2014, which is addressed to fifth respondent stating that the sample cannot be drawn for analysis as arbitrary, illegal, unconstitutional and violative of fundamental right guaranteed under constitution of India and direct the 5th respondent to release the consignment of the goods "Desiccated coconut fine grade" import by the petitioner company.

For petitioner .. Mr.Dr.D.Venket Reddy for  
M/s.Vijaya Bharathi

For Respondents .. Mr.Su Srinivasan  
Addl Solicitor General of India  
for RR1 to R3

Mr.K.Surendranath for R4

Mr.Dr.M.Devandiran for R5

O R D E R

The petitioner, a Private Limited Company has filed this Writ Petition challenging the order passed by the fourth respondent dated 09.07.2015, informing the petitioner that on inspection and verification of the consignment containing a food item, it was observed that the sample does not meet the labelling requirements under the Food Safety and Standards Act, 2006 and the Rules and Regulations made thereunder (hereinafter referred to as the "Act and Rules") and therefore, samples cannot be drawn for analysis as the name and complete address of the manufacturer/packer is not mentioned as required under Regulation 2.2.2:6(i) of the Food Safety and Standards (Packing and Labelling) Regulation, 2011 (hereinafter referred to as the 'Regulation').

2. The facts which are necessary for disposal of the Writ Petition are that the petitioner who are engaged in the business of manufacturing confectionery items, cakes, wafers etc., imported as consignment of 12.5 tonnes of "Desiccated Coconut Fine Grade" from a supplier at Malaysia, M/s.Behn Meyer Chemicals (M) SDN BHD (M/s.BMC), the consignment was imported based on a commercial invoice issued by M/s.BMC, dated 27.05.2014. The consignment arrived at the Chennai Port on 26.05.2014 and Bill of Entry dated 07.06.2014, was filed. On Bill of Entry being presented, the fourth respondent, Deputy Director, Authorised Officer under the Act refused to issue the No Objection Certificate on the ground that the complete address of the manufacturer/packer is not mentioned in the product as required under Regulation 2.2.2:6.(i) of the Regulation. The petitioner submitted a representation on 01.09.2014, seeking for a personal hearing before the second respondent to provide further clarification and produce the necessary records. Thereafter, the petitioner addressed a representation through E-Mail to the second respondent on 08.09.2014 to consider their representation and set aside the rejection report by reviewing the same. This was followed by a reminder dated 10.10.2014. Ultimately, the petitioners sent a legal notice on 31.10.2014, for which a reply was sent by the fourth respondent on 02.02.2015. In the background of these facts, the petitioner has filed this Writ Petition challenging the impugned order refusing to draw samples on the ground that the consignment does not satisfy the labelling requirement under the said Regulation.

3. The learned counsel appearing for the petitioner submitted that the impugned communication is an internal communication and no notice was issued to the petitioner and no copy was marked to the petitioner and therefore, the impugned order has been passed in gross violation of principles of natural justice. It is further submitted that under Packing and Labelling Regulation in clause 2.2.2:6(i), it is stated that the name and complete address of the manufacturer and the manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package and this has been complied with by the petitioner and by referring to the copy of the packing, it is stated that the name of the supplier has been mentioned and it has been mentioned it is the product of Indonesia, the name of the petitioner/importer has been mentioned and the nature of product, batch number, net weight, gross weight, production date and expiry date have been mentioned. Therefore, it is submitted that the petitioner satisfies the requirement in clause 2.2.2:6(i) of the Regulation. In this regard, the learned counsel referred to the guidelines, which were issued by the respondent, dated 23.03.2012. It is submitted that in serial No.2 (3) of the Guidelines in respect of wholesale packages, the name and complete address of the manufacturer is required to be mentioned, however, it may also be

verified from the relevant documents. Further, it is submitted that the guidelines also provides for one more avenue namely, under para i (c) stating that if complete address of the manufacturer is not given in the labels and his name alone is given, his address may be verified from the relevant documents like certificate of analysis, invoice etc. By referring to the definition of "Manufacturer" under Regulation 3(zd) of the Act, it is submitted that a manufacturer means a person engaged in the business of manufacturing any article of food for sale and includes any person, who obtains such article from another person and packs and labels it for sale or only labels it for such purposes. Therefore, it is submitted that the petitioner's supplier clearly falls within the definition of "Manufacturer" and therefore, the respondents are not justified in refusing to draw samples on the ground the consignment does not satisfy the Labelling requirement.

