

W.A(MD) No.900 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2025

Pronounced on : 25.08.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A(MD) No.900 of 2025
and
C.M.P.(MD)No.5852 of 2025**

1.The Commissioner,
Tamil Nadu Food Safety
and Drug Administration
Department,
DMS Campus, Teynampet,
Chennai – 600 006.

2.The Designated Officer,
Tamil Nadu Food Safety and
Drug Administration
Department, Food Safety Wing,
Sivagangai District.

... Appellants

Vs.

1.S.Subramaniyan

2.The Inspector of Police,
Nerkuppai, Police Station,
Nerkuppai, Sivagangai District.

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 31.01.2023 made in WP(MD)No. 1040 of 2023.

For Appellant : Mr.A.Kannan,
Additional Government Pleader

For Respondents : Mr.S.Ramanathan for R1

Mr.T.Senthilkumar,
Additional Public Prosecutor for R2

JUDGMENT
(By G.R.SWAMINATHAN, J.)

This appeal is directed against the order dated 28.02.2025 made in WP(MD)No.5378 of 2025 filed by the first respondent herein. The first respondent has been running a petty shop in the petition-mentioned premises. On 07.12.2024, the Inspector of Police, Nerkuppai Police Station, Sivagangai District inspected the shop premises and found that the shop keeper (R1 herein) had kept concealed certain banned tobacco products for sale. He thereupon registered Crime No.75 of 2024 under Section 24(1) of the Cigarette and Other Tobacco Products Act, 2003. This was forwarded to the Designated Officer, Tamil Nadu Food Safety



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and Drug Administration Department, Food Safety Wing, Sivagangai District on 01.02.2025 for taking further action. Thereafter, the said officer inspected the first respondent's shop and passed the impugned order dated 06.02.2025 whereby the shop keeper was fined Rs.25,000/- and the shop was also sealed. Challenging the said order, WP(MD)No. 5378 of 2025 was filed. The learned Single Judge directed de-sealing of the premises vide order dated 28.02.2025. The prosecution was allowed to go on. Assailing the said order, this writ appeal has been filed.

2.The learned Additional Government Pleader reiterated all the contentions set out in the grounds of appeal. He pointed out that certain tobacco products such as gutkha have been banned but the writ petitioner was keeping them for sale. He pointed out that the Designated Officer under the Food Safety and Standards Act, 2006 is having the power to seal the unlicensed premises/shops. He added that the Commissioner of Food Safety had issued order bearing R.No.8491/2019/S1/FSSA dated 04.01.2024 providing for levy of compounding penalty for selling banned food items. The quantum of fine would vary whether the penalty was being levied for first time offence, second time offence or third time



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offence. He also submitted that considering the larger social implications, this Court may set aside the order of the learned Single Judge.

3.Per contra, the learned counsel appearing for the writ petitioner submitted that the shop in question has been under lock and seal for more than six months and that the writ petitioner's livelihood has been seriously affected.

4.We carefully considered the rival contentions. Even while we acknowledge that sale of banned tobacco products has a deleterious impact on public health, the issues raised in this writ appeal have to be answered through the prism of legality. We keep aside our moral sentiments. The first question is whether the Food Safety Officer has the power to seal any business premises ? The answer is in the affirmative. But it is hedged with certain conditions. Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011 sets them out. It reads as follows :



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“2.1.3: Food Safety Officer

4. Powers and Duties:

(i) Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38 (1) (c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis...”

The above Rule refers to Section 38 of the Food Safety and Standards Act, 2006 which deals with the powers of Food Safety Officer. It reads as follows :

“38.Powers of Food Safety Officer. (1) The Food Safety Officer may –

(a) take a sample –

(i) of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

(ii) of any article of food or substance which is found by him on or in any such premises; which he has reason to believe



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that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; or

(b) seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the regulations made thereunder; and

(c) keep it in the safe custody of the food business operator such article of food after taking a sample; and in both cases send the same for analysis to a Food Analyst for the local area within which such sample has been taken:

Provided that where the Food Safety Officer keeps such article in the safe custody of the food business operator, he may require the food business operator to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Safety Officer deems fit and the food business operator shall execute the bond accordingly.

