

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION ST.NO.17613 OF 2018

Libas Trader	.. Petitioner
Versus	
Union of India and others	.. Respondents

...

Mr. Sujay Kantawalla with Anupam Dighe, Chandni Tanna I/b
India Law Alliance for the petitioner.
Mr.Pradeep S. Jetly for respondent no.1 to 3.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 16th JULY 2018

P.C:-

1 After hearing both sides and by clarifying that all contentions are kept open, we dispose of the writ petition by the following order :-

(a) We are presently not inclined to declare that the goods imported by the petitioner do not attract the provisions of the Food Safety and Standards Act, 2006.

2 After the affidavit in reply has been filed, a copy received by the petitioner, it is stated on instructions by Shri Kantawalla that the petitioner is now not interested in taking away the consignment because the goods were fungus laden and rendered unfit for human consumption. However, the petitioner will make an application to release the goods not for human consumption but for utilization in making of fertilizers of the required standards by an unit in the State of Gujarat at the cost charges and expenses of the petitioner and on petitioner's undertaking the goods be allowed to be cleared, taken away and discharged in the premises of the unit in the State of Gujarat. We have no doubt in our mind that if such a request is made, despite the pendency of adjudication in the show cause notice, the Revenue on the specific undertaking that the goods would not be released in the domestic market as fit for human consumption but only for use in the fertilizer industry and removed at the cost, charges and the expenses of the petitioner for being taken away to a named unit, allow the same but without prejudice to its rights and contentions. The Revenue shall retain the power to adjudicate the show cause

notice and in addition to the duty recovery, can proceed to determine the interest and penalty, if at all, and all contentions of the petitioner at such adjudication are kept open.

3 We clarify that our order only ensures that the consignment which is lying at the port does not congest the port any further. These containers which are 14 in number, are stated to be lying from May 2017. Secondly, this order shall not be treated as a precedent and in all future cases, the consignments be not released merely because the alternate request is made by the importer in a Writ Petition in this Court.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)