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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 19.01.2017

1.

CWP-297-2014

M/s Agson Global Private Limited

... Petitioner(s)

Versus

Union of India and others

... Respondents

2.

CWP-324-2014

M/s Agson Global Private Limited

... Petitioner(s)

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Ajiteshwar Singh, Advocate and
Mr. Kannan Malik, Advocate
for the petitioner(s).

Mr. Sourabh Goel, Senior Standing Counsel
for respondent No.1-Union of India.

Mr. Sahil S. Chauhan, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two writ petitions bearing

CWP No.297 of 2014 titled as **“M/s Agson Global Private Limited V/s**

Union of India and others” and **CWP No.324 of 2014** titled as **“M/s Agson**

Global Private Limited V/s Union of India and others”, whereby the

petitioner(s) is aggrieved of the order dated 01.11.2013 (Annexure P-14) passed by respondent No.2, whereby the Ministry of Health & Family Welfare, Food Safety and Standards Authority of India refused to grant NOC for clearance of consignments of poppy seeds.

Mr. D.S. Patwalia, learned Senior Counsel assisted by Mr. Ajiteshwar Singh, Advocate and Mr. Kannan Malik, learned counsel appearing on behalf of the petitioner(s) submits that the Company is engaged in the business of importing of food products and had imported six consignments of poppy seeds on 06.06.2013 as permitted under the Open General License Scheme. The Authority i.e. respondent No.2 on 14.06.2013 had taken only two samples (one sample in duplicate) from each consignment and sent for analysis. According to first analytical report, the poppy seeds and the elements were not found fit for human consumption. On request of the petitioner(s), for reappraisal, the matter was again sent to the Laboratory, but a different report came, in essence, in the first report, it was containing some '*mould*', but in the second one, found non-volatile ether extract, but no '*mould*'. Both the reports were contradictory to each other. The petitioner(s) requests for analysis of the aforementioned samples by third Laboratory, was refused. The petitioner(s) got the same analyzed from the Laboratory, which gave the opinion, that it was fit for human consumption. Since the quantity was of perishable item and had a high value, the petitioner(s) was constrained to approach this Court by way of the aforementioned writ petitions. Vide order dated 06.03.2014, this Court granted the permissions to the petitioner(s) to get the goods released subject to the deposit of ₹ 5,00,000/- as penalty for each consignment, in essence, had deposited ₹ 30,00,000/- in each case i.e. ₹ 60,00,000/- for all

the consignments. The goods according to the contentions of Mr. D.S. Patwalia, have been sold in open market.

He further submits that ₹ 60,00,000/- stands deposited with the respondent No.1 i.e. Custom Department. So still date, the petitioner-Company has not received any intimation from respondent No.2 of initiation of the proceedings under Section 47 onwards of the Food Safety and Standards Act, 2006 (for short 'the 2006 Act').

He undertakes that in case, the proceedings are initiated subject to the compliance of the principles of natural justice and all objections qua limitation available in law, he will associate the same/Department and take all defence, but the amount lying deposited with the Custom Department be ordered to be released. He is a registered importer and has a sufficient immovable property at his disposal.

He submits that since the goods have been released, cause of action in the present writ petition, no longer, survives.

Mr. Sahil S. Chauhan, learned counsel appearing on behalf of respondent No.2 submits that as per the information and reply, so far the Department has not taken any action and if the Act permits, the action will be taken in accordance with law.

He further submits that both the reports do not permit the goods to be fit for human consumption.

Mr. Sourabh Goel, Senior Standing Counsel appearing on behalf of Union of India, submits that the Custom Department do not deny the factum of deposit of ₹ 60,00,000/- as the goods could not be released by them without the Nod/NOC of respondent No.2.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that once the factum of release of the goods and selling thereof in the open market is not disputed, respondent No.2 shall be at liberty to take the action in accordance with law, if permissible i.e. Food Safety and Standards Act, 2006. The petitioner(s) shall also have a right to take all possible objections, if permissible in law .

It would be a farcical exercise in keeping the writ petition pending as whatever action be taken by respondent No.2, it will have its own course.

Resultantly the writ petitions are disposed of in the aforementioned terms.

Prayer of Mr. Patwalia is accepted and the respondent No.1- Custom Department is directed to return a sum of ₹ 60,00,000/- to the petitioner(s) within a period of one month from the receipt of the certified copy of the order.

19.01.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No