

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21791 of 2016

M.Mohamed Hanifa,
Proprietor
Nisha Enterprises.

...Petitioner

Vs.

- 1.Union of India,
Rep. By its Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
- 2.The Commissioner of Customs (Import),
Office of the Commissioner of Customs,
Customs House,
Chennai.
- 3.The Commissioner of Food Safety,
5th Floor, DMS Buildings,
359, Anna Salai,
Teynampet, Chennai - 6.
- 4.The Authorised Officer,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
II Floor, Central Documentation Complex
(South Wing),
Chennai Port Trust Building, Chennai - 1.
(impleaded as per order dt.28.06.2016 passed in
WMP.No.18944/16 in W.P.No.21791/16)
- 5.The Director (Imports),
Food Safety and Standards Authority of India,
FDA Bhavan, Kotle Road,
New Delhi - 110 002.Respondents
(suo-motu impleaded today as 5th respondent)

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of mandamus to direct the respondents 3 and 4 to send the samples of MILO products from the consignment ID-ICA20160500021167 bearing product code 19019010 and covered by Bill of Entry No.5177554 and to issue NOC for the same for local consumption based on the test results of the samples.

For Petitioner : Mr.T.Saikrishnan
for M/s.Sai Bharath and Ilan

For R1 : Mr.Su.Srinivasan, Assit.
Solicitor General

For R2 : Mr.A.P.Srinivas, SPC
For R3 & R4 : Ms.H.Yasmeen Ali

ORDER

Heard Mr.T.Saikrishnan, learned counsel for the petitioner and Mr.Su.Srinivasan, learned Assistant Solicitor General for the first respondent and Mr.A.P.Srinivas, learned standing counsel for the second respondent and Ms.H.Yasmeen Ali, learned counsel for the respondents 3 and 4, and with their consent, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition seeking for issuance of a writ of mandamus to direct the respondents 3 and 4 to send the samples of "MILO" products from the consignment ID No.ICA20160500021167 bearing product Code No.19019010 and covered by the Bill of Entry No.5177554 and to issue No Objection Certificate for the same for local consumption.

3. Though the petitioner sought for only a writ of mandamus to effect the drawl of samples, by then, the respondents 2 and 3 have examined the consignment and a rejection report dated 31.05.2016 has been issued and the rejection report states as follows:

"Remark: 1) Date of Manufacture/Packing is not mentioned as required under Clause 2.2.2:9 of FSS (Packaging and Labelling) Regulations, 2011. Hence, the balance shelf life of the product could not be ascertained 2) Name and complete address of the manufacturer/packer is not mentioned as required under Clause 2.2.2:6. (i) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Hence, the product is misbranded as per Section 3(1)(zf)(C)(i) of FSS Act, 2006. As per Section 25(1)(iii) of FSS Act, 2006, "No person shall import into India any article of food in contravention of the provisions of this Act or of any rule or regulation made thereunder."

4. In terms of the above report, two issues have been pointed out for rejecting the food import; one is relating to date of manufacture/packing and the other one is in not mentioning of name and complete address of the manufacturer/packer.

5. Learned counsel for the petitioner submitted that if the guidelines issued by the Government of India dated 23.03.2012 is applied to the case of the petitioner, the import of the food item could be permitted.

6. I have considered somewhat an identical issue in the case of Kantilal N.Shah v. The Authorised Officer, FSSAI, Chennai, and others (W.P.No.40168 of 2015, dated 03.06.2016). In the said writ petition, the product which was imported was "Olive Oil" and similar objection was raised by the Food Safety Authority and a rejection report was submitted. This Court, after considering the materials placed before it, pointed out that the technical matters have to be considered by the competent authority under the Food Safety and Standards Act, 2006, and such an exercise could not be done in a writ petition. However, taking note of the fact that the importer has other remedies available under the Act, the writ petition was disposed of with certain directions.

7. At this juncture, it is useful to refer to the order passed in the above said writ petition. Paragraph Nos.7 to 11 thereof are extracted below:

"7.After elaborately hearing the learned counsel for the parties and perusing the materials placed on record, though it is the endeavour of the learned counsel for the petitioner to point out that the violations pointed out are minor, there appears to be several violations which though are stated to be minor if considered cumulatively may have to be interpreted as not in conformity with the labelling requirement. However, this observation should not be mistaken to state that the product is not a quality product nor it is unfit for human consumption, in fact that is not the stand of the 1st respondent themselves. Being conscious of the fact that this Court is exercising jurisdiction under [Article 226](#) of the Constitution of India, this Court would not venture into disputed questions nor it would have expertise to find out as to whether what has been mentioned in Turkey language is in fact the name of the company or other details to verify the serial number, batch number etc. That apart, it has to be seen as to whether the ingredients which are contained in the product should be disclosed in the label as required under the Regulations. However, these issues being

technical matters have to be considered by the competent authority under the Food Safety and Standards Act, 2006.

8.It is noteworthy to mention that in the impugned order dated 24.11.2015, the 1st respondent, after coming to the conclusion that the labelling requirements are not satisfying, has observed that one time relaxation cannot be given at their level. However, this does not mean that the petitioner is remedyless. Admittedly, the Director (Imports), Food Safety and Standards Authority of India, FDA Bhavan, Kotle Road, New Delhi 110 002 is the superior authority over the 1st respondent and is also a competent authority to examine as to whether the petitioner can be granted one time relaxation from the requirements of the packaging and labelling Regulations.

