

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WA.No.730 of 2015  
and MP.Nos.1 & 2 of 2015  
and CMP.No.5231 of 2016

M/s.Gandour India Food Processing Pvt Ltd.,  
Sy.No.172 & 173, Phase Iv, IDA, Cherlapally  
Rangareddy District, Hyderabad, Telangana,  
Represented by its Authorised Representative  
Sri.R.Srinivasan s/o.N.Ramaswamy  
Occ.Head Supply Chain Manager,  
R/o.115, Mani Enclave Yaprall,  
Secunderabad - 500 087.

... Appellant/Petitioner

Vs.

1.Union of India  
rep by Principal Secretary,  
FSSAI Ministry of Health and Family Welfare,  
FDA Bhavan, Kolta Road, New Delhi - 110 002.

2.The Director (Imports)  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kolta Road, New Delhi -110 002.

3.The Assistant Director (Imports)  
Food Safety and Standards Authority of India,  
Ministry of Health and Family Welfare,  
FDA Bhavan, Kolta Road, New Delhi -110 002.

4.The Deputy Director/Authorised Officer,  
Food Safety and Standards Authority of India,  
CID, Rajaji Bhavan, Besant Nagar, Chennai-90.

5.The Deputy Commissioner,  
(Customs Docks) Seaport,  
Customs House, Rajaji Salai,  
Chennai-1.

... Respondents/Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent to set aside the order of the learned single judge made in WP.No.5285 of 2015 dated 25.03.2015.

Petitioner filed under Article 226 of the Constitution of India praying to issue writ of Declaration to declare the impugned rejection order issued by the 4th respondent vide Letter No.F.No.R.301/ 2014/fssai/ chn-import dated 9.7.2014 which is addressed to 5th respondent stating that the sample cannot be drawn for analysis as arbitrary illegal unconstitutional and violative of Fundamental Right guaranteed under Constitution of India and direct the 5th respondent to release the consignment of the goods Desiccated Coconut Fine Grade import by the petitioner company.

For appellant : Mr.L.Chandrakumar.  
For respondents : Mr.Su.Srinivasan, ASG-I for R1.  
Mr.H.Yaseen Ali, for R2 to R4.  
Mr.Sr.M.Devendran, SSC for R5.

#### JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The writ appeal is directed against the order of the learned single judge dated 25.03.2015 made in WP.No.5285 of 2015 filed by the appellant/petitioner.

2. The appellant/petitioner filed the writ petition challenging the impugned rejection order issued by the fourth respondent vide letter No.F.No.R.301/204/fssai/chn-import dated 09.07.2014 which is addressed to 5<sup>th</sup> respondent stating that the sample cannot be drawn for analysis as arbitrary, right guaranteed under constitution and violative of fundamental right guaranteed under Constitution of India and direct the respondent to release the consignment of the goods "Desiccated coconut fine grade" import by the petitioner company

3. The brief facts for filing the writ petition is as follows :-

The Writ petitioner who engaged in the business of manufacturing confectionery items, cakes, wafers etc., imported as consignment of 12.5 tonnes of Desiccated Coconut Fine Grade from a supplier at Malaysia, M/s.Behn Meyer Chemicals (M) SDN BHD (M/s.BMC), the consignment was imported based on a commercial invoice issued by M/s.BMC, dated 27.05.2014. On 26.05.2014, the consignment arrived at the Chennai Port and Bill of Entry dated 07.06.2014, was filed. On Bill of Entry being presented, the fourth respondent, Deputy Director, Authorised Officer under the Act refused to issue the No Objection Certificate on the ground that the complete address of the manufacturer/packer is not mentioned in the product as required under

Regulation 2.2.2:6.(i) of the Regulation. The petitioner submitted a representation on 01.09.2014, seeking for a personal hearing before the second respondent to provide further clarification and produce the necessary records. Thereafter, the petitioner addressed a representation through E-Mail to the second respondent on 08.09.2014 to consider their representation and set aside the rejection report by reviewing the same. This was followed by a reminder dated 10.10.2014. Ultimately, the petitioners sent a legal notice on 31.10.2014, for which a reply was sent by the fourth respondent on 02.02.2015. In the background of these facts, the petitioner has filed this Writ Petition challenging the impugned order refusing to draw samples on the ground that the consignment does not satisfy the labelling requirement under the said Regulation.

4. The learned single judge after hearing the arguments of both sides and considering the materials on record dismissed the writ petition filed by the appellant/petitioner.

