

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.20251 of 2018

Jithendra Kothari

(Prop) M/s Kasturi Coconut Processing
Chowki mutt Road, Keremegela Doddi
Channapatna, Ramanagaram District,
Karnataka State

... Petitioner

vs.

1. The Authorised Officer,
Chennai Sea Port and Air Port,
Food Safety and Standards Authority of India
Ministry of Health and Family Welfare,
Southern Regional Office,
Rajaji Salai Chennai-600 001

2. The Deputy Commissioner of Customs,
Customs House,
No.68, Rajaji Salai, Chennai-600 001

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to issue/ grant NOC to clear the cargo/ consignment of 58 Cartons (which were not affected by either fungal development and de-coloration in NATA DE COCO Batch No - N-12 of 280201 covered by bill of entry No. 5687491 dated 22.03.2018 consists if 83 cartons (2115 Kgs) as apparent from the Impugned order in NCC No: NCC 201800016808 dated 02.05.2018 to the petitioner.

For Petitioner : Mr.M.S.Subramaniam
for Mr.M.Mahendra Kumar

For Respondent :Mr.Su.Srinivasan
Standing Counsel for R1
Mr.V.Sundareswaran
Senior Panel Counsel for R2

O R D E R

This writ petition is filed for a mandamus directing the first respondent to issue/ grant NOC to clear the cargo/ consignment of 58 Cartons (which were not affected by either fungal development and de-coloration in NATA DE COCO Batch No - N-12 of 280201 covered by bill of entry No. 5687491 dated 22.03.2018 consists of 83 cartons (2115 Kgs) as apparent from the Impugned order in NCC No: NCC 201800016808 dated 02.05.2018 to the petitioner.

2.The case of the petitioner is as follows:

The petitioner has imported Raw Nata De Coco (unprocessed Coconut Jelly) vide bill of entry No. BE 5687491 BE dated 22.03.2018 from Vietnam. The bill of entry was presented before the second respondent for assessment. The second respondent had instructed his officers to physically examine the goods to verify whether the contents match with the declaration made in the bill of entry. The imported goods were also verified for compliance with the provisions of the Food Safety and Standards Act, 2006. Accordingly, the matter has been referred to the first respondent to certify whether the consigned goods had fulfilled all the necessary requirements to issue NOC for release of the goods under the Food Safety and Standards Act, 2006. The petitioner has paid all the duties and levies for the above consignment. On preliminary and random physical, visual examination observation, the inspecting officer reported that the subject of consignment had developed fungal growth which resulted in terming the product unsafe as per Section 3(1) (zz) (ii) of Food Safety and Standards Act, 2006. The first respondent, thus, refused to issue NOC for releasing the consignment. The petitioner wrote letters on 09.04.2018 and 10.04.2018 explaining the process for removal of fungus in their factory with a request to issue NOC. The first respondent had arranged for re-inspection on 12.04.2018. On re-inspection, the inspecting staff reported that the five batches of Nata De Coco had no fungal growth out of six batches which remain intact, and the analysis samples confirmed to the specification under the Food Safety and Standards Act, 2006 and recommended NOC for release of consignment and rejected the Batch No.N-12. Based on the inspecting officer's report, the first respondent had issued five no objection certificates for clearance of imported goods for the respective batches. Thereafter, the goods were cleared and released to the petitioner. The entire Nata De Coco consists of 83 cartons and the same was rejected by the first respondent by the impugned order by making remarks that as per the visual inspection observations report by the inspecting officers on 26.04.2018, thick fungal growth was found in few cartons. Hence, the present writ petition is filed challenging the above rejection order.

3.The first respondent filed a counter affidavit wherein it is stated as follows:

(i) As per the visual inspection observations reported by the inspecting officers "Thick fungal growth was found in approximately 25 cartons of Nata de coco of size 12x12x12 mm (Batch no. N12.280201) and yellow dis-colouration also. No fungal growth was observed in the remaining cut sizes or batches of the product.

(ii) Copies of the request letter dated 12.04.2018 submitted by importer/petitioner seeking re-verification of the consignment, copy of letter submitted by this office to the Chennai Customs authorities in this regard and copy of re-verification inspection report submitted by the inspecting officers who had re-verified the consignment is enclosed as Annexure 4.

(iii) Since during the re-verification of the consignment done on 12.04.2018, it was observed that only the product pertaining to one of the cut size/batch (Cut Size- 12x12x12 mm (Batch no. N12.280201)) was having visible thick fungal growth/contamination & yellow discolouration and the petitioner was given an opportunity to file a fresh application in online FICS showing the details of each cut size/batch of the product separately in the application.

(iv) Subsequently importer/petitioner submitted a fresh application in online FICS (FICS Consignment ID: ICA20180400010643 dated 25.04.2018) specifying separately the details of all the six cut sizes/batches of the product in the consignment.

(v) Samples of the product pertaining to the cut size/batch (Cut Size-12x12x12 mm (Batch no. N12.280201)) was not drawn due to the visible thick fungal growth/contamination & yellow discolouration observed in the inspected/verified cartons of the said product.

(vi) Samples of the product pertaining to the remaining five cut sizes/batches drawn were forwarded to the FSSAI's notified lab for analysis and based on the analysis reports dated 26.04.2018 that was issued for the products by the FSSAI's notified lab in online FICS, the NOC's for the product pertaining to these five cut sizes/batches were granted in online FICS.

