* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th July, 2015

% **Date of Decision: 15th July, 2015**

\+ W.P.(C) 1998/2015

PANCHSHIL INFRASTRUCTURE HOLDINGS PVT. LTD. ..... Petitioner

Through: Mr. Alok Yadav, Adv.

versus

UOI & ORS. ..... Respondents

Through: Ms. Bharti Raju, CGSC

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is a petition under Article 226 of the Constitution of India to direct the respondents to issue a No Objection Certificate (hereinafter referred to as 'NOC') to allow clearance of duty paid on perishable goods- Rostaa processed triangle cheese that has been lying in the warehouse for more than four months.

2. Succinctly stating the facts of the present case leading to the present petition are that the petitioner is a company registered under the Indian Companies Act, 1956 and has its registered office at Tech Park One, Tower 'E', S. No. 191/A/2A/1/2 Yerwada, Pune. The

petitioner is engaged in the hospitality business. In 2014, the petitioner in the course of its business sought to import Rostaa Processed Triangles Cheese (hereinafter referred to as 'subject goods') – ITC (HS) 04063000, from Egypt into India. In this regard, the petitioner purchased the subject goods from Al Nour for Dairy Industries, Egypt, who is engaged in the business of producing processed cheese under the supervision of the veterinary and exports the processed products to other countries. Section 3A of the Livestock Importation Act provides that the central government may by notification restrict the import of any live stock product which may affect the human or animal health. The term 'Livestock Products' has been defined to *inter alia* include milk and milk products. Vide notification S.O. 655 (E) dated July 7, 2001, the Department of Animal Husbandry, Dairying and Fisheries (hereinafter referred to as 'DADF') has imposed certain restrictions on import of *inter alia* milk and milk products. Pursuant to the notification, import of milk and milk products is allowed only against a sanitary import permit issued by the DADF and after following the applicable procedure. A similar condition has also been provided in the Notification No. 18(RE-2013)/2009-14 dated June 11, 2013 issued by the Directorate General of Foreign Trade. The Livestock Import Notification also specifies the procedure pursuant to which the sanitary import permit would be issued by DADF.

3. The petitioner in due compliance with the applicable laws applied for a certificate to the DADF for import of the subject goods and filed an application describing the product sought to be imported and mentioned that the livestock product would be produced in Egypt.

In response, DADF, Ministry of Agriculture issued Permit Letter No. 0697/2014/DADF dated 26.05.2014 (hereinafter referred to as 'Import Permit') and allowed the petitioner to import the subject goods from Egypt into India. The Import Permit required that the consignment should be accompanied by an official sanitary certificate issued by the authorized officer from the country of origin i.e. Egypt. The said official certificate was also required to include a declaration *inter alia* stating "may be allowed as per sanitary conditions given in the attached sanitary certificate for import of milk and milk products into India. On 10.09.2014, the consignment of the subject goods arrived at the Nhava Sheva Port. The consignment was accompanied with all relevant documents including the sanitary certificate dated 05.08.2014 issued by Ministry of Agriculture and Land Reclamation General Organization for Veterinary Services, under Secretary of State for Veterinary Affair, Veterinary Quarantine Department (Tenth of Ramadan City) by an authorized veterinarian – Veterinary Quarantine Department Manager. On 25.09.2014, the authorized officers of Food Safety and Standards Authority of India (hereinafter referred to as 'FSSAI') undertook the necessary sampling and physical verification of the shipment. The concerned officers found the subject goods "Fit for use" and in conformity to the applicable standards post the physical and technical examination. Consequently, FSSAI issued the NOC. In the said certificate, FSSAI clearly specified as under:

> "This office has no objections if this consignment is released from this port as the result(s) of the analysis shows that the samples conform to the specifications

> prescribed under the Food Safety and Standards Act, 2006 and the regulations made thereunder."