5. Aggrieved against the order passed by the learned single judge in WP.No.5285 of 2015, the appellant/petitioner preferred the present writ appeal.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The learned counsel for the appellant/petitioner submits that the learned single judge has not properly appreciated the bill of entry. The non mentioning of name and address is without any basis since the guidelines issued by FSSAI dated 23.03.2012 on proper construction would not only inure the benefit of the appellant but also satisfy the requirement as because the guidelines would say that "if the complete address of the manufacturers is not given in the labels and only name of the manufacturer is given, then his address may be verified from the relevant documents like certificate of analysis, invoice, etc, thereby the address of the manufacturer can be traced from any one of the above links". If the authority views the issue for the purpose of fixing the responsibility of the product which requires NOC then, the person who claims that the said consignment has been addressed to him, in the present case, the appellant can be held responsible in all the respects for the purpose of applying the mandatory provisions of the Regulations, since Regulation 2.2.2:6(iii) has the application in so far as the appellant is concerned.

8. The learned counsel for the appellant further contended that the learned single judge failed to apply the principle of Doctrine of defacto responsibility on the part of the appellant, who but for his staking the claim for clearing the goods or shipment will be the sole person available for any act be it good or bad or for penalization

whatsoever, therefore, the non consideration of the responsibility which the appellant had accepted upon himself results in the impugned order. It is also contended that regarding manufacture and labeling in Indonesia is totally without any basis in view of the fact that the appellant way back in July 2014 itself had provided FSSAI a latter dated 23.07.2014 confirming the manufacturers address and thereby performing not only satisfaction of the requirements as per guidelines and rules but also for further process towards analysis of sample. As pr FSSAI Rules, the supplier is also a manufacturer, therefore the assumption of the learned single judge cannot be manufacturer goes to the root of the issue and the order in its entirety is without any basis and proper recourse to the statutory rules and thus prays to set aside the order of the single judge and to allow the writ appeal.

9. The learned counsel appearing for the respondents/department would submit that the inspection of the subject consignments on 04.07.2014 and it is transpired that the subject consignment was in complete violation of regulations. It is submitted that the labels do not provide the mandatory information such as name, complete address of the manufacture as per clause 1(i)(c) of FSSAI guidelines No.1-17/FSSAI/T/2010 (part J) dated 23.03.2012. It is admitted by the appellants, in the certificate of origin in respect of the subject consignment issued by one M/s.Behn Meyer Chemicals (M) SDN BHD, Malaysia states that the goods were produced or processed in Indonesia.

10. On careful perusal of the order passed by the learned single judge, the learned single judge has elaborately discussed the regulations in detail and the relevant particulars about the importer and the manufacturer of the goods and decisions of the various High Courts which supports the present case on hand is extracted below :-

"17. It is not in dispute that the M/s.BMC is not a 'manufacturer' of the food article nor the petitioner state that they obtained the food article from another person and they had packed and labelled it for sale. It was argued by the learned counsel for the petitioner that Section 3(zd) is an inclusive definition as the expression used is includes any person and the petitioner falls within the inclusive definition. For better clarity, the Regulations have to be seen and clause 2.2.2.(6) would be relevant, which reads as follows:-

6.Name and complete address of the manufacturer

(i) The name and complete address of the manufacturer and the manufacturing unit if these

are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food;

(ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under his or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for an on whose behalf it is manufactured or packed or bottled.

18. On a reading of the above provision, it makes it clear that the name and complete address of the manufacturer and in case the manufacturer is not the packer, the name and complete address of the packer are to be declared on every package of food if the article of food is manufactured or packed by a person under the written authority of the some other manufacturer under its brand name, the label shall carry the name and complete address of the manufacturing or packing unit as the case may be and also the name of complete address of the manufacturer or the company for and on whose behalf it is manufactured or packed or bottled. The consignor/exporter from Malaysia, M/s.BMC is not the 'manufacturer'. Therefore, if it is the case of the supplier that they have been authorised by the manufacturer to manufacture or pack the product, then the name of the manufacturer should have been disclosed in the packing. Mere mention that it is a product of the Indonesia does not satisfy the labelling requirement. It is not in dispute that the petitioner, supplier is not the 'manufacturer', since they have admitted that M/s.BMC is only a 'supplier'. If that be the case, the name and full details of the manufacturer was bound to be disclosed. This is a very vital requirements, since the product imported is a food product having shelf life only till May 2015. In such circumstances, no error can be attributed to the impugned rejection report issued by the respondent. This conclusion is fortified by the decision of the Hon'ble Division Bench of the Calcutta High Court in the case of Food Safety and Standards Authority of India vs., Heartland Trading Company Pvt