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.



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(3) Where any sample is taken, its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) Where any article of food seized under clause (b) of subsection (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer may, after giving notice in writing to the food business operator, cause the same to be destroyed.

(5) The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the Food Safety Officer and a sample of such adulterant submitted for analysis to a Food Analyst: Provided that no such books of account or



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other documents shall be seized by the Food Safety Officer except with the previous approval of the authority to which he is subordinate.

(7) Where the Food Safety Officer takes any action under clause (a) of sub-section (1), or sub-section (2), or sub-section (4) or sub-section (6), he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.

(8) Where any books of account or other documents are seized under sub-section (6), the Food Safety Officer shall, within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts there from as certified by that person in such manner as may be prescribed by the Central Government have been taken: Provided that where such person refuses to so certify and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof and extracts there from as certified by the court have been taken.

(9) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.



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(10) The Commissioner of Food Safety may from time to time issue guidelines with regard to exercise of powers of the Food Safety Officer, which shall be binding:

Provided that the powers of such Food Safety Officer may also be revoked for a specified period by the Commissioner of Food Safety.”

Section 38 of the Act empowers the Food Safety Officer to take sample, seize any article of food that appears to be in contravention of the statute, enter and inspect any place, and direct destruction of food that is unfit for human consumption. Nowhere, this provision has conferred any power to seal the premises. This power is traceable only to Rule 2.1.3(4) (i) of the 2011 Rules. The Rule itself reads that the premises may be sealed for investigation after the Food Safety Officer is of the opinion that in the given situation, it is not possible to comply with the provision of Section 38(1)(c) or the proviso to Section 38(1) for reasons like non-availability of the food business operator. Section 38(1)(c) of the Act envisages keeping the seized food article in the custody of the food business operator. The proviso to Section 38(1) empowers the Food Safety Officer in such cases to call upon the food business operator to

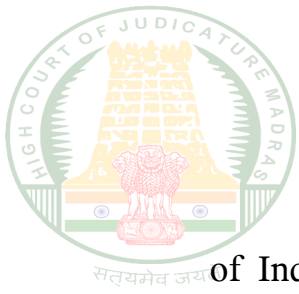


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execute a bond with sureties. If the food business operator is not available, the Food Safety Officer will have no option but to seal the premises. The sealing of premises is for the purpose of investigation.

5.It is well settled that the power to seal is a drastic power. The Act and the Rules framed thereunder are both regulatory as well as penal in character. Therefore, the Rule cannot be expansively or liberally construed. On the other hand, it has to be strictly interpreted. The application of the Rule will have to be within the four corners of the statute.

6.Right to property has ceased to be a fundamental right but it still retains its constitutional status under Article 300-A. When the property is used for business purposes, any action to seal the premises would have a direct bearing and effect on legal rights of the person to use and occupy the premises. The action of sealing would amount to suspension or taking away of such legal right, which cannot be resorted unless the procedure in law is adopted (vide **2023 SCC OnLine Bom 1499, Narayan Power Solutions vs UOI**). The right to carry on business is a fundamental right guaranteed under Article 19(1)(g) of the Constitution



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of India. Though it is not an absolute right, any interference with a fundamental right has to meet the standard of proportionality. A measure restricting a right must have a legitimate goal. It must be a suitable means of furthering this goal. There must not be any less restrictive but equally effective alternative. The measure must not have a disproportionate impact on the right holder. This four-pronged approach laid down in Aadhar case was approvingly cited in ***Akshay N.Patel v. RBI (2022) 3 SCC 694***. If on inspection, the officer finds a statutory violation, he is entitled to seize the food article. But the food business operator must be present so that the other formalities can be complied with. If the food business operator is not available in the spot, the officer has no option but to keep the seized article in the premises itself and seal the same. If in the absence of the food business operator, the seizure takes place and the officer takes the sample for testing, the food business operator can plead later that the seizure was not from his premises. Thus, this measure has a legitimate goal. It is also an appropriate method of effectuating the goal.