4. Since the NOC was issued by FSSAI, all relevant information that was required to be provided as per the applicable provisions of law was provided and all due formalities were fulfilled, the petitioner believed that the subject goods would be cleared into India for home consumption. Consequently, the petitioner paid the applicable Customs Duty of Rs.7,28,081/- on 25.09.2014. On 10.11.2014, the representative of the petitioner approached the office of respondent No.4 for issuance of the NOC. However, the petitioner was surprised when the concerned officer expressed inability to release the subject goods consignment and issue a NOC for want of Sanitary Certificate in the prescribed format. The representatives of the petitioner deliberated with the concerned officers and highlighted the fact that the subject goods are perishable in nature and the raw material that was used by the Egyptian exporter was of Indian origin. Relevant documents in this regard were also produced, however, the concerned officer still refused to issue the NOC. The petitioner even wrote a letter dated 28.11.2014 with the offices of respondent No.2, 3 and 4 reiterating the fact that all details that were required in the prescribed format were present in the sanitary certificate issued by the veterinary authority in Egypt. After repeated meetings/discussions and follow ups with respondent No.4 on numerous occasions, the representative of the petitioner was informed that the DADF had sought assistance of the Indian Embassy in Egypt to seek the sanitary certificate in the requisite form from the authorized

veterinarian in Egypt. On 07.01.2015, the representative of the petitioner was informed that the counselor of the Indian Embassy, Cairo responded to the email sent by the office of respondent No.4. In reply, the counselor has clearly stated that the General Organization for Veterinary Services has confirmed that the samples of the subject goods from the exporter were tested and found to be fit and no issues were found in the samples that were tested. At present, duty paid subject goods are lying in a bonded warehouse as the same cannot be cleared for home consumption for want of NOC, despite the subject goods complying with the safety and standard requirements under all applicable laws. Hence the petitioner has preferred the present petition.

5. Learned counsel for the petitioner contended that the Livestock Import Notification neither prescribes a specific requirement for obtaining a sanitary certificate from the exporting country nor sets out the format of any such sanitary certificate. It was not a requirement under the import permit that the sanitary certificate be issued in the format of the sanitary certificate attached to the import permit. The sanitary certificate issued by the Egyptian authorities substantially conformed to the requirements in the sanitary certificate attached to the import permit. FSSAI is the foremost authority in the country in matters relating to standards of food products. Section 25(2) of the FSSAI Act provides that the central government shall, while prohibiting, restricting or otherwise regulating import of article of food under the Foreign Trade (Development and Regulation) Act, 1992, follow the standards laid down by the Food Authority under the provisions of this Act and the rules and regulations made thereunder.

The fact that a NOC has been issued by FSSAI clearly shows that the subject goods complied with all safety and quality standards under Indian law and were fit for use. Withholding of a NOC merely on the ground that the sanitary certificate issued by the authorities in Egypt is not in the format of the sanitary certificate attached to the Import Permit is unfounded in the statute and is *ex facie* arbitrary. The only requirement under the Import Permit is that the sanitary certificate should contain a declaration that the subject goods 'may be allowed' as per the sanitary conditions contained in the sanitary certificate attached to the Import Permit. Therefore, no question arises as to issuance of the sanitary certificate in a particular format.

6. It is further contended by the learned counsel for the petitioner that the sanitary certificate clearly certifies that the subject goods were produced under thermal conditions using UHT technology at 142 degree Celsius and no fresh milk was used in its preparation; the subject goods were sampled and found to be free from diseases and fit for human consumptions; the imported subject goods (including skimmed milk powder of Indian origin) are free from diseases and the ingredients were cleared for consumption in Egypt only after analysis at the port of arrival. It was confirmed that the milk powder from India had been examined and found fit for preparation of the cheese. The sanitary certificate was also accompanied by a health certificate issued with respect to the factory where the subject goods were produced. Therefore, it is evident that the subject goods met the requirements set out in the Import Permit read with the sanitary certificate. Since the subject goods were produced with powdered milk, therefore the

aforesaid certifications could not be given verbatim by the authorized Veterinarian as the sanitary certifications in the prescribed format only make reference to liquid milk. The correspondence between the DADF and the Counselor of the Indian Embassy in Cairo, Egypt also shows that the Egyptian government has reiterated that the subject goods are fit for use.

