



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2018

C O R A M

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.5924 of 2018

and

W.M.P (MD) .No.5808 of 2018

M/s.Madurai Sree Meenakshi Agencies,
Represented by its Proprietor
Mr.Bharathdeepak
7/1, Rajampadi Bus Stop,
Nagamalai Pudukottai,
Madurai- 625 019

... Petitioner

Vs.

1. The Inspector,
Railway Protection Force,
Southern Railway Junction,
Madurai, Tamil Nadu.

2. The Designated Officer,
Office of the Deputy Director of Health Services,
Viswanathapuram,
Madurai-625 014.

...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Mandamus, to direct the respondents to release the illegally seized chewing tobacco, which was booked with a rail leasing company under G.R.No.107552, dated 02.02.2018.

For Petitioner : Mr.K.R.Lexman
for Mr.B.Saravanan

For Respondents : Mr.S.Manohar (For R1)
Mr.S.Nagarajan (For R2)
Special Government Pleader

O R D E R

The petitioner had transported consignment containing 200 boxes of tobacco and the same was waylaid during the course of the rail transit and the said tobacco was seized. The petitioner had transported this seized chewing tobacco through rail leasing company under G.R.No.107552, dated 02.02.2018.



2. According to the learned counsel for the petitioner, there are no proceedings initiated by the respondents and that the entire seizure is illegal. Even otherwise, tobacco seized is not banned item under the Food Safety and Standards Act and as such, the second respondent is not justified in seizing the same.

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3. The learned Special Government Pleader appearing for the second respondent submitted that under Section 3(1) (zz) (i) (iii) (v) of FSS Act 2006 and Rules 2.3.4 of the Food Safety and Standard Act, the sample was found to be unsafe and by relying upon the Government Gazette No. VI(1)155(a)/2017, dated 23.05.2017, they justified the seizure.

4. This Court in a catena of orders has held that the chewing tobacco will not fall under the purview of the Food Safety and Standard Act. The relevant portion of one such order dated 27.04.2015 made in CrI.O.P(MD)No.5505 of 2015 reads as follows:-

"8. Thus it is clear that the petitioners who are manufacturing Gutka and Pan Masala cannot be proceeded under the FSSAI. Tobacco is covered under the COTA (Cigarettes and other Tobacco Products Act, 2003)."

5. It is also seen that the Government order relied upon by the second respondent was subject matter of writ petition in W.P(MD). No.10319 of 2017, whereby, the G.O. dated 23.05.2017 came to be quashed by an order dated 12.09.2017. As such, by relying upon the Government order and justifying the action taken may not be proper and the entire seizure would be illegal.

6. Above all, since the seized tobacco is not follow under the purview of Food Safety and Standard Act, the respondents may not be justified in initiating coercion action against the petitioner. Hence, the writ petition stands allowed with a direction to the respondents to release the tobacco seized, which is booked by rail leasing company in G.R.No.107552, dated 02.02.2018. Such an exercise shall be completed, within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector,
Railway Protection Force,
Southern Railway Junction,
Madurai, Tamil Nadu.



2. The Designated Officer,
Office of the Deputy Director of Health Services,
Viswanathapuram,
Madurai-625 014.

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+1cc to Mr.B.Saravanan, Advocate Sr.No.63469

+1cc to Mr.S.Manohar, Advocate Sr.No.62949

RMK

VB/SV/MMS/SAR1/03/05/2018/3P/5C

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