(vii) NCC No.NCC201800016808 dated 02.05.2018 was issued for the 84 nos of cartons of the product pertaining to the cut size/batch (Cut Size- 12x12x12mm (Batch no. N12.280201)). (One carton of the product from this cut size batch is retained in the custody of FSSAI, Chennai office for reference).

(viii) Copies of NCC No. NCC201800016808 dated 02.05.2018 that was issued for the 84 nos of cartons of the product pertaining to the cut size/batch (Cut Size- 12*12*12mm (Batch no. N12.280201)) based on the visual inspection observations (visible fungal growth/contamination) along with the copies of

photographs of the product pertaining to this batch taken during visual inspection of the consignment is enclosed as Annexure 5. Copy of the FICS application (FICS Consignment ID: ICA20180400010643 dated 25.04.2018), Copy of the test reports issued by FSSAI's notified lab for the five cut sizes/batches of the products based on which NOC was issued for these cut sizes/batches in online FICS is enclosed as Annexure 6. Copies of the documents submitted by importer/petitioner in online FICS applications and copies of the photographs of the products in the consignment taken during re-verification of the consignment done on 12.04.2018 is enclosed as Annexure 7.

(ix) It is further stated that as per Section 18(1) (g) of FSS Act, 2006, "where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements." As per Section 26(5) of FSS Act, 2006 "where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe".

4. When the matter was taken up earlier for hearing, this Court, by order dated 04.09.2018, directed the respondent to send a sample of the disputed item for getting the lab report and file the same so that appropriate decision shall be taken in this writ petition. Accordingly, the respondents filed the compliance report dated 09.10.2018 enclosing the lab report dated 26.09.2018.

5. Perusal of the compliance report and the lab report filed by the respondents would show that the disputed consignment is unsafe and do not comply with the food safety requirements. The relevant averments made in the compliance report at paragraph No.7 and the abbreviation of lab report is extracted as hereunder:

It is submitted that about 25 cartons of the product pertaining to the cut size/batch (Cut Size-12x12x12 mm (Batch No.N12.280201) in the consignment were found to have visible thick fungal growth/ contamination & yellow discolouration. In the Lab report dated 26.09.2018 physical appearance of the sample was observed as "Sample of NATA DE COCO was opened and found jelly-like semi solid product with pink, yellow, black discolourations and fungal growth on its surface and with off odour were observed. On sample testing, it was opined

that the sample of NATA DE COCO SIZE 12x12x12 mm (Batch No.N12.280201) does not confirm to the standards laid down under Regulation No.2.12.1 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and is unsafe as per Section 3(1)(zz)(ii) & (iii) of FSS Act, 2006. Hence, it is respectfully submitted that as per Section 3(1)(zz) of FSS act, 2006 and as per Section 18(1)(g) & 26(5) of FSS Act, 2006, the product pertaining to the cut size/ batch (Cut Size - 12x 12x 12 mm (Batch No.N12.280201) in all the 84 nos of cartons in the subject consignment are, therefore, Unsafe & does not comply with the food safety requirements. Hence, NOC cannot be issued for the remaining 58 nos of cartons of this product also, as prayed by the petitioner.

Abbreviation: BLD: Below Detection Limit; DL: Detection Limit; CFC: Colony Forming Unit.

Opinion: And I am of the opinion that the same of NATA DE COCO SIZE 12x12x12 mm (BATCH NO:N12.280201) does not conform to the standards laid down under Regulation No.2.12.1 of Food Safety and standards (Food Product Standards & Food Additives) Regulations, 2011 and is unsafe as per Section 3(1)(zz)(ii) & (iii) of FSS Act, 2006.

6. Learned counsel for the petitioner however, sought to rely on another private lab report, namely, Pristine Laboratories dated 26.10.2018. Perusal of the said report does not indicate anywhere as to whether the sample tested by the petitioner on their own is safe and complying with the food safety requirements. When the items sought to be released has to satisfy the food safety and standards and when the lab report submitted by the respondents particularly indicates that the subject matter goods, is unsafe and does not comply with the food safety requirements, this Court is not inclined to interfere with the impugned proceedings and issue any positive mandamus to issue no objection certificate to the petitioner, as any such interference would amount to compromising on safety standards, especially when ultimate larger interest of the consumer involved in this case would certainly outweigh the private interest of the petitioner. No doubt the learned counsel for the petitioner pleaded that such fungal growth can be removed by washing the product and thereafter, it can be put to test once again. I do not think his request can be acceded. A consumable item, if found to have grown with fungus, it means that such item has lost its purity and safety. Fungal formation

on a consumable item is a clear indication that such item became stale. Why to allow such item to be consumed by the tail end consumer, assuming such product would undergo some process or would be utilized to make another final product after undergoing some manufacturing activity. A stale or impure item should be thrown out at the threshold, especially, when the consumption of the same likely to affect public safety. Hence, I reject the request of the learned counsel for the petitioner to send the disputed goods for further test after giving it a wash. Therefore, I find no merits in this writ petition. Accordingly, this writ petition is dismissed. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

vsi/sni

To

1. The Authorised Officer,
Chennai Sea Port and Air Port,
Food Safety and Standards Authority of India
Ministry of Health and Family Welfare,
Southern Regional Office,
Rajaji Salai Chennai-600 001
2. The Deputy Commissioner of Customs,
Customs House
No.68, Rajaji Salai, Chennai-600 001.

+1 CC to Mr.Su.Srinivasan, Advocate sr 77969

+1 CC to Mr.V.Sundareswaran, Advocate sr 78116.

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W.P.No.20251 of 2018

BS (CO)

SP(18/12/2018)

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