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05.09.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28958 of 2022

M/S. Mokalbari Kanoi Tea
Estate Pvt. Ltd. & Anr.
Vs.
Union of India & Ors.

Mr. N.K. Chowdhury,
Mr. Nilotpal Chowdhury,
Mr. Prabir Bera,
Mr. Deepak Sharma
...for the petitioners

Ms. Manika Roy,
Mr. Sumalya Chakraborty
...for the respondent nos. 2 and 3

1. The grievance of the petitioners in the present writ petition is against the refusal of the Food Safety and Standards Authority of India (FSSAI) to give a no-objection for the petitioners to bring back into India products manufactured by the petitioners, which were initially exported to France. A part of the export consignment was returned by the French buyers on the ground that the grades and the qualities of the product (tea) did not match their requirements.

2. However, as per the document of such return from the end of the French importers, annexed to the writ petition, nothing is evident, nor has been relied on by the respondents-authorities, to show that the French importers refused on the ground

that there was any misrepresentation regarding the “best before date” of the products.

3. When the products were coming back into India, the Food Safety and Standards Authority of India (FSSAI), purely by relying on visual inspection, came to the conclusion that there was misrepresentation/misbranding and that the products did not qualify for no-objection, since sufficient time was not left between the date of inspection and the ‘best before’ date of the products. The premise of such observation by the respondent-authorities was that there were conflicting prints on the packages. In the default prints on the packages, it was indicated that the products were best used within twelve months from the date of manufacture, which was in the middle of the year, 2021. On the other hand, the labels pasted by the petitioners showed that the ‘best before’ date was to expire in the month of June, 2025. If the labels of the petitioners are taken to be correct, there is much time yet left for the ‘best before’ date to come.

4. Thus, the entire premise of the consideration of the respondent authorities was a visual inspection. However, nothing is depicted in the repeated refusals by the respondent-authorities, at the first instance and, thereafter on the two review prayers

made by the petitioners, to show as to what was the reason for accepting the pre-prints in the packages which indicated that twelve months was the 'best before' period, overriding the labels put by the petitioners/manufactures themselves.

5. In the absence of any such reason, the petitioners argues that the authorities ought to have physically sampled the products and satisfied themselves by appointing experts as to whether the 'best before' date was yet to come.

6. Learned counsel for the petitioners places reliance on Regulation 2(1)(c) of the Food Safety and Standards (Import) Regulations, 2017, which defines "Balance shelf-life" as the period between the date of import and "Best Before" or "Date of expiry", as the case may be. Again, learned counsel places reliance on Regulation 2(1)(c) of the Food Safety and Standards (Labelling and Display) Regulations, 2020, which, on the other hand, defines "Best before date" as the date which signifies the end of the period under any stated storage conditions during which the food product shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made, and beyond that date, the food may still be perfectly safe to consume, though, its quality may have diminished. However, the product

shall not be sold if at any stage the product becomes unsafe.

7. Learned counsel appearing for the respondent-authorities places reliance on Regulation 5(6) of the Import Regulations of 2017, referred to above. It provides that the Customs shall not clear any article of food unless it has a valid shelf-life of not less than sixty per cent or three months before expiry, whichever is less, at the time of import.

8. Learned counsel also places reliance on Section 3 (zf) (i) of the Food Safety and Standards Act, 2006 where “misbranded” means an article of food (A) if it is purported or is represented to be or is being (i) offered or promoted for sale with false, misleading or deceptive claims either (a) upon the label of package or (b) through advertisement or (ii) sold by a name which belongs to another article of food.

9. Drawing of sample, it is argued, is subject to satisfactory compliance of necessary provisions of labelling and display, physical condition of the consignment/product and satisfying the balanced shelf-life, failing which the consignment can be rejected at visual inspection stage.

10. Upon hearing learned counsel for the parties, it transpires that the premise of the rejection to grant no-objection was that in the perception of the respondents-authorities, the labels put by the

petitioners themselves to the packages were false, misleading and deceptive claims, on which premise the respondents found that the said labels were to be ignored in preference to the pre-existing prints on the packages of the products, which indicated that the best before date expired twelve months after the manufacturing date, which was in the middle of the year, 2021.

11. However, in terms of the written notes of the respondents themselves, filed in pursuance of a direction of Court, drawing of sample is subject to satisfactory compliance of necessary provisions of labelling and display, physical condition of the consignment/product and satisfying the balanced shelf-life, failing which, consignment can be rejected at visual inspection stage. The construction of such sentence, which finds place in the short notes handed over in court today by the respondents, clearly indicates that prior to the visual inspection stage, there has to be a drawing of sample and an examination of the physical condition of the consignment/product for satisfaction regarding balanced shelf-life.

12. In the present case, there is nothing to indicate that there was ever any sampling or physical examination of the consignment or product to verify as to whether the shelf-life indicated in the labels of

the petitioners were correct or that which was pre-printed in the packages of the product.

13. In the absence of such examination, the refusal by the respondent-authorities is vitiated.

14. Even on a consideration of Regulation 2(1)(c) of the Labelling and Display Regulations, 2020, the 'best before' date is the date which signifies the end of the period under any stated storage conditions during which the food product shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made.

15. To assess whether the products-in-question retained such specific qualities for which tacit or express claims were made by the petitioners, a hearing ought to have been given to the petitioners and an opportunity to the petitioners to produce documents in that regard, coupled with sampling of the products before coming to the conclusion that the pre-printed dates would override the labels of the petitioners. In such view of the matter, the impugned decisions, annexed to the writ petition, whereby the respondent-authorities repeatedly refused to grant no-objection to the petitioners for the purpose of importing their products, are set aside.

16. Accordingly, W.P.A. No. 28958 of 2022 is allowed, thereby setting aside the refusal of the

respondent-authorities to grant no-objection to the petitioners to bring in their return products.

17. The respondent-authorities are directed to give an opportunity to the petitioners to present their case as well as to produce their documents to substantiate their claims regarding the actual 'best before' date in the light of the above observations.

18. The respondent-authorities shall also conduct a physical sample examination of the petitioners' products for the purpose of ascertaining the veracity of the petitioners' contentions, before coming to a finding as to whether the 'best before' date disclosed in the labels of the petitioners, that is, June, 2025 is the actual 'best before' date or that printed in the packages, that is, twelve months from the date of manufacturing.

19. Such re-hearing and the entire exercise shall be concluded expeditiously by the respondent-authorities, preferably within one month from date, and the outcome thereof shall be communicated to the petitioners immediately thereafter.

20. It is made clear that the rival contentions of the parties on the merits of the samples have not been decided on merits by this court and it will be open to the respondent-authorities to decide the same independently on their own merits.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)