4. The learned counsel referred to the commercial invoice dated 12.05.2014, to show that the name of the exporter/supplier has been mentioned, which finds place in the packing of the consignment, the country of origin has been mentioned as Indonesia and the supplier is from Malaysia. Further, by referring to the bill of lading, it is submitted that the Port of loading is Indonesia and Shipper is M/s.BMC. It is further submitted that the bill of lading is clearly shows that the expiry date as May 2015 and therefore, there is urgency for the consignment to be released. The learned counsel referred to the submissions made by the petitioner in their representation dated 23.07.2014 and legal notice dated 31.10.2014 and submitted that the petitioner has produced all the documents and also expressed their willingness to abide by any condition that may be imposed by the fourth respondent and yet the authorities did not consider their request. Therefore, the petitioner sent a legal notice for which a reply was sent containing distorted facts and therefore, after having exhausted all the remedies available, the petitioner has approached this Court by way of this Writ Petition. Further, the learned counsel referred to two bills of entries filed by the petitioner during 2012-13 through the Mumbai Port and Nhava Shave Port and submitted that the same product has been permitted to be imported in the same packing.

5. In support of his contention, reliance was placed on the decisions of this Court in the case of M/s.Foodlever India Pvt., Ltd. vs., Senior Inspecting Officer, FSSAI, reported in CDJ 2012 MHC 1335 and M/s.Avenue Impex vs., The Commissioner of Customs (Seaport-Import) & Ors., reported in CDJ 2012 MHC 328, and the decisions of the High Court of Delhi in the case of United Distributors Incorporation vs., Union of India & anr., reported in CDJ 2014 DHC 2042, and Danisco (India) Pvt. Ltd. vs. Union of India & Anr., reported in CDJ 2014 DHC 2063 and the decision of the High Court of Judicature at Bombay in the case of Dalmia Continental Pvt., Ltd.,

vs. FSSAI in W.P.(Lodging) No.2080 of 2014, and the appeal filed by the respondent before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.33079 of 2014 was dismissed on 12.01.2015. On the above submissions, the learned counsel sought for setting aside the impugned order and expressing their willingness to abide by any condition that may be imposed by this Court, since the product is required to be utilised by the petitioner for their production in their factory and the expiry date is fast approaching.

6. The learned counsel appearing for the respondents 2, 3 and 4 after referring to Section 27 of the Act submitted that after the procedure contemplated therein is followed, the Authorised Officer inspects the consignment to verify the documents, labels on the product and further verifications are made qua the source of import i.e., whether or not, the import is from a banned/prohibited/restricted source and whether it fulfils the requirements issued by FSSAI. Further, it is submitted that verification is done with regard to the remaining shelf life of the product and at the time of import is more than 60% of the original shelf life is a mandatory requirement as per the notification and it is submitted that if there is any violation of any of the applicable provisions of law, sample will not be drawn from the imported consignment and rejection note will be forwarded to the Customs Authority pointing out the contravention, which came to light during Inspection and Verification process.

7. So far as the petitioner's case it is submitted that they submitted an application on-line seeking clearance of the imported consignment "Desiccated Coconut Fine Grade". The inspection was carried out on 04.07.2014 and on inspection, it was found that the label was in complete contravention of the mandatory requirement under the Regulations. It is submitted that the labels as well as the certificate of origin submitted by the importer states that the country of origin is Indonesia i.e., stating that the product was produced in Indonesia and the certificate of origin was issued by M/s.BMC at Malaysia stating the goods were produced or processed in Indonesia. The other documents namely, Invoice, Bill of Lading, Certificate of Origin and Phytosanitary Certificate, it is mentioned that the shipment is made from Indonesia to India. Therefore, it is submitted by the respondent that the product has been manufactured, packed and labelled in Indonesia, but however, the packing does not give the name and address of the manufacturer in Indonesia nor any of the documents produced by the petitioner including the import documents does not furnish the details. The label affixed on the bag states that M/s.BMC, Malaysia, is a 'supplier' and they are not a 'manufacturer' or 'packer'. Therefore, it is submitted that the address of the manufacturer could not be verified from the documents submitted online and accordingly, the impugned rejection report was submitted. With regard to the contention raised by referring to

