IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

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

W.P.No.19950 of 2017

M/s.K.P.Manish Global Ingredients Pvt.Ltd.,
Represented by its Chief Financial Officer,
Mr.P.Deepak Jain,
No.41, Raghunayakulu Street,
Sowcarpet, Chennai - 600 003. ..Petitioner

Vs.

The Additional Commissioner of Customs (Group-1),
Office of the Commissioner of Customs, Chennai - II,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ..Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent culminating in the Order in Original No. 55839/2017 dated 08.06.2017 issued from File No.S.Misc./92/2016-GR1 and quashing the same direct the respondent to permit cross-examination of the officials concerned as requested for by the petitioner company before adjudicating the case in respect of import of Whey Power under Bills of Entry No. 3741103 dated 29.12.2015 and 3824194 dated 06.01.2016.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.K.Ravi,
Senior Panel Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.K.Ravi, learned Senior Panel Counsel for the respondent.

2. The petitioner is aggrieved over the impugned order passed by the Additional Commissioner of Customs, being the order-in-original dated 08.06.2017. By the impugned order the respondent has held that the subject goods namely the "Sweet Whey Powder" covered under the two bills of entry are not conforming to the provisions of the Food Safety and Standards Act, 2006 Rules and Regulations made thereunder. Therefore, the respondent ordered confiscation of the said powder under Section 111(d) of the Customs Act, 1962 and imposed penalty of Rs.2,00,000/- on the petitioner under Section 112 (a) of the Customs Act, 1962, with an option to redeem the goods for re-export on payment of redemption fine of Rs.3,00,000/-.

3. Mr.S.Murugappan, learned counsel for the petitioner would vehemently contend that the lab reports of the Primary lab (Nawal Analytical Laboratories, Hosur) and Referral Food Laboratory, Kolkata reveal many contradictory opinions among the parameters tested with wide variations within the analysis reports and finally, resulted in declaring that the product is not in compliance with the standards.

4. Further, the learned counsel made elaborate endeavor to convince this Court, as to how the consignment samples could have been failed in the parameters with regard to flavour and taste, lactose, milk protein, arsenic and sodium etc. Thus, it is the contention that the officials who conducted the test should be made available for cross examination. The contention raised by the petitioner is liable to be rejected on more than one ground.

5. Firstly, there is no allegation of malafides as against the officer who performed the test and submitted the report. Admittedly, the officer does not issue a certificate in his individual capacity but as an officer in a Government lab, which could be either Primary lab or Referral lab. Therefore, the plea raised by the petitioner that the officer should be made available for cross examination is not tenable.

6. Secondly, the concerned officer has not been impleaded as a party respondent in this writ petition or for that matter, the primary lab or the referral lab or the authorities under the Food Safety and Standards Act have not been arrayed as respondents. Therefore, both the pleas raised by the petitioner has to necessarily fail.

7. An identical case came up for consideration before this Court in the case of M/s.Parry Enterprises India Limited Vs. The Authorised Officer, Food Safety and Standards Authority of India and 3 others, in W.P.No.34716 of 2016. Though in the said case the Director, Central Food Laboratory, Kolkata was impleaded as

third respondent, the Court while examining the correctness of the report of the Central Food Laboratory, pointed out that this Court while exercising the jurisdiction under Article 226 of the Constitution of India cannot examine the validity of the test report when there are no other allegations of malafides being made against the officer who have performed the test . In this regard, the observations made by this Court in paragraph 6 of the order in W.P.No.34716 of 2016, dated 30.09.2016 is extracted hereunder:

> 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 Activities) 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.

8. Admittedly, the report filed by the Central Food Laboratory is a technical report. Therefore, if the petitioner seeks to dispute the technical report, it is for him to establish on the fact that the report is contrary to the factual position. However, this exercise cannot be done in a writ petition.

9. Thus, for the above reasons this Court is not inclined to entertain the writ petition and the same is dismissed as not maintainable. However, the petitioner is at liberty to avail the appeal remedy provided under the Act. If such appeal is preferred, the appellate authority shall exclude the period from 01.08.2017 till the receipt of certified copy of this order while computing limitation.

10. It is made clear that the observations made in this order are only for the limited purpose of deciding as to whether

the writ petition has to be entertained. These observations shall have no baring on the appeal petition. Appeal, if any preferred by the petitioner, shall be decided by the Appellate authority uninfluenced by the observations made in this order. Accordingly, the writ petition is dismissed. No Costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Additional Commissioner of Customs (Group-1),
Office of the Commissioner of Customs, Chennai - II,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.K.Ravi, Advocate Sr. 65737
+1cc to Mr.S.Murugappan, Advocate Sr. 66077

W.P.No.19950 of 2017

AR(IV)
VR(21/09/2017)