

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.30839 of 2015

M/s.Padmavati Enterprises,
Represented by its Proprietor, Mr.Dhanraj,
No.47/1, Varadhamuthaiyappan Street,
Chennai -600 001

... Petitioner

Vs.

1. The Deputy Commissioner of Customs (Group 1),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001
2. The Director,
Food Safety and Standards Authority of India,
Ministry of Health and Family Welfare,
New Delhi.
3. Authorised Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
C.I.D, Rajaji Bhawan, Besant Nagar,
Chennai-600 090.
4. Inspection Officer,
Food Safety & Standards Authority of India,
Ministry of Health and Family Welfare,
C.I.D, Rajaji Bhawan, Besant Nagar,
Chennai-600090.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 3rd and 4th respondents herein to draw samples and certify petitioner's standard based on the specifications applicable under the Food Safety and Standards Act, 2006 and Regulations made thereof.

For Petitioner : Mr.S.Murugappan
For Respondents : Mr.SU.Srinivasan
CGSC for respondents.

O R D E R

The relief sought for in the present Writ Petition is to direct the respondents 3 and 4 to draw samples and certify petitioner's standard based on the specifications applicable under the Food Safety and Standards Act, 2006.

2. The petitioner firm is an importer and trader in camphor and other chemicals. In the course of its business activities, the petitioner firm imported 4312 bags of sodium chloride from China. The net quantity imported is 107.8 tonnes in four containers with each bag of Sodium Chloride (Salt) weighing 25 kgs, net. The goods were supplied by M/s.China Salt Jitan Co.Ltd. The goods were accompanied by the suppliers' certificate of Analysis dated 02.07.2015 and also the certificate of Origin dated 02.07.2015.

3. Upon arrival of the goods at the Chennai Port, the petitioner firm filed a bill of entry with the first respondent as required by the Customs Department for due assessment and clearance of the consignment after completion of customs formalities. Since the goods imported were claimed as food grade sodium chloride, the matter was referred to the 3rd respondent for drawal of samples and giving their confirmation with regard to the food safety standards.

4. The 4th respondent came to inspect and draw the sample as per the directions of the third respondent. However, he did not draw any sample and instead forwarded a message online as per the practice of the 2nd respondent. The message received from the 4th respondent electronically was that "Best Before/ Use by date/ Date of expiry is not mentioned where it is required under clause 2.2.2:10 of FSS (Packaging and labelling Regulation, 2011)". Thus, an objection was raised for drawing sample on the ground that the details regarding the manufacturing date or date of expiry in the labelling were not found.

5. Thus, the request of the petitioner for conducting the lab test was denied. Therefore, the petitioner is constrained to move the present Writ Petition.

6. The learned counsel for the petitioner drew the attention of this Court with reference to the relevant rules, more specifically, as per the Food Safety and Standards (Packaging and Labelling) Regulation, 2011. Such a labelling in respect of wholesale quantity are exempted. When there is an exemption under the regulation in respect of whole sale packaging, there is no reason whatsoever to deny the benefit of lab test for the product imported by the petitioner.

7. The learned Central Government standing counsel reiterated by stating that in the absence of date of expiry and other details under the regulations, the authorities would not be in a position to draw sample, conduct test and send the same for testing in the lab. Relying on the counter affidavit, the learned Central Government standing counsel made a submission that in the present case such labelling and the particulars were missing and therefore the inspecting authorities refused to draw sample and there is no infirmity as such.

8. Para 1.2.1:(6) of the Regulation defines "Multipiece package means a package containing two or more individually packaged or labelled pieces of the same commodity of identical quantity, intended for retail either in individual pieces or packages as a whole"

9. Clause - 12 of the Regulation states Wholesale as follows:

"Wholesale package means a package containing -

a) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

b) a commodity of food sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity of food to the consumer in smaller quantities".

10. Clause 2.6 of the Regulation contemplates exemptions from labelling requirements-

Clause 2.6.1(5) enumerates that "In case of wholesale packages the particulars regarding list of ingredients, Date of Manufacture/ packing, best before, expiry date labelling of irradiated food and, vegetarian logo/ non vegetarian log, may not be specified."

11. The learned counsel for the petitioner made a submission that the packages in the case of the petitioner is

wholesale package. The commercial invoice issued by the exporting company indicates that the Sodium Chloride (food grade) in 25 kg/PE bag (Polyethylene bags). Therefore, the salt is packed in 25 kgs baggage and is a wholesale package. When it is a wholesale package, the exemption clause has to be applied and therefore, the stand taken by the Department is not in consonance with the provisions of the Regulation of the year 2011.

12. This Court is of the considered opinion that it is not in dispute that the petitioner imported salt from China. Further, the invoice indicates that it is a wholesale package. As far as the wholesale package of salt is concerned, the exemption clause is applicable. Furthermore, it is brought to the notice of this Court that there is no expiry date for salt. These are all the facts which were not considered by the competent authorities. Thus, this Court is inclined to consider the Writ Petition.

13. Accordingly, the respondents 3 and 4 are directed to draw samples and certify petitioner's standard based on the specification applicable under the Food Safety and Standards Act, 2006. The said exercise is directed to be done within a period of 4 weeks from the date of receipt of a copy of this order.

14. With this direction, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Customs (Group 1),
Custom House,
No.60, Rajaji Salai,
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+1cc to Mr.S.Murugappan, Advocate, S.R.No.69689

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UM(CO)
SU(31/01/2022)