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7. Let us take a look at the sequence of events. The local police had conducted an inspection of the shop in question and registered a case on 07.12.2024. The Designated Officer visited the shop full two months later and proceeded to seal the premises. The impugned action of the authority fails at the very threshold stage itself. There was no legitimate goal to be fulfilled. Secondly, the sealing has to be for the purpose of investigation. Here, the local police had already registered a case. The second appellant herein had not taken any sample or seized the banned food items. Hence, there was no scope for any investigation to be done by the second appellant. The statutory condition set out in the Rule is not met. Unless the twin conditions laid down in the Rule (A. The authority must be of the opinion that it is not possible to comply with the provision of Section 38(1)(c) or the proviso to Section 38(1) B. Sealing is necessary for the purpose of investigation) are satisfied, any act of sealing will be without jurisdiction. The expression “for” found in the Rule cannot be ignored. P.Ramanatha Aiyar's Advanced Law Lexicon states that the word “for” is sometimes used as importing a condition precedent, or as a word of limitation. It can also mean “in the interest” or “to the benefit of”. In the present context, it can only mean that sealing



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must facilitate investigation. The authority is obliged to show that if sealing is not done, investigation will be hampered. The investigation referred to is not investigation by police. Since the Act contemplates further steps by the Food Safety Officer, the expression “investigation” would refer only to those steps to be taken by the Food Safety Officer and nothing else. Further, the sealing of the premises cannot be for eternity. The investigation has to be concluded within a reasonable time and once investigation is over, the premises must be de-sealed.

8.In the case on hand, such a situation did not even arise. The second appellant had sealed the premises by citing the mere registration of FIR. The impugned action of the authority can only be characterised as shockingly arbitrary.

9.More than six months have elapsed. The only reason for not de-sealing the premises is because the writ petitioner did not pay the fine amount of Rs.25,000/-. The second appellant levied the said penalty based on the order dated 04.01.2024 issued by the first appellant. It reads as follows : .



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TAMIL NADU FOOD SAFETY AND DRUG ADMINISTRATION DEPARTMENT

R.No. 8491/2019/S1/FSSA

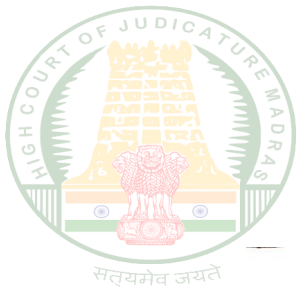
Chennai - 600 006
Dated:04.01.2024

ORDER

Sub : TN FSD - Control and Eradication of the drug menace in the State- Ban on Gutkha, Panmasala and other Chewing Tobacco Products containing tobacco/nicotine- Executive order for effective implementation of ban notification - certain instructions issued-Regarding.

- Ref :
1. The order of Honourable Supreme court in Central Arecanut Marketing Corporation and others Vs Union of India (Transfer case (c) 1 of 2010 dated:09.11.2016
 2. Compounding Penalty order issued vide R.No.8491/2019/S1/FSSA Dt:26.11.2019
 3. Ban Notification issued in Tamil Nadu gazette Extraordinary No. 188 dated 23.05.2023
 4. Minutes of the Meeting by Chief Secretary on 28.11.2023.
 5. Minutes of the Meeting by Principal Secretary, Health and Family Welfare Department on 29.11.2023.
 6. Representation received from Traders Association on 30.12.2023.

1) As per reference 1st cited, Considering the ill effects of tobacco on the health, the Hon'ble Supreme Court of India had issued directions to the Chief Secretaries of the States and the Administrators of the Union territories to issue notification vide its order in Central Arecanut Marketing Corporation and others Vs Union of India (Transfer case (c) 1 of 2010) in terms of Food Safety and Standards Act 2006 to ban manufacturing and sale of Gutkha and Panmasala with tobacco and/or nicotine.

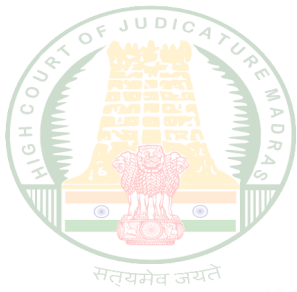


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2) Based on the Hon'ble Apex Court direction, and to prevent various types of cancer caused by consumption of tobacco and Nicotine, as per the reference 3rd cited, in exercise of the powers conferred under section 30(2) (a) FSSA 2006, the Commissioner of Food Safety had issued ban Notification on Gutkha, Panmasala and other chewable products containing tobacco/nicotine from the year of 2013. In continuation, the latest ban notification has been issued on 23.05.2023 to prohibit the manufacture, storage, transport, distribution or sale of all food products chewable or otherwise which is either flavoured or scented or mixed with any of the said additives, and whether going by the name or form of Gutkha, Panmasala, flavoured or scented food products or chewable food products by whatsoever name called, whether packaged and /or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer and any other food products containing tobacco and/or nicotine as ingredients, by whatsoever name it is available in the whole of the state of Tamil Nadu. In this connection, Food Safety department is effectively implementing the ban notification throughout Tamil Nadu from the year of 2013.

3) However, to strengthen the enforcement and to eliminate the banned food products from the State of Tamil Nadu 391 joint inspection teams have been formed with each team consisting of Food Safety Officer and Police Officer at Corporation/ Municipality / Block wise from 01.11.2023. Accordingly, during the joint inspection, in the interest of Public Health, Designated Officer/Food Safety Officer cancel or suspend the FBO's License/Registration Certificate as the case may be, who have been found to be selling banned food products in their premises under Regulations 2.1.8(4) of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 and also seals the Premises/ shops in accordance with the Act, Rules and Regulations, as the Food Business Operators shall not carry on the business without License/Registration Certificate.



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4)At this juncture, many representations have been received for revocation as early as possible based on the undertaking affidavit filed by Food Business Operators. It was also requested that if the shops are kept closed for longer duration, Food Business Operators' livelihood would be heavily affected. Hence, it was requested to fix the time limit for revocation.

5)However, selling of banned food products will endanger human health and well being of future generation. Hence, it has been decided to issue guidelines for effective implementation of ban notification.

6)In view of the above, it is hereby ordered that the Serial No.6 mentioned in the Compounding Penalty order issued U/s.69 of FSS Act 2006 vide R.No.8491/2019/S1/FSSA Dt:26.11.2019 is hereby revised. Further, it is hereby ordered that the modified compounding penalty for selling banned food items is to be followed as mentioned in the below table.

TABLE NO.1: REVISED COMPOUNDING PENALTY

S.No	Type of Food Business Operators in Sec.31(2) of FSSA, 2006 read with Reg.1.2.1(4) of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011	Penal Sections of FSSA 2006	Penalty for First time offence (Rs.)	Penalty for Second time offence (Rs.)	Penalty for Third time offence (Rs.)
06.	All kind of FBO's, whether registered or not, are found with selling banned food items and seized banned food items less than sample quantity in their premises	55,58	25,000	50,000	1,00,000



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**TABLE NO.2: GUIDELINES FOR SUSPENSION/ CANCELLATION OF
LICENSE/REGISTRATION CERTIFICATE AND CONDITIONS FOR
REVOCATION**

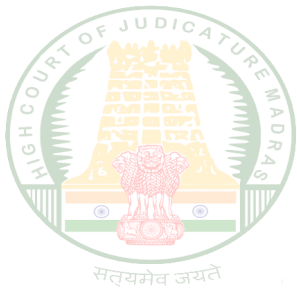
TYPE OF OFFENCE	ACTION	CONDITIONS FOR REVOCATION	NATURE OF AFFIDAVIT
First time	1.Suspension of License/Registration Certificate in the interest of public health under 2.1.8(4) of FSS (Licensing and Registration of Food Businesses) Regulations, 2011 and seal the premises / shops in accordance with the Act, Rules and Regulations.	Not less than 15 days from the date of suspension And For License category- File petition before Adjudicating Officer U/s.55,58 of FSS Act 2006 For Registration Category- Compounding Penalty- Rs.25,000/-	FBO Shall file an affidavit of undertaking that he/she will not sell any banned products in his/her shop, if it is violated, FBO bound by legal action. The affidavit should be in non- judicial stamp paper worth Rs.100/- with Notary attestation.
	2. If any FBOs carry on Food business without license/Registration Certificate in the interest of public health U/s.31(1) and 31(2) of FSS Act 2006 (as the case may be) and seal the premises / shops in accordance with the Act, Rules and Regulations.	Without License - File petition before Adjudicating Officer U/s.55,58,63 of FSS Act 2006 The FBO shall apply License /Registration Certificate before re-opening the shop.	



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TYPE OF OFFENCE	ACTION	CONDITIONS FOR REVOCATION	NATURE OF AFFIDAVIT
Second time	1.Suspension of License/Registration Certificate in the interest of public health under 2.1.8(4) of FSS (Licensing and Registration of Food Businesses) Regulations, 2011 and seal the premises / shops in accordance with the Act, Rules and Regulations.	Not less than 30 days from the date of suspension And For License category File petition before Adjudicating Officer U/s.55,58 of FSS Act 2006 For Registration Category- Compounding Penalty - Rs.50,000/-	FBO Shall file an affidavit of undertaking that he/she will not sell any banned products in his/her shop, if it is violated, FBO bound by legal action. The affidavit should be in non-judicial stamp paper worth Rs.200/- with Notary attestation.
Third time	1.Cancellation of License/Registration Certificate in the interest of public health under 2.1.8(4) of FSS (Licensing and Registration of Food Businesses) Regulations, 2011 and seal the premises / shops in accordance with the Act, Rules and Regulations.	Not less than 90 days from the date of cancellation. And For License category: File petition before Adjudicating Officer U/s.55,58 of FSS Act 2006 For Registration Category - Compounding Penalty - Rs.1,00,000/-	FBO Shall file an affidavit of undertaking that he/she will not sell any banned products in his/her shop, if it is violated FBO bound by legal action. The affidavit should be in non-judicial stamp paper worth Rs.500/- with Notary attestation.



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Note:

- ❖ The compounding penalty should be collected before revocation.

Hence all the Designated Officers hereby instructed to strictly adhere to the above guidelines with respect to Ban Notification from the date of issue of this order.

By 4/11/24
FOR COMMISSIONER OF FOOD SAFETY (i/c)

To

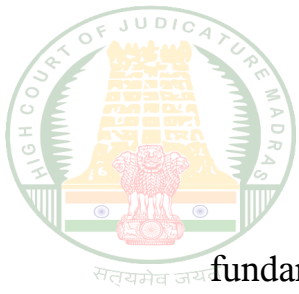
1. All the Designated Officers,

Copy submitted to

1. Additional chief Secretary to Government, Health and Family Welfare Department, Secretariat, Chennai – 600 009.
2. Appellate Tribunal, Food Safety Department, Chennai – 600 006.
3. All sections of this office.

We have already clarified as to when the authority can resort to sealing of the premises. It cannot be linked to payment of compounding penalty. When one is accused of having acted illegally, it is open to the accused to defend himself in the manner known to law. One can either plead guilty or contest the charges. Right to defend oneself against an accusation is a

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fundamental right. The person accused cannot be compelled to admit that he or she committed the offence. If the offender pays the compounding penalty, he can avoid prosecution. If he does not, he has to face adjudication under Section 68 of the Food Safety and Standards Act, 2006 or face trial in the criminal court. The choice is left to the individual. Section 69 of the Act empowers the authority to compound offences. It reads as follows :

69. Power to compound offences.—The Commissioner of Food Safety may, by order, empower the Designated Officer, to accept from petty manufacturers who himself manufacture and sell any article of food, retailers, hawkers, itinerant vendors, temporary stall holders against whom a reasonable belief exists that he has committed an offence or contravention against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.

(2) On the payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person.

(3) The sum of money accepted or agreed to be accepted as composition under sub section (1), shall not be more than one lakh rupees and due regard shall