

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.11544 of 2016

and

W.M.P.No.9970 of 2016

M/s.Sulthana Trading Corporation,
rep. by its Proprietrix
K.C.Nisha Petitioner

Vs.

- 1.The Commissioner of Customs,
Madurai - Harbour Express Road,
Periyanayagapuram,
Thoothukudi-628 008.
- 2.The Authorized Officer,
Food Safety and Standards Authority
of India,
Ministry of Health and Family Welfare,
Central Documentation Complex,
(South Wing), 2nd Floor,
Chennai Port Trust,
Rajaji Salai, Chennai-1. Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the second respondent to draw fresh samples from the consignment covered under Bill of Entry bearing B.E.No.3423342 dated 30.11.2015 on the file of the first respondent and to forward the samples to the Notified Laboratory and to get their report and forward the same to the first respondent for the purpose of clearance of the perishable goods imported by the petitioner.

For Petitioner : Mr.M.Abdul Nazeer

For Respondents : Mr.R.A.S.Senthil Vel,
Addl. Govt. Pleader.

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the second respondent to draw fresh samples from the consignment covered under Bill of Entry bearing B.E.No.3423342 dated 30.11.2015 on the file of the first respondent and to forward the samples to the Notified Laboratory and to get their report and forward the same to the first respondent for the purpose of clearance of the perishable goods imported by the petitioner.

3. The case of the petitioner, in brief, is as follows:-

(a) The petitioner has been importing Wet Dates for the past several years from Gulf countries. They have been importing the Wet Dates in bulk quantities and after customs clearance, the Dates are being sold in the wholesale market at Kerala and they are being repacked and sold in India. The petitioner is carrying on their business by duly obtaining the license under the FSS Act, 2006 from the Government of India, Food Safety and Standard Authority of India.

(b) The petitioner wants to import High quality Dates and Regular varieties of Dates and hence, they approached one Royal Link International LLC, Dubai, a foreign supplier, who in turn, imports Wet Dates from Iraq and Iran and re-export them to India and other countries. After being satisfied about the quality and fresh nature of crops, they placed orders for 56 Metric tonnes of Iraqi Brand : IBN JAWAHAR brand high quality Wet Dates of Iraq origin, packed in 10 kgs cartons containing 5600 carton boxes. These 5600 carton boxes were stuffed in two containers bearing Nos.ATKU 9601120 and ***CAXU8081532**. The petitioner has engaged the services of CHA viz., M/s.Accord Logistics (India) Pvt. Ltd., for the clearance of the goods. They were consigned from the port of Jabel Ali / Dubai to the port of Tuticorin / India by vessel 'Rajiv Gandhi'. When the above said consignments arrived at Tuticorin Port, the Bill of entry No.328046, was ordered to be examined by Examination Order dated 17.11.2015 through their Customs House Agent.

(c) The petitioner has also imported regular variety of Wet Dates packed in PP bags in 1500 bags having a weight of 54.28 M.Ton. The above Dates were supplied by foreign supplier Royal Link International LLC, Dubai. The above Dates were brought in two containers viz., (i) KCSU 2066899 containing 750 bags having a net weight of 27490 kgs and (ii) container bearing No.KCSU

2618369 containing 750 bags having a net weight of 26790 kgs and the total gross weight is 54,280 kgs. They were brought by vessel named SSL BHARATH and the port of loading is Jabal Ali / Dubai and the port of import is Tuticorin-India. The above consignment was shipped on Board on 15.11.2015. The above second consignment of regular variety of wet Dates Cargo reached Tuticorin Port and the petitioner filed Bill of Entry BE 3423342 dated 30.11.2015 through their Customs House Agent for clearance.

(d) The Customs authorities issued examination order dated 30.11.2015 for inspecting the container and to verify the marks and numbers. They have also directed to get the certificate from FSSAI amongst other formalities for clearing the said cargo. The above goods were imported by the foreign supplier viz., Royal Link International LLC from Iraq and when they re-exported the said Dates to India, the Dubai Government issued Phyto Sanitary certificate for re-export from Dubai to India. The petitioner filed the Phyto Sanitary certificate for re-export issued by Ministry of Environment and Water, United Arab Emirates and the certificate of Origin issued by Dubai Chamber, Bill of Lading, packing List and Commercial Invoice. The above Dates are of fresh crops.

(e) The petitioner also sent a letter dated 19.12.2015 to the Authorized Officer, FSSAI, requesting them for import clearance of the Dates after taking the sample and sending them to laboratory test and to forward their report. The FSSAI have issued a rejection report dated 1.1.2016 on the ground that the production date declared on the packages is 09/2014 and expiry date declared is 3/2016 and shelf life is less than 60%. The goods are of recent crops and the foreign supplier has not followed the packing standards, though the crops are of fresh in nature. The laboratory test will prove the fresh nature of the Wet Dates. They are all agricultural products and the Phyto Sanitary Certificate issued by the Dubai Government will prove that it is fit for human consumption. Therefore, it is just and necessary to take the fresh samples from the consignment cargo and send the same for laboratory test.

