

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.40168 of 2015 and
M.P.Nos.1 and 2 of 2015

Kantilal N.Shah
Represented by its Proprietor,
Mr.Mukesh K.Shah
No.3, Nyniappa Naick Street,
Shop NO.IV, 1st Street,
Chennai - 600 003.

... Petitioner

Vs

- 1.The Authorised Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
Central Documentation Complex,
Chennai Port Trust Building,
II Floor, South Wing, Rajaji Salai,
Chennai - 600 001.
- 2.The Deputy Commissioner (Customs-Docks), Seaport,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
- 3.The Director (Imports),
Food Safety and Standards Authority of India,
FDA Bhavan, Kotle Road,
New Delhi - 110 002

(R3 impleaded as per order dated 03.6.2016
in W.P.No.40168/2016 in MP.Nos.122/15))

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned report dated 24.11.2015 issued by the 1st respondent in F.No.Court Cases/FSSAI/CHN/Imports/2015 and quash the same and further direct the 1st Respondent to send appropriate report under the Foods Safety and Standards Act, 2006 and the Rules and Regulations made thereunder, so as to enable the petitioner to clear the goods covered by bill of entry no.3857867 dated 20.11.2013 for home consumption.

For petitioner ... Mr.Hari Radhakrishnan

For 1st respondent ... Ms.H.Yasmeen Ali

Standing counsel for FSSAI

For 2nd respondent ... Mr.T.Chandrasekaran

SPC for R.2

ORDER

The petitioner has filed this writ petition praying for issuance of a writ of certiorarified mandamus to quash the order passed by the 1st respondent, who is the authorised officer functioning under the provisions of the Food Safety and Standards Act, 2006.

2.The petitioner had imported Olive Oil from Turkey and filed Bill of Entry dated 20.11.2013. The consignment was examined by the authorised officer and a communication was sent to the 2nd respondent dated 09.12.2013. In the said communication, the authority pointed out as to how the consignment does not satisfy the labelling requirement as required under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Thereafter, the petitioner submitted letters to the 1st respondent on 04.08.2014, 31.10.2014 and 03.02.2015. The sum and substance of the contention raised in those letters are that the petitioner sought to clarify that the consignment which they have imported largely satisfies the labelling requirements under the Regulation and they were ready to explain the minor discrepancies pointed out by the authorised officer. At that relevant point of time, the petitioner filed a writ petition before this Court in W.P.No.20409 of 2015, by which, the petitioner challenged the report of the authorised officer dated 09.12.2013. In the said writ petition, counter affidavit was filed by the 1st respondent and during the course of hearing, an interim direction was issued on 28.09.2015 by which the petitioner was directed to appear before the 1st respondent on 01.10.2015 at 2.00 p.m. with all supporting documents so as to prove the specific name of the manufacturer and the name printed whether it is in English or in Turkish language. The petitioner was also permitted to place any objections in the meanwhile and report the outcome to the Court. Pursuant to which, the petitioner appeared before the authority and made their submissions and after hearing the petitioner, the authority has passed the order dated 24.11.2015 which is impugned in this writ petition. Owing to the fact that already an order had been passed, the earlier writ petition stood dismissed as withdrawn.

3.I have elaborately heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Ms.H.Yasmeen Ali, learned standing counsel appearing for the 1st respondent.

4.The learned counsel for the petitioner during the course of arguments submitted that four issues have been pointed out by the 1st respondent in the impugned order of which the petitioner for the present is not contesting the issue pertaining to Pure Olive Oil (125 ml in Tins) and they seek to contest the matter only with regard to the other three namely, Pure Olive Oil (51.5 Kg Drums), Pure Olive Oil (250 ml, 500 ml & 1000 ml in PET Bottles) and Extra Virgin Olive Oil (500 ml & 1000 ml in PET Bottles and Pure Olive Oil (5 Liter Tins) and Extra Virgin Olive Oil (5 Liter Tins).

5.It is submitted by the learned counsel for the petitioner that the objection raised by the 1st respondent stating that in the 5.15 kg Drums, the labels does not contain the prefix "producer" or "manufacturer" is untenable as the label clearly shows that the source/seller and the product is a quality product from Turkey and the petitioner has produced supporting documents to show that the person who has been mentioned as source/seller is in effect the manufacture. The learned counsel also produced the brochure of the Trukey firm to show that they are in fact a manufacturing company. Further, the learned counsel sought to explain that the serial numbers tallies and the observation of the officer is incorrect. So far as the PET bottles are concerned, it is submitted that the language is in English and not in Turkish and overall it is satisfies the labelling requirement and there are only minor issues which can be considered by the authority and the one time relaxation could be granted. In support of his contention, the learned counsel placed reliance on the decision of the Delhi High Court in the case of United Distributors Incorporation Vs. Union of India and another in W.P.(C).No.3708 of 2014 dated 20.08.2014.

6.The learned standing counsel appearing for the 1st respondent submitted that the most important point to be first taken note of is that the product which imported by the petitioner is an edible product and therefore, strict interpretation of the requirements is required to be made. Referring to Regulation 2.2 which deals with 'Labelling', it is submitted that the impugned labels do not satisfy sub-regulations 2, 3, 4 and 6 of Regulation 2.2.1. Further, the labelling requirement for Pre-packaged Foods as stipulated under Regulation 2.2.2 have not been fulfilled. The list of ingredients have not been mentioned and unless and until, the petitioner satisfies the requirement in full, the question of certifying the product does not arise. Further, it is submitted that the petitioner had submitted a representation on 01.10.2015

to the 1st respondent requesting for relaxation of the norms. But however, the authority who is competent to grant relaxation is only the Director (Imports), Food Safety and Standards Authority of India, FDA Bhavan, Kotle Road, New Delhi - 110 002 and if at all the petitioner seeks for one time relaxation, he has to approach the said authority at New Delhi.

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 remediless. 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.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorised Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
Central Documentation Complex,
Chennai Port Trust Building,
II Floor, South Wing, Rajaji Salai,
Chennai - 600 001.
2. The Deputy Commissioner (Customs-Docks), Seaport,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
3. The Director (Imports),
Food Safety and Standards Authority of India,
FDA Bhavan, Kotle Road,
New Delhi - 110 002

+1cc to Mr. Hari Radhakrishnan, Advocate, S.R.No.29767
+1cc to Mr. J. Chandrasekaran, Advocate, S.R.No.29696

PUR(CO)
EU(21/06/2016)

W.P.No.40168 of 2015