9.In the light of the above, this Court is inclined to give liberty to the petitioner to move the said authority for one time relaxation. Since the said authority is not been impleaded as a party respondent in this writ petition, this Court suo motu impleaded the Director (Imports), Food Safety and Standards Authority of India, FDA Bhavan, Kotle Road, New Delhi 110 002 as the 3rd respondent in the writ petition.

10.In the light of the above discussion, the Writ Petition is disposed of, by directing the petitioner to file an application before the 3rd respondent seeking one time relaxation and the application shall contain all details and supported by documentary proof and if such application is filed before the 3rd respondent, along with the copy of this order, the 3rd respondent shall consider the same, afford an opportunity of personal hearing to the petitioner and take a decision on merits and in accordance with law, as expeditiously as possible preferably, within a period of four weeks from the date on which the representation is given. This time limit is fixed taking into consideration that the Bill of Entry was filed in 2013 and the product/s shelf life is to expire in 2017.

11. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed."

8. Learned counsel for the petitioner submitted that a similar direction may be issued in this writ petition also. However, since the Director of Imports, Food Safety and Standards Authority of India, New Delhi, has not been impleaded as respondent, this Court suo-motu impleads the said authority as the fifth respondent.

9. In the light of the above, the writ petition is disposed of by directing the petitioner to file an application before the fifth respondent seeking one time relaxation and the application shall contain all the details and supported by documentary proof and if such application is filed before the fifth respondent along with a copy of this order, the same shall be considered, after affording an opportunity of personal hearing to the petitioner or their authorised representative and decision be taken on merits and in accordance with law as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order, as it is stated that the shelf life product would expire by April, 2017. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
2. The Commissioner of Customs (Import),
Office of the Commissioner of Customs,
Customs House,
Chennai.

3.The Commissioner of Food Safety,
5th Floor, DMS Buildings,
359, Anna Salai,
Teynampet, Chennai - 6.

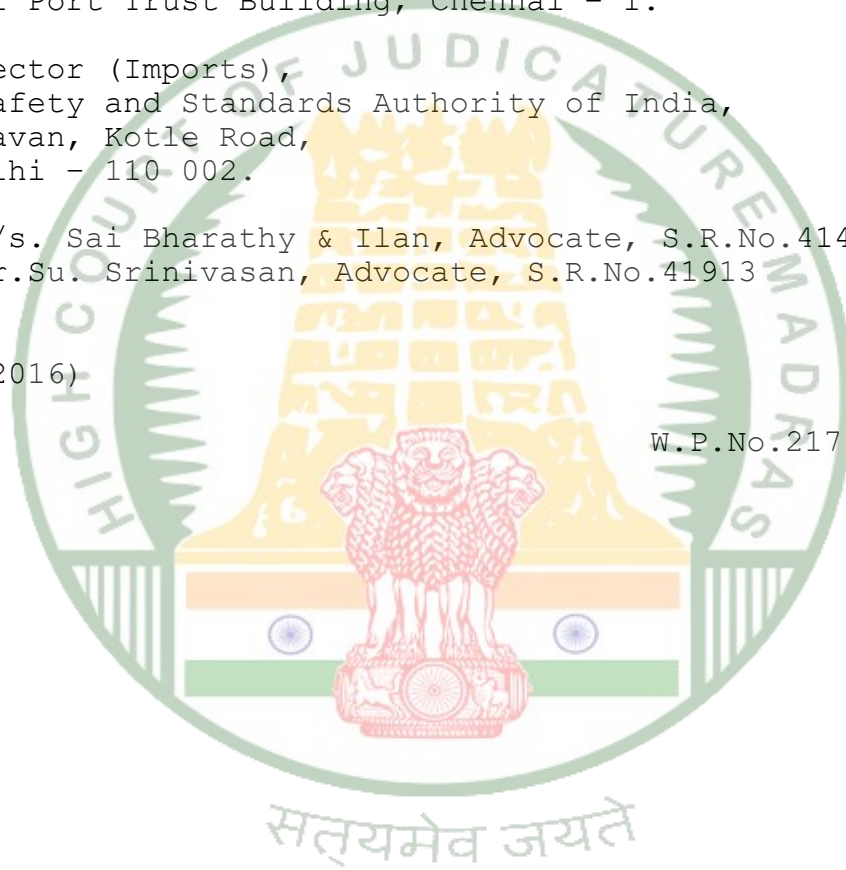
4.The Authorised Officer,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
II Floor, Central Documentation Complex
(South Wing),
Chennai Port Trust Building, Chennai - 1.

5.The Director (Imports),
Food Safety and Standards Authority of India,
FDA Bhavan, Kotle Road,
New Delhi - 110 002.

+1cc to M/s. Sai Bharathy & Ilan, Advocate, S.R.No.41468
+1cc to Mr.Su. Srinivasan, Advocate, S.R.No.41913

RJ(CO)
EU(26/07/2016)

W.P.No.21791 of 2016



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