7. It was also contended by the learned counsel for the petitioner that under the applicable regulation, the petitioner was not required to disclose anywhere the source of raw materials that were used in the preparation of the subject goods. He has placed reliance upon Form B-Application for permit to import Live-stock Products for Trading/Marketing attached to Notification S.O 655 (E) dated 07.07.2001. No local fresh milk from Egypt was used in preparation of the subject goods and that powdered milk exported from India was used in preparation of the same. He has placed reliance upon letter dated 28.11.2014 (affixed as Annexure P-8) to the present writ petition. As per the guidelines of the veterinary certificate for import of milk and milk products into India one of the general conditions provides "If milk product contains animal rennet, it should be labeled." Thus, given that there was no rennet present in the milk/milk products, no such declaration is required. Additionally, in line with the applicable laws a green mark has been indicated on the packaging of the subject goods which is indicative of the fact that the subject goods are purely vegetarian. The permit was issued on 26.05.2014 vide Permit Letter No. 0697/2014/DADF and the shipment containing subject goods arrived at the Nhava Sheva Port, Mumbai on 10.09.2014, therefore the

recent notification i.e. Notification S.O. 2666(E) dated 17.10.2014 supersedes Notification S.O. 655 (E) dated 07.07.2001. In any event the recent notification does not prescribe any additional conditions that have not been fulfilled in the instant case.

8. It was lastly contended by the learned counsel for the petitioner that the nature of goods is such that if not released, will become unfit for consumption leading to irreparable loss to the petitioner, therefore the respondents are bound to immediately issue the NOC.

9. *Per Contra*, learned counsel for respondents contended that import of livestock products are regulated under Section 3A of the Livestock Importation Act, 1898. Under this Act an importer of livestock products requires sanitary import permit (hereinafter referred to as 'SIP') issued by the department of animal husbandry, dairying and fisheries. In this regard department had issued notification vide S.O. 655 (E) dated 07.07.2001 which has been further amended vide S.O. 2666 (E) dated 17.10.2014. The SIP needs to be issued by the official veterinarian of the exporting country complying with India's requirements listed in the sanitary certificate attached with the SIP. Egypt is a beef eating country; therefore, there is every possibility of using animal rennet in the coagulation process of cheese. The animal rennet clause has not been certified which is a violation of FSSAI regulation also. The Department of animal husbandry dairying and fisheries (for short 'the department') took the matter with Indian Embassy in Cairo with the request to approach the Egyptian veterinary authority to verify India's health certificate so that the consignment can

be released. The Indian embassy in Cairo has forwarded a letter of Dr. Sayed Gad EL-Mowla, Head of Egyptian Veterinary Quarantine (for short 'GOVS') addressed to Counselor, Indian Embassy, Cairo. The Egyptian authority shall not issue the health certificate as per Indian requirement for this particular consignment. However, the department asked the firm to submit the test report and animal rennet certification so that the department can further examine and take a view. The petitioner never asked the Egyptian authorities to issue the health certificate as per India's requirement.

10. It was further contended by the learned counsel for the respondents that in the notification S.O. 2666 (E) dated 17.10.2014, which has superseded notification S.O. 655 (E) dated 07.07.2001, the procedure for import of livestock products has been laid down. Milk and milk products are considered as vegetarian in India. Hence, the cheese containing the animal rennet needs to be labeled. The use of animal rennet is not permitted for manufacturing of cheese in India. The animal rennet is sourced from the stomach of calf after slaughtering the same which is banned in India. Similarly a certificate is required that the milk products have never been fed with feeds produced from internal organs, blood meals and tissues of ruminant origin as animal origin feed is not fed to the milking animals in India. Sanitary certification is also required by the official veterinarian since the conditions are fulfilled based on the practice adopted by the manufacturer, raw milk produced and countries control on determining the various pesticides, veterinary drugs and mycotoxin levels in the animal product. Therefore, the conditions need to be certified as the

other ingredients viz. cheddar cheese, butter, milk protein concentrate have been imported from other countries by the manufacturer in Egypt in addition to skimmed milk powder from India. Also, there is a chance of contamination during the manufacturing process and at the packaging time. Testing of products at the source with regard to veterinary drugs, mycotoxin, performed bacterial toxin of Staphylococcusaureus, Bacillus cereus, Clostridiumperfringes and Clostridium botulinum are required as per the Codex standard requirement as these bacteria affect human health. The FSSAI is mandated for import clearance from the domestic standard requirement after the products entered into India. Prior to the shipment from the foreign port, the consignment has to be certified by the exporting country meeting the sanitary requirement prescribed in the SIP stating that the product conforms to India's requirement. Hence, the requirement of SIP and the requirement of FSSAI are different and separate. To clear the imported product of animal origin, clearance from both the animal quarantine and FSSAI are required.

