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W.P.No.31796 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.31796 of 2018

and

W.M.P.No.37028 of 2018

M/s.Jaiswal Products,
Rep. by its authorized signatory,
Inbarasu,
Manufacturer of Hans Chhap Tobacco,
G-82 Preet Vihar, Delhi - 110 092

...Petitioner

Vs.

1. The Food Safety & Standards Authority of India (FSSAI),
FDA Bhawakotta Road,
New Delhi-110 002.
2. The Designated Officer,
Deputy Director of Health Service Campus,
Old District Board Building,
Salem-636 001.
3. The Food Safety Officer,
Kadaiyampatti Block,
O/o The Designated Officer,
Deputy Director of Health Service Campus,
Old District Board Building,
Salem-636 001.
4. The Commissioner of Food Safety,

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Tamil Nadu Food and Drug Administration,
Anna Salai, Chennai

...Respondents

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for all records pursuant to the proceedings in R.No.797/A3/FSSA/2018 dated 04.06.2018 and quash the same and consequently forbear them from seizing the product namely “Hans Chaap Tobacco” unless it is found to be used as an ingredient in any food products.

For Petitioner : Mr.D.Saikumaran

For Respondents : Mr.Su.Srinivasan, for R1
: Mr.S.Balamurugan, GA, for R2 to R4

ORDER

The petitioner has come up with this Writ petition seeking quashment of the proceedings bearing R.No.797/A3/FSSA/2018 dated 04.06.2018 and to consequently forbear them from seizing the product namely “Hans Chaap Tobacco” unless it is found to be used as an ingredient in any food products.

2. The case of the petitioner is that the petitioner is carrying on business of tobacco, namely, Hans Chhap Tobacco. On 27.04.2018, the petitioner has received a notice from the 2nd respondent along with the food analyst report asking certain particulars, since R2 has seized the product of the petitioner from a retail outlet and sent the same for food analyst. The



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petitioner responded to the said notice vide reply dated 02.05.2018 stating that they are not selling their products in the State of Tamil Nadu and they do not have any agent to sell the same. Further, the product of the petitioner is a pure tobacco product and hence the regulations applicable to a food product will not apply on a tobacco product. Simultaneously, the petitioner has filed appeal challenging the report of the food analyst, which stands rejected vide order dated 04.06.2018, impugned in this Writ Petition.

3. Learned counsel for the petitioner submits that, the petitioner has not sold the products to the vendor directly. Further the product is a pure form of tobacco and it was not intended or sold as ingredient to any food products. He further submits that when R3 has not seized the product while mixing with any food product, the report of the food analyst has no basis. The Food Safety and Standards Act, 2006 is applicable only for foods and not to tobacco. Without prejudice to the aforesaid contention, learned counsel for the petitioner submits that, the respondents may be directed to send the samples of the tobacco seized to referral lab for examination.

4. Learned counsel for the respective respondents do not object to the



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aforesaid request and the suggestion of the Court in directing the respondents to send the samples to referral lab for examination.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the petitioner's product was seized and the same was sent for food analysis and the food analyst opined that the seized product is not fit for consumption, based on which, the appeal preferred by the petitioner under Section 46(4) of the Act, before the Designated Officer, was rejected by the appellate authority. However, the petitioner has right to prefer appeal to send its product to referral lab, which is an authorised lab as notified by the Food Authority for opinion. Instead of the same, rejecting the petitioner's appeal for untenable reason is not sustainable.

7. For the reasons aforesaid, this Court, has no hesitation to interfere with the order of the 1st respondent impugned in this Writ petition. Hence, the impugned order dated 04.06.2018 is set aside and the 1st respondent is directed to send the samples for examination to the referral laboratory



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within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of the report, the respondents are at liberty to do the needful, after conducting appropriate enquiry.

8. With the above observations and directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous petition is closed.

07.03.2023
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skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

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O/o The Designated Officer,
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M.DHANDAPANI., J.

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and
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W.M.P.No.37026 of 2018

in

W.P.No.31796 of 2018

M.DHANDAPANI., J.

Dispense with ordered for the
present.

07.03.2023

(2/2)

skt