

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34716 of 2016
and W.P.No.29903 of 2016

M/s.Parry Enterprises India Limited,
Dare House, No.2, NSC Bose Road,
Chennai - 600 001. ... Petitioner

vs.

- 1.The Authorised Officer,
Food Safety and Standards Authority of India,
Chennai Sea Fort & Airport,
Ministry of Health and Family Welfare,
Southern Regional Office, Chennai.
- 2.The Chief Executive Officer,
Food Safety and Standard Authority of India,
FDA Bhawan, Near Bal Bhavan,
Kolta Road, New Delhi - 110 002, India.
- 3.The Director,
Central Food Laboratory,
13, KYDS Street, Kolkata - 10.
- 4.The Deputy Commissioner of Customs (Imports)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the case relating to the impugned rejection report in NCC No.RNCC201600000004 dated 18.01.2016 passed by the first respondent and to quash the same and thereby directing the first respondent and fourth respondent to release the goods covered under Bill of Entry No.3226264 dated 12.11.2015.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.H.Yasmeen Ali (For R1 & R2)
Mr.K.Ravi (For R4)

O R D E R

Heard Mr.T.Ramesh, learned Counsel appearing for the petitioner. Mr.H.Yasmeen Ali, learned counsel accepts notice on behalf of the respondents 1 and 2 and Mr.K.Ravi, learned counsel accepts notice on behalf of the fourth respondent. With the consent of either side, the writ petition itself is taken up for disposal.

2.The petitioner seeks for issuance of Writ of Certiorarified Mandamus to quash the rejection report issued by the third respondent which is a Central Food Laboratory, whereby the samples drawn from the goods which is sought to be imported by the petitioner was found to contain certain materials and therefore, a rejection report has been submitted. The remarks in the rejection report is to the following effect:

"Remark: As per lab analysis report the sample does not conform to the standard as laid down under Regulation 2.11.6 of Food Safety & Standards (Food Product Standards & Food Additives) Regulations, 2011 and as per FSSAI Methods and Standards for Imported Foods 2012 (FSSAI Order No.06/QAS/2012/Import Issues/FSSAI dated 02.08.2012) as the sample shows "Ash Insoluble in dil HCL"content more than the prescribed limit. It also shows presence of "heavy metal-Aluminium" in it. Hence the sample is Sub-standard under Section 3(1)((zx) of FSS Act, 2006."

3.The arguments of the learned counsel appearing for the petitioner is that when the samples were tested at Chennai and rejected by report dated 12.11.2015, the only issue which was pointed out is that Alkalinity of total ash on moisture and fat free basis as K20 exceeds the maximum permissible limit (i.e. 7.65% against the maximum permissible limit of 6.0%). Therefore, the petitioner challenging the same has made a request for re-testing before the Central Laboratory which has rejected the samples by order dated 12.11.2015.

4.The learned counsel appearing for the petitioner would submit that parameters have been laid down for testing food samples and the parameters do not contain any provision of testing of aluminium content and therefore the impugned rejection report is the outcome of non-application of mind.

5.The submission made is not well founded for the reason that the parameters laid down for testing of samples under the Food Safety Regulations could at best considered as illustrative and general parameters and in the process of testing, if the Scientific Officer comes to know that there are certain other components in the samples then he has the duty to report the same in his report. This is what precisely the third respondent has done and submitted the report. The product which is imported by the petitioner is Cocoa Powder which is one of the main ingredient in the manufacture of Chocolates and confectionery items which is being done by the petitioner and they are one of the major players in the market. It cannot be disputed that 90% of the consumers of these confectionery items and chocolates are young children. Therefore, utmost care and caution should be exercised while testing such food products.

6.This Court while exercising the jurisdiction under Article 226 of the Constitution of India cannot examine the validity of test report when there are no other malafides alleged against the Officers who have done the testing. Thus, merely because the third respondent has reported the presence of "heavy metal-Aluminium" in the samples, that by itself cannot vitiate the report by stating that he ought not to have examined the metal content in the samples as the general parameters do not provide for the same. In fact, even as per the general parameters in Regulation 2.11.6 of Food Safety & Standards (Food Product Standards & Food Additives) Regulations, 2011, metal contaminants can be examined for contents of contaminated metals like Lead, Copper, Arsenic, Mercury, Methyl Mercury, Tin, Zinc, Cadmium. Therefore, merely because of non-mentioning of the Aluminium as one of the metal contaminant cannot be a reason to vitiate the impugned test report. Thus the petitioner has not made out any case for interference.

7.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

cse

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub-Assistant Registrar

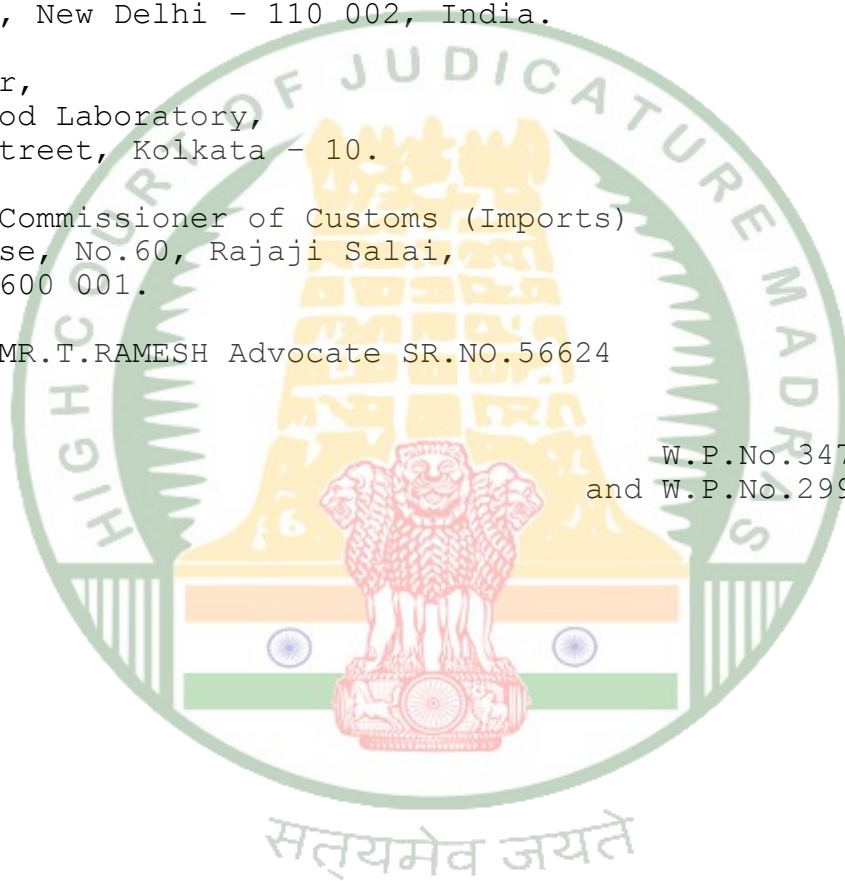
To

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+1CC to MR.T.RAMESH Advocate SR.NO.56624

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MP[CO]
MK:25/10/2016



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