11. It was also contended by the learned counsel for the respondents that the FSSAI Act does not supersede the Livestock Importation Act, 1898. The FSSAI is mandated for import clearance from the domestic standard requirement after the products entered into India. The FSSAI Act does not supersede the Livestock Importation Act. FSSAI is mandated for the import clearance from the domestic standard requirement after the products entered in India. Prior to the shipment from the foreign port, the consignment has to be certified by the exporting country meeting the sanitary requirements prescribed in the

SIP stating that the product confirms to India's requirement. The petitioner is in violation of Section 25(1) (ii) & 25 (1) (iii) of the FSSAI Act which states,

> "No person shall import to India any article of food for the import of which a licence is required under any Act or Rules or Regulations, except in accordance with the conditions of the licence."

12. Learned counsel for the respondent further contended that the goods imported by the petitioner are not accompanied by the prescribed health certificate of the official veterinarian of Egypt as required in SIP issued under Section 3A of the Livestock Importation Act, 1898. Hence, the quarantine officer, Mumbai has not issued No Objection which is one of the requirements for customs clearance of the goods in addition to the NOC from FSSAI. The sanitary conditions in the sanitary certificate have been evolved after following rigorous process of risk analysis by the technical experts of risk analysis committee to prevent ingress of exotic diseases through such import so as to protect the human and animal health as mandated under Livestock Importation Act, 1898. The Egyptian Health Certificate is silent on various requirements and is vague and in summary form without the necessary specifics about required certifications. The department further asked the petitioner to submit the test reports and animal rennet certification conducted by the Egyptian authority so that the department can examine and take a considerate view, but the petitioner has failed to produce the same.

13. It was lastly contended by the learned counsel for the respondents that after exchange of communications between the officials of the two nations it has been confirmed that the Egyptian Authority will not issue the health certificate as per the Indian requirement for this particular consignment. However, in future they assured to unify the health certificate module.

14. I have heard the learned counsel for the parties and have perused the material on record.

15. The Livestock Importation Act, 1898 was enacted to make better provision for the regulation of the importation of livestock which is liable to be affected by infectious or contagious disorders. The FSSA was enacted to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

16. Therefore, these acts have been enacted for ensuring the security and precautionary measures to be ordained while importing goods into India. Before adverting to the facts of the case this court considers it important to reproduce the relevant provisions of these Acts. Section 25 of the FSSA reads as under:

> "**25. All imports of articles of food to be subject to this Act.-** (1) No person shall import into India –

(i) any unsafe or misbranded or sub-standard food or food containing extraneous matter;

(ii) any article of food for the import of which a licence is required under any Act or rules or regulations, except in accordance with the conditions of the licence; and

(iii) any article of food in contravention of any other provision of this Act or of any rule or regulation made thereunder or any other Act.

(2) The Central Government Shall, while prohibiting, restricting or otherwise regulating import of articles of food under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), follow the standards laid down by the Food Authority under the provisions of this Act and the rules and regulations made thereunder."

17. Further, Section 3A of the LiveStock Importation Act, 1898 says:

"**3A. Power to regulate importation of live-stock products.-** The Central Government may, by notification in the Official Gazette, regulate, restrict or prohibit in such manner and to such extent as it may think fit, the import into the territories to which the Act extends, of any live-stock product, which may be liable to affect human or animal health."

18. Therefore, cheese is a livestock product. As per notification S.O. 655(E) dated 07.07.2001, the import of milk and milk products is to be

allowed only against a sanitary import permit. The petitioner as per the requirement of this notification of the Ministry of Agriculture imported the subject goods into India with a SIP and the said shipment arrived into India on 10.09.2014, which is prior to the notification S.O. 2666(E) was introduced on 17.10.2014. The notification S.O. 2666(E) specifically provides:

> "**S.O. 2666 (E).-** In exercise of the powers conferred by clause (d) of section 2 and section 3A of the Live-stock Importation Act, 1898 (9 of 1898) and in supersession of notification S.O. 655 (E) dated the 07th July, 2001, except as respects things done or omitted to be done before such supersession….."

Therefore, the aforementioned notification S.O. 2666 (E) itself provides a remedy to the petitioner in terms of applicability of the provision of S.O. 655 (E) over its subject goods. Since the consignment already arrived before the notification S.O. 2666 (E) came into force, the argument that the petitioner's subject goods satisfy the requirements as prescribed under S.O. 655 (E) find favour with this Court.