Section 3(1)(zd), it is submitted that at no point of time, the petitioner claimed himself to be the "manufacturer" nor "packer", but his claim was only as a supplier. Therefore, it is submitted that the interpretation given by the petitioner is erroneous. By referring to the decision of the Calcutta High Court in the case of FSSAI vs. Heartland Trading Company Pvt., Ltd., & Ors., in MAT No.1252 of 2014, dated 22.09.2014, it is submitted that in the said decision, it has been held that labelling deficiencies are not permissible to be rectified under the Act and cannot be rectified in exercise of Writ Jurisdiction under Article 226 of the Constitution and what the law does not permit to be done directly, cannot be permitted to be done indirectly.

8. With regard to the decision of this Court and the decision of the High Court of Delhi, referred by the learned counsel for the petitioner, it is submitted that the facts are entirely different and both decisions have been challenged by filing appeal before the Hon'ble Division Bench. Further, it is reiterated that the definition under Section 3(zd) does not support the contention of the petitioner, since the petitioner has admitted to be a "supplier" and not a "manufacturer". Further, it is submitted that the product imported is to be used for manufacturer of chocolates, which would be consumed by children and even as per the bill of lading, the shelf life of the product will expire in May 2015 and from the representation given by the petitioner, they would take 3 to 6 months to exhaust the full quantity in their manufacturing process. Therefore, by then the product shelf life would have expired and therefore, the question of permitting import does not arise. By referring to the legal notice, dated 31.10.2014, issued by the petitioner to the respondents, it is submitted that the petitioner has admitted that M/s.BMC are only "suppliers" and without placing the correct facts and without satisfying the labelling requirements, the petitioner attempts to find fault with the department to state it is a bad interpretation of the statutory Regulations. Further, it is submitted that the guidelines was issued in 2012 and the requirements mentioned therein are minimum labelling requirements and even going by the said guideline, the petitioner's label does not disclose the name of the manufacturer except to state it is the product of the Indonesia. With the regard to the imports done through other Ports in 2012 and 2013, during the period when the Regulations came into force, those imports have been done, however the facts are not very clear and the petitioner cannot take advantage of any illegality in the past. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Centre for Public Interest Litigation vs. Union of India & Ors., in W.P.(C).No.681 of 2004. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Badshah vs. Urmila Badshah Godse & Anr., reporte din (2014) 1 SCC 188, with regard to the manner in which the Rules and Regulations have to be interpreted and as to why the Rule of

purposive construction/interpretation should be followed.

9. Heard the learned counsels appearing on either side and perused the materials placed on record.

10. The dispute involved in this Writ Petition lies in a very narrow compass. The petitioner is an importer of "Desiccated Coconut Fine Grade", supplied M/s.BMC, Malaysia. The petitioner does not dispute the fact that the M/s.BMC is the "supplier" and the supplier is at Malaysia, it states that the Country of Origin of the product is Indonesia. However, there is no certificate produced to show the name of the manufacturer at Indonesia through whom the supplier M/s.BMC at Malaysia had procured the product. From the Bill of Lading, it is seen that the consignment was loaded at Indonesia with the Port of discharge at Chennai. The bill of lading does not mention the name of the 'manufacturer' as the 'shipper', but the name of M/s.BMC, the "supplier" has been shown as the 'shipper'. Here again, the name of the manufacturer or other details concerning the manufacturer has not been disclosed. The Certificate of Origin shows the name of the consignor as M/s.BMC, Malaysia and the consignee, the petitioner. Though the Port of loading has been shown as Indonesia and a declaration has been given by the exporter/consignor (M/s.BMC) that the products were produced and processed in Indonesia, the details of the producer or the processor at Indonesia has not been furnished. When the petitioner filed Bill of Entry for home consumption, the details regarding the manufacturer were not furnished. Based on these records, request was made to the fourth respondent, the competent authority under the Act, seeking clearance for the imported consignment. The total quantity of the product imported is 12.5 tones in 500 bags each weighing 25kgs.

