

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2018

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.21748 of 2018

M/s.Unik Traders
No.140, Old Tharagupet,
Bangalore - 560 053,
Represented by its by Proprietor
Shri Hanif K. Thara. ... Petitioner

Vs

The Authorized Officer,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
2nd Floor, Central Documentation Building,
Chennai Port Trust, Rajaji Salai,
Chennai - 600 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to draw fresh samples of Areca Nuts for testing the same for compliance with the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 as amended and forward the same for testing to a Referral Laboratory in terms of para 2.2.2 of the Food Safety Standards (Laboratory and Sample Analysis) Regulations, 2011.

For Petitioner : Mr.Vijay Narayan
Senior Counsel for
Mr.B.Satish Sundar

For Respondent : No appearance

ORDER

The prayer sought for in this writ petition is for a mandamus, directing the respondent to draw fresh samples of Areca Nuts for testing the same for compliance with the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 as amended and forward the same for testing to a Referral Laboratory in terms of para 2.2.2 of the Food Safety Standards (Laboratory and Sample Analysis) Regulations, 2011.

2. The case of the petitioner is that they are in the trade of import and local sales of Spices, Condiments, Areca Nuts etc., for the past two decades and favoured with an Import and Export Code No.0791011917, issued by the JDGFT, Bangalore, Ministry of Commerce, Government of India. According to the petitioner, in the course of their business, they filed Bill of Entry for certain quantity of Areca Nuts for import. Before clearance of the consignment, samples were taken and forwarded to a Notified Laboratory, as per the Regulations. The Notified Laboratory after testing the samples, opined that the same did not confirm to the prescribed standards as per the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011 and such is the result from the Referral Laboratory at Mysore also. Hence, the petitioner made a request for re-testing the same afresh, so as to prove that the Areca Nuts imported by the petitioner, would confirm to the standards prescribed under the said Regulations. Since the petitioner consistently claims that the goods are in conformance to the standards, he requested the authorities to provide a fresh test and such request came to be declined, the petitioner is before this Court.

3. Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioner submitted that despite the petitioner's repeated attempts and his communication dated 20.08.2018 to the respondent seeking drawal of fresh samples for retesting, so as to confirm as to whether the goods so imported are meeting the Food Safety and Standards Regulations, 2017, there is no response forthcoming from the respondent. The learned Senior Counsel further submitted that no credence be given to the test reports relied by the authorities. since there is no jurisdiction for testing the samples by the said two Laboratories. The learned Senior Counsel further submitted that the petitioner is entitled to seek re-testing as provided by the general guidelines for sampling under the manual, which stipulates the same. Hence, the learned Senior Counsel sought a direction to the respondent to draw a fresh samples for testing the same by a Referral Laboratory to meet the ends of justice. The learned Senior Counsel also submitted that the petitioner would re-export the product, if the test report goes against them.

4. On 24.08.2018, when the matter was taken up for hearing, Mr.J.Madhana Gopal Rao, learned Standing Counsel submitted that he informed the respondent, who in turn directed their one of the empanelled counsel to appear and contest the matter on the next date of hearing i.e., on 31.08.2018. A communication was also sent in this regard. Despite the same, there is no representation for the respondent, when the matter is taken up for hearing today.

5. In view of the above, considering the nature of the product involved herein, this Court is inclined to direct the respondent to draw the fresh samples of Areca Nuts for testing in compliance with the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 and forward the same to any authorised laboratory in terms of para 2.2.2 of the Food Safety Standards (Laboratory and Sample Analysis) Regulations, 2011. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. If the petitioner fails in the test, the petitioner shall re-export the same without further delay.

6. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To
The Authorized Officer,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
2nd Floor, Central Documentation Building,
Chennai Port Trust, Rajaji Salai,
Chennai - 600 001.

+ 1 cc to Mr. B. Satish Sundar, Advocate Sr.60328

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(CS-IV)
EU(03/10/2018)

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