

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

WP.No.37720/2016 & WMP.No.32339/2016

M/s.Nandhi Dall Mill
rep.by its General Manager
Mr.B.Selvarathinam

..Petitioner

-Vs-

1.The Food Safety Officer,
Ammappettai Zone III
Salem Taluk, Salem District.

2.The District Revenue Officer
Salem District.

3.The Registrar
Food Safety Appellate Tribunal
Chennai 600 006.

..Respondents

PRAYER : Writ 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 2nd respondent under Na.Ka.34006/2014-J7 dated 21.09.2016 and quash the same as being illegal and depriving the petitioner out of its statutory remedy and consequently direct the 2nd respondent to defer further proceedings until the appeal is numbered and taken up by the 3rd respondent.

For Petitioner: M/s. Ananda Gomathy

For Respondents: Mr.A.N.Thambi Durai,
Special Government Pleader

ORDER

Heard Mr.Anandamoorthy, learned counsel for the petitioner and Mr.A.N.Thambi Durai, learned Special Government Pleader accepting notice on behalf of the respondents.

2 The petitioner would state that the petitioner Mill is a leading manufacturer of Dhall and pulses and that it ensures that its products are supplied to the consumers with utmost good quality. The petitioner / Mill has also got an "Agmark

Certificate" from the Ministry of Agriculture and also possesses ISO Certification and Import and Export Registration Certificate issued by the Office of the Joint Director General of Foreign Trade, Coimbatore. While so, a surprise raid was conducted by the 1st respondent in the provision shop in the name and style of "King Traders Maligai" on 28.08.2014 and that a particular product of the petitioner / Mill, viz., Appalam, was seized and sent for Lab Test on 29.08.2014. The samples were analysed between 02.09.2014 and 05.09.2014 and that it was concluded that the said product contained Sodium Bi-Carbonate. Hence, an order was passed by the 2nd respondent / Original Authority on 07.05.2015 imposing a penalty of Rs.1,00,000/- upon the petitioner / Company for having manufactured a sub-standard product. It is the case of the petitioner that the product seized from the provision shop was an expired one, for which the petitioner cannot be held liable and responsible. Aggrieved against which, the petitioner has preferred an appeal before the Appellate Authority/3rd respondent herein on 22.06.2015, well within the time. As the Tribunal is not functioning due to the non-appointment of a Presiding Officer, the Appeal is yet to be processed ; numbered and heard. It is the grievance of the petitioner that in the meanwhile, the 2nd respondent has passed the present impugned order, calling upon the petitioner to deposit the penalty amount within fifteen days from the date of receipt of the said impugned order, failing which, appropriate action would be initiated against the petitioner / Company. Hence, having left with no alternative, the petitioner is before this Court with the present writ petition.

3 It is seen that the only grievance of the petitioner is that the 2nd respondent has passed the impugned order, directing the petitioner to pay the penalty amount of Rs.1 lakh and that though the appeal has been preferred in time before the Appellate Authority / 3rd respondent, the same is yet to be processed, numbered and heard for want of the Presiding Officer and hence, the appeal is kept pending. It is the case of the petitioner that had the appeal been numbered, there is every chance for the petitioner to obtain an order of interim stay in the appeal and since the appeal is not yet numbered and that before even the Appellate Authority could decide the matter on merits, the 2nd respondent insists the petitioner for payment of the penalty amount. It is the contention of the learned Special Government Pleader that unless stay is granted by the Appellate Authority, the 2nd respondent got every right to seek for payment of penalty in accordance with law.

4 Be that as it may, no doubt, unless the Appellate Authority stays an order, the impugned order remains intact and the authority concerned has got every right to pursue the order passed by the original authority. In the instant case, according to the petitioner, the Appellate Tribunal is not functioning due to non-appointment of a Presiding Officer.

5 In that view of the matter and also taking into consideration the fact that the petitioner has already preferred an appeal in time, there will be a direction to the petitioner to deposit a sum of

Rs.1,00,000/- [Rupees One Lakh only] before the 2nd respondent , within a period of one week from the date of receipt of a copy of this order, without prejudice to the appeal preferred by the petitioner / Company. It is made clear that the said amount will not be treated as penalty amount and that it will be kept in a separate account till the disposal of the appeal.

6 The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Food Safety Officer,
Ammapettai Zone III
Salem Taluk, Salem District.
- 2.The District Revenue Officer
Salem District.
- 3.The Registrar
Food Safety Appellate Tribunal
Chennai 600 006.

- 1 cc to M/s. Anandagomathy, Advocate, Sr. 61965
1 cc to Government Pleader, Sr. 62117

W.P.No.37720 of 2016

RSK (CO)
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