

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1171 OF 2022

Mr.Prakash Shah a/w J. Sanghavi i/b PDS Legal for the Petitioner.
Mr.Pradeep Jetly, Senior Advocate a/w Maya Majumdar and Sangeeta
Y. for Respondents.

DATE : 25TH APRIL, 2022.

1] The Petitioner challenges the impugned seizure memo dated 16.04.2021. The Petitioner had imported goods claiming to be Eucalyptus oil. The same finds place in entry No.33.01 of the Customs Tariff Act. According to the Department the said product is Eucalyptol . It finds entry at Sr. No.29.32 of the Customs Tariff Act.

2] The Government laboratory that had tested the product and submitted the report did not have the facility to test the product Eucalyptus oil and it had submitted the report that the said product is Eucalyptol.

3] It is not the matter of dispute that the Government Laboratory

which has given the report earlier did not possess the facility to test the Eucalyptus oil. The matter came upto this Court. The Co-ordinate Bench of this Court under order dated 12.02.2021 in Writ Petition (St.) No.3311/2021 directed the department to draw fresh samples from the consignment in question of the Petitioner within one week for testing at any accredited laboratory at the instance of the Petitioner.

4] Pursuant to the aforesaid order the department had drawn fresh samples and had sent the same to the accredited laboratory viz. Geo Chem Laboratories (Rajkot) Pvt. Ltd. The report is submitted.

5] The report submitted by the Geo Chem is again a subject matter for interpretation before this Court. Both the parties were interpreting in their own way. This Court under order dated 18.04.2022 in the present Writ Petition directed the Geo Chem Laboratories to clarify with precision as to whether the product of which report is submitted and is matter of record, is Eucalyptus oil or Eucalyptol. Pursuant thereto Geo Chem has submitted clarification. It is stated that it had carried out identification test by G.C. method and the product in question is 'Eucalyptus oil'.

6] Mr. Jetly, learned senior counsel for the respondent submits that it appears that the product sent subsequently is pursuant to different bill of exchange than the one recorded in the earlier Petition.

7] This may not be permissible, as it is the department only who was directed to draw fresh samples from the consignment in question of the Petitioner for testing it in accredited laboratory. The samples were drawn by the department and sent it to the accredited laboratory.

The department in a way has considered that the same product is sent to the laboratory. It cannot now turn around and contend otherwise. In the light of the fact that the product is certified to be eucalyptus oil by the Geo Chem Laboratory i.e. product declared by the Petitioner, we pass the following order :

- i] The impugned seizure memo dated 16.04.2021 is set aside.
- ii] As the impugned seizure memo is set aside, further consequences to follow in accordance with law.
- iii] The goods in question be released.
- iv] Writ Petition is disposed of. No costs.

[M.G.SEWLIKAR, J]

[S.V.GANGAPURWALA,J]