19. In the communication received from the concerned Veterinary Authority, Egypt (affixed at page 118 of the paper book), it has been stated *interalia* that:

> "….The company regularly examined and samples from the products sent regularly to lab examination…."

Further, the packaging of the subject goods (affixed at annexure P-1 at page 180), show the green mark, which as per the petitioner reflective of the subject goods being vegetarian. The term 'Vegetarian' as per the Food Safety and Standards (Packaging And Labelling) Regulations, 2011, has been defined as:

> "1.2: Definitions— 1.2.1: In these regulations unless the context otherwise requires:
>
> xxx xxx xxx
>
> 7. "Non- Vegetarian Food" means an article of food which contains whole or part of any animal including birds, fresh water or marine animals or eggs or products of any animal origin, but excluding milk or milk products, as an ingredient;
>
> 11. "Vegetarian Food" means any article of Food other than Non- Vegetarian Food as defined in regulation 1.2.1 (7).
>
> xxx xxx xxx"

20. The ratio laid down by the Customs, Excise And Service Tax Appellate Tribunal South Zonal Bench at Chennai in '**Customs (Imports) v. Kalra Exim Pvt. Ltd.'**, *2013 (200) ECR 113 (Tri.-Chennai)* is that:

> "Goods in question shall be liable for confiscation if it does not meet labeling requirement laid down by provision of statutes."

However, even though the labeling of the subject goods has been so completed as per the necessary requirements, the green symbol indicative of the product being vegetarian has been affixed on the product by the concerned Egyptian authorities and has not been labeled in India. The petitioner has not been able to convince this Court so as to whether the said certification meets the Indian vegetarian requirements and standards. Therefore, the submission of the respondents that the conditions need to be certified as the other ingredients viz. cheddar cheese, butter, milk protein concentrate have been imported from other countries by the manufacturer in Egypt in addition to skimmed milk powder from India, finds favour with this Court.

21. It has been further contended by the learned counsel for the respondents that after exchange of communications between the officials of the two nations, it has been confirmed that the Egyptian Authority will not issue the health certificate as per the Indian requirement for this particular consignment. However this does not leave the petitioner with any alternative or efficacious remedy.

22. Even if this court agrees with the arguments presented by the respondents the sight of the fact cannot be lost that the petitioner has made a substantial amount of investment in the subject goods which will in turn heavily impact the petitioner financially and would lead to wastage of the subject goods. However, such goods cannot be allowed inside the country for the prime reason that they may or may not contain animal rennet that might impact the spiritual vegetarian beliefs and sentiments strictly adhered to in our country. Therefore, if this Court does not reach a conclusion that draws a line between prayers of both the parties, the purpose of ends of justice would not be served which is what the law seeks to achieve. A pragmatic approach would meet the ends of justice and provide the petitioner with an efficacious remedy as well as settle the dispute of the respondents.

23. It is a contention of the respondents that the concerned department has asked the petitioner to submit the test reports and animal rennet certification conducted by the Egyptian authority so that the department can examine and take a considerate view, but the petitioner has failed to oblige. Since it has been confirmed now that the Egyptian authorities will not issue the health certificate as per the Indian requirement for this particular consignment, this court is of the view that the testing of the samples has to be conducted in India. There is no justifiable reason so as to understand why any deficiency on the part of the Indian importer/petitioner cannot be made up by the petitioner itself in India. The object of this entire process is to satisfy the respondents/concerned authority that no animal rennet has been used in the process of creation of the subject goods. In order to issue a NOC, the respondents must be satisfied so as to the veracity of the declaration on the label and the requisite tests need to be carried out in this regard.

24. Therefore, this court gives the liberty to the petitioner to allow the Central Government to take requisite samples of the subject goods for conducting the necessary tests or if the petitioner wants to get the samples tested from the Central Government authorized and approved laboratories; he may be entitled to do so. The results of such samples are to be provided to respondent No.4 who may then take a decision whether the products are entitled to be released or not based upon such samples.

25. It is made clear that this entire process has to be expedited by the concerned government departments and be completed maximum within a period of one month.

26. With the aforesaid observations, the petition stands disposed of.

(VED PRAKASH VAISH)
JUDGE

JULY 15th, 2015
hs