

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.2351 of 2016

& W.M.P.No.2027, 5609 and 5610 of 2016

Mrs.Shanthi Hariharan,
Universal Fine Foods,
12/185, Amarjothi Saroj Nagar,
Thudiyalur, Coimbatore-641 034. . Petitioner

Vs.

1. Director,
The Food Safety and Standards Authority of India,
(Legal Division),
Ministry of Health and Family Welfare,
FDA Bhavan, Kotla Road, New Delhi-110 002.
2. Food Safety and Standard Authority of India,
C-I-D, Rajaji Bhavan, Besant Nagar, Chennai-600 090.
3. Commissioner of Customs (Chennai-V),
Custom House,
No.60, Rajaji Salai, Chennai-600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in respect of File No.P.15017/125/2015/FSSAI/Legal, dated 30.12.2015 and quash the same and direct the third respondent to release the goods pertaining to Bill of Entry No.5011837, dated 26.03.2014.

For Petitioner : Mr.M.V.Swaroop
For Respondents : Mr.H.Yasmeen Ali, CGSC for RR-1 & 2
Mr.Haja Mohideen Gisthi, SCGSC for R-3

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Writ of Certiorarified Mandamus to call for the records of the first respondent in respect of File

No.P.15017/125/2015/FSSAI/Legal, dated 30.12.2015 and quash the same and direct the third respondent to release the goods pertaining to Bill of Entry No.5011837, dated 26.03.2014.

2. The petitioner is the proprietrix of M/s.Universal Fine Foods, an importer based in Coimbatore (Tamil Nadu) and their Food Safety and Standards Authority of India (FSSAI) license number is 10012042000456. The petitioner has been importing Carl Jung brand of non-alcoholic beverage since 2011. When the petitioner applied for a license as a Food Business Operator on 12.07.2012, vide application No.20120400100006576, the petitioner clearly stated that it would import Carl Jung brand of de-alcoholised wine and based on this application, on 08.11.2012, the Designated Officer, Central Licensing Authority, FSSAI granted a license to import the products in question. The license clearly stated that the petitioner may import beverages, excluding diary products. From 2011 to 2014, the petitioner's consignments went without any issues raised by any of the authorities. The petitioner's last consignment in question arrived in Chennai on 20.03.2014 and on 27.03.2014, Customs Department Examination Order was passed and the Bill of Entry was raised for the same. The information was sent to the FSSAI through the internal communication systems. The petitioner was informed through second respondent's website that the samples would not be drawn as there is no standard specification for the product under FSS Act, 2006 and the rules and regulations framed thereunder and the same could not be cleared without NOC from FSSAI, Delhi. Since no appeal is provided under the FSS Act, the petitioner has approached this Court by filing this Writ Petition for the relief stated supra.

3. When the Writ Petition is taken up for hearing, learned counsel for the petitioner submitted that during earlier occasion, when the very same petitioner sought for quashing of the impugned order therein, dated May, 2015 and to direct the first respondent to grant product approval for the Carl Jung brand of de-alcoholised wine and pay to the petitioner a sum of Rs.4 lakhs as demurrage charges incurred by the petitioner between 24.03.2014 and June 2015. This Court, by order dated 03.11.2015 passed in the Writ Petition in W.P.No.18479 of 2015, gave liberty to the petitioner to make an application to the first respondent seeking consideration of the product under Clause 14(2) of the Indian Food Code and the petitioner will have to include the relevant materials including scientific report. This Court also granted liberty to the petitioner to contend that the alcoholic content is less than 1% and the consequences would follow. It was further observed that as and when the petitioner makes an application to the first respondent, the said authority shall consider the same within a period of six weeks from the date of receipt of a copy of the order.

4. Following the above said order of this Court in W.P.No.18479 of 2015, dated 03.11.2015, the present Writ Petition is disposed of, with liberty to the petitioner to make an application to the first respondent seeking fresh consideration of the products under Clause 14(2) of the Indian Food Code, within a period of two weeks from the date of receipt of a copy of this order and along with a copy of this order, the petitioner will have to include the relevant materials including scientific report. It is also open for the petitioner to contend that the alcoholic content is less than 1% and the consequences would follow. As and when the petitioner makes an application to the first respondent, the said authority shall consider the same, within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the first respondent to decide the same. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To:

1. Director,
The Food Safety and Standards Authority of India,
(Legal Division),
Ministry of Health and Family Welfare,
FDA Bhavan, Kotla Road, New Delhi-110 002.
2. Food Safety and Standard Authority of India,
C-I-D, Rajaji Bhavan, Besant Nagar, Chennai-600 090.
3. Commissioner of Customs (Chennai-V),
Custom House, No.60, Rajaji Salai, Chennai-600 001.

+1 cc to Mr.M.V.Swaroop, Advocate, sr.12786

+1 cc to Mr.Haja Mohideen Gisthi, Advocate, sr.12946

W.P.No.2351 of 2016

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kra 02.03.2016