11. The foremost requirement to be fulfilled before drawing of samples is to examine as to whether the consignment satisfies the requirement under the provisions of the Act and the Regulations more particularly, Section 25 of the Act read with Regulation 2.2.2:6 or (6), which deals with the labelling requirement. The statute empowers the authorised officer functioning under the Act to refuse to draw samples if the labelling requirement is not satisfied.

12. As rightly submitted by the learned counsel appearing for the respondent that in exercise of power under Article 226 of the Constitution, this Court cannot direct the Authority to do a particular act, which the statute does not authorised him to do. The scope of judicial review will be restricted to the decision making process whether there was any arbitrariness in the manner in which the Authorised Officer has acted whether he has disregarded the statutory provisions or failed to follow the mandatory procedure or the conduct/action of the Officers does not satisfy the Wednesbury principles or reasonableness.

13. After elaborately hearing the arguments by the learned counsel for the petitioner and carefully perusing the averments made in the affidavit as well as in the representations and the legal notice except for a faint plea that there is violation of principles of natural justice, the petitioner has not made a specific allegation as to how they were put to a disadvantage or as to how the Authorised Officer failed to adhere to the procedure under the Regulations.

14. As noticed above, the applications submitted by the petitioner for clearance was considered and inspection was conducted on 04.07.2014, at the container freight station. Before drawing samples, the Act empowers authorised officer to satisfy himself as to whether the labelling requirements as provided under the Regulation are fulfilled. It is only after due satisfaction of the requirements under the Regulation, samples will be drawn.

15. As pointed out earlier, M/s.BMC is only a 'supplier' and he is not a 'manufacturer'. The supplier is not stationed in the country where the product is said to have been manufactured, except to state that the Port of loading is Indonesia, the name and address of the manufacturer has been withheld and not furnished.

16. Now it has to be seen as to what are the statutory requirements, for which we shall first consider Section 3(zd) of the Act, which defines "manufacture" to mean a person engaged in the business of manufacturing of any article of food for sale and includes any person who obtain such article from another person and packs and labels it for sale or only labels it for such purpose.

17. It is not in dispute that the M/s.BMC is not a 'manufacturer' of the food article nor the petitioner state that they obtained the food article from another person and they had packed and labelled it for sale. It was argued by the learned counsel for the petitioner that Section 3(zd) is an inclusive definition as the expression used is "includes any person" and the petitioner falls within the inclusive definition. For better clarity, the Regulations have to be seen and clause 2.2.2.(6) would be relevant, which reads as follows:-

6.Name and complete address of the manufacturer

(i) The name and complete address of the manufacturer and the manufacturing unit if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food;

(ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written

authority of some other manufacturer or company, under his or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for an on whose behalf it is manufactured or packed or bottled.

18. On a reading of the above provision, it makes it clear that the name and complete address of the manufacturer and in case the manufacturer is not the packer, the name and complete address of the packer are to be declared on every package of food if the article of food is manufactured or packed by a person under the written authority of the some other manufacturer under its brand name, the label shall carry the name and complete address of the manufacturing or packing unit as the case may be and also the name of complete address of the manufacturer or the company for and on whose behalf it is manufactured or packed or bottled. The consignor/exporter from Malaysia, M/s.BMC is not the 'manufacturer'. Therefore, if it is the case of the supplier that they have been authorised by the manufacturer to manufacture or pack the product, then the name of the manufacturer should have been disclosed in the packing. Mere mention that it is a product of the Indonesia does not satisfy the labelling requirement. It is not in dispute that the petitioner, supplier is not the 'manufacturer', since they have admitted that M/s.BMC is only a 'supplier'. If that be the case, the name and full details of the manufacturer was bound to be disclosed. This is a very vital requirements, since the product imported is a food product having shelf life only till May 2015. In such circumstances, no error can be attributed to the impugned rejection report issued by the respondent. This conclusion is fortified by the decision of the Hon'ble Division Bench of the Calcutta High Court in the case of Food Safety and Standards Authority of India vs., Heartland Trading Company Pvt Ltd., (supra), wherein the Hon'ble Division Bench pointed out that the purpose of labelling is not to be ascertained by any one for diluting the rigours of the regulations and importing the concept of substantial compliance therewith and 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. Further, it was pointed out that the rectification of the labelling deficiencies is not permissible under any law and cannot be ordered by the High Court in exercise of the power under Article 226 and illegal grant of NOC to any other importer for the same articles of food cannot entitle a subsequent importer to seek NOC, as an order for perpetuation of an illegality cannot be passed by the High Court under Article 226 of the Constitution of India. With the above observations, the Hon'ble Division Bench of the Calcutta High Court disagreed with the views of the Delhi and Bombay High Court in the case of United Distributors Incorporation vs., Union of India & anr., (supra), Danisco (India) Pvt. Ltd. vs. Union of India & Anr. (supra)