(f) The second respondent failed to examine the goods properly and they have not sent the goods for laboratory test to find out the fitness of the Dates for human consumption. In this regard, the petitioner sent a detailed representation dated 5.3.2016 to the authorized officer, FSSAI, Chennai, the second respondent herein. But, the same has not been considered so far by the second respondent. Due to the inaction on the part of the second respondent, the petitioner has to pay huge amount towards demurrage charges for the above said two containers.

(g) The petitioner has also brought to the notice of the second respondent that they are not familiar with FSSAI label

Standards as the Customs have instructed to get FSSAI certificate only from November, 2015 and therefore, the suppliers have not followed the label standards. Unless the certificate is given by the second respondent, they will not be cleared. Hence, left with no other alternative, the petitioner has come up with the present writ petition seeking a direction to the second respondent to draw fresh samples from the consignment covered under Bill of Entry bearing B.E.No.3423342 dated 30.11.2015 on the file of the first respondent and to forward the samples to the Notified Laboratory and to get their report and forward the same to the first respondent for the purpose of clearance of the perishable goods imported by the petitioner.

4. It is the grievance of the petitioner that they have informed the second respondent that they are not familiar with the FSSAI Label Standards, as the Customs have instructed to get FSSAI Certificate only from November 2015, and therefore, the suppliers have not followed the Label Standards. The petitioner requested the second respondent to collect the samples and forward the same to Laboratory for testing. The petitioner further states that packing lapse is only curable defect. As the crops are very fresh and new crops, the wet Dates will be fit for human consumption and due to scarcity of PP bags, the foreign supplier might have packed them in old bags and it is only an agricultural produce. Already, the Ministry of Environment and Water, Dubai gave Phyto Sanitary Certificate for re-export and again, on arrival of the said Consignment, the Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation, Directorate of Plant Protection, Quarantine and Storage, examined and recommended for release of the Consignment. Unless the samples from the above two Containers, namely ***KCSU2066899** and **KCSU2618369** are sent for Laboratory Test, they will not be cleared. In spite of the petitioner's request on 5.3.2016 for drawing the samples and to send them for Lab Test, the second respondent has not taken action. Since the petitioner has been incurring demurrage charges and as the goods imported, namely, Dates, being agricultural products, are perishable in nature, the petitioner is before this court with the above prayer.

5. Learned counsel appearing for the petitioner submitted that the authorities of the Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India, inspected the goods and issued Certificate recommending release of the goods and only thereafter, the petitioner requested the second respondent to send the samples for Laboratory analysis. But the said request has not been considered by the second respondent.

6. Per contra, learned Additional Government Pleader appearing for the second respondent submitted that the goods were manufactured long back and according to them, it may not be suitable for human consumption.

7. On the other hand, learned counsel appearing for the petitioner submitted that without any laboratory test, by mere visual examination, it cannot be stated that the goods are unfit for human consumption.

8. Considering the facts and circumstances of the case and considering the submissions made on either side, without going into the merits of the claim made by the petitioner, the petitioner is directed to submit a fresh representation to the second respondent, for the above claim, along with a copy of this order and shall produce all the relevant documents, including the Origin Certificate to the authorities for consideration, within a period of one week from the date of receipt of a copy of this order. On receipt of such a representation, the second respondent is directed to draw the samples from the Consignment(s) /goods / Containers in question and forward the same to the Notified Laboratory for their report, within a period of one week thereafter. The Notified Laboratory is directed to submit a report to the concerned authority within a period of one week thereafter. After receipt of the report to be given by the Laboratory Authorities, the respondents are directed to consider the above claim of the petitioner and pass appropriate orders, on merits and in accordance with law and also by taking note of the recommendations already made by the Government of India and dispose of the said representation, within a period of two weeks thereafter, in respect of the release of the Consignment(s) / goods / Containers, namely ***KCSU2066899 and KCSU2618369**, forming part of the Consignment filed under Bill of Entry bearing B.E.No.3423342, dated 30.11.2015 on the file of the first respondent.

9. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, miscellaneous petition is closed.

sbi

Sd/-
Asst.Registrar

***Amendment order to be
issued as per the order
of this Court dated 21/4/2016 and
made herein**

-s/d-

**Assistant Registrar (CS VI)
dt:28/04/2016**

/true copy/

Sub Asst. Registrar

To

- 1.The Commissioner of Customs, **(To be Substituted to the order
Madurai - Harbour Express Road, (already despatched 01/04/2016)
Periyanayagapuram,
Thoothukudi-628 008.**
- 2.The Authorized Officer,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
Central Documentation Complex,
(South Wing), 2nd Floor,
Chennai Port Trust,
Rajaji Salai, Chennai-1.

+1 cc to Mr.M.Abdul Nazeer Advocate sr.24796
+1 cc to Mr.H.Yasmin Ali Advocate sr.24798

KR/31/3/16
aa28/04/2016

W.P.No.11544 of 2016