Ltd., (supra), wherein the Hon'ble Division Bench pointed out that the purpose of labelling is not to be ascertained by any one for diluting the rigours of the regulations and importing the concept of substantial compliance therewith and strict compliance principle seems to be the requirements of the regulations dictated by public interest that must prevail over any private interest of an importer. Further, it was pointed out that the rectification of the labelling deficiencies is not permissible under any law and cannot be ordered by the High Court in exercise of the power under Article 226 and illegal grant of NOC to any other importer for the same articles of food cannot entitle a subsequent importer to seek NOC, as an order for perpetuation of an illegality cannot be passed by the High Court under Article 226 of the Constitution of India. With the above observations, the Hon'ble Division Bench of the Calcutta High Court disagreed with the views of the Delhi and Bombay High Court in the case of United Distributors Incorporation vs., Union of India & anr., (supra), Danisco (India) Pvt. Ltd. vs. Union of India & Anr. (supra) and Dalmia Continental Pvt., Ltd., vs. FSSAI (supra). In any event, the decisions in those cases were rendered considering the fact situation arising therefrom, since the dispute is with regard to the labelling requirement facts are very relevant to be considered first.

11. On perusal of the entire records it is seen from the records that the labels contained the details of the supplier, receiver, product, batch number, weight, date of production and expiry date. The main aspect to be noted herein is that the goods imported from Malaysia got expired long back in the year May 2015 itself, the same cannot be used for human consumption. The raw materials imported is used for manufacturing chocolates which is consumed mostly by children. At this time, even if the goods are handed over to the appellant, the same cannot be used for manufacturing purposes, as the shelf life of the raw materials is already expired. From the available records, it is seen that the appellant in their representation dated 23.07.2014 addressed to the fourth respondent have admitted that they would require 3 to 6 months to exhaust the total quantity of goods imported.

12. Considering the above said facts and circumstances of the present case on hand, we find there is violation in the import process and the learned single judge has rightly taken note of the regulations and the import process while passing the order. We are

therefore of the considered view that there is no reason to interfere with the order passed by the learned single judge and the learned single judge has also given liberty for re-exporting the goods, if any request is made by the appellant/petitioner.

13. Under the said circumstances, if at all any request is made by the appellant for waiver of demurrage charges, the same may be considered by the respondents in accordance with law.

14. With the above observation, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.Union of India  
rep by Principal Secretary,  
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2.The Director (Imports)  
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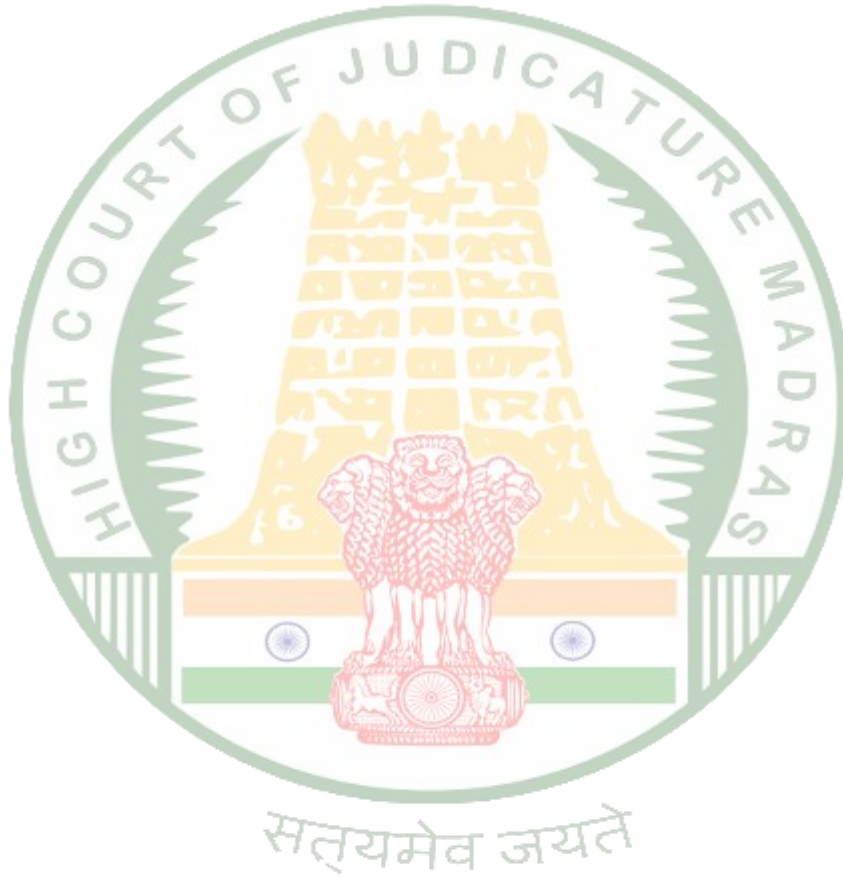
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(Customs Docks) Seaport,  
Customs House, Rajaji Salai,  
Chennai-1.

+1cc to Mr.Su.Srinivasan, Advocate, S.R.No.75172  
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.74879

WA.No.730 of 2015

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