and Dalmia Continental Pvt., Ltd., vs. FSSAI (supra). In any event, the decisions in those cases were rendered considering the fact situation arising therefrom, since the dispute is with regard to the labelling requirement facts are very relevant to be considered first.

19. So far as the decision of this Court in the case of M/s.Foodlever India Pvt., Ltd. vs., Senior Inspecting Officer, FSSAI, (supra), the product imported was drawn compound chocolate, Singapore and the allegation was that the date of manufacture, date of expiry were not mentioned in the printed format as required under the labelling requirement. Taking into consideration the fact that the label was not affixed along with the container was one of the ground to direct samples to be drawn in the said case. The fact of the said case was clearly distinguishable with that of the facts of the present case and therefore, the decision does not render any assistance to the case of the petitioner.

20. The decision in the case of M/s.Avenue Impex vs., The Commissioner of Customs (Seaport-Import) & Ors., (supra) directions were issued to release the goods by following an order passed by the CESTAT in another connected appeal and goods were released subject to the condition that the importer undertakes to provide the necessary details to comply with the local laws at the time of repacking and the relabelling of the case in the Customs bonded area before the necessary Customs clearance is given. The said decision is of little assistance to the case of the petitioner, since even in this Writ Petition the petitioner has failed to disclose the name of the manufacturer, but would seek to interpret the definition of manufacturer under Section 3(zd) to be an inclusive definition and the petitioner's supplier would also fall within the definition of manufacturer. The said contention deserves to be out rightly rejected, since even as per the consignor M/s.BMC he is only a "supplier" and he has not claimed to be a manufacturer, therefore, the impugned consignment does not satisfy the labelling requirement as provided under the Regulations and no grounds have been made to interfere with the impugned rejection report. Further, as per the bill of lading the life of the product will expire by May 2015 after which it cannot be used for human consumption, since it is a food product to be used for manufacture of Chocolates mostly consumed by children. The petitioner in their representation dated 23.07.2014, addressed to the fourth respondent have admitted that they would require 3 to 6 months to exhaust the total quantity of 12.5 tones imported by them. Obviously beyond May 2015, the petitioner cannot use the imported product because of the expiry date. Therefore, no grounds have been made out for directing the release of the goods or for passing any conditional order. The reference to two bill of entries filed by the petitioner for import the similar products through other Port in 2012-13 cannot advance the case of the petitioner as those imports were immediately after the notification

was issued notifying the Regulation and there was a circular which was issued. Therefore, those documents are of little avail.

21. In the result, the Writ Petition fails and it is dismissed. However if a requests is made by the petitioner for re-export, the same shall be considered by the fifth respondent in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn.

To

- 1.The Principal Secretary, Union of India,  
FSSAI,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kotla Road,  
New Delhi - 110 002.
- 2.The Director (Imports),  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kotla Road,  
New Delhi - 110002.
- 3.The Assistant Director (Imports),  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
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- 4.The Deputy Director/Authorised Officer,  
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- 5.The Deputy Commissioner,  
(Customs-Docks) Seaport,  
Customs House, Rajaji Salai,  
Chennai - 600 001.

1 cc to Mr.Dr.M.Devandiran ,Advocate, SR.No.16768/15

1 cc to Mr.K.Surendranath ,Advocate, SR.No.16809

W.P. No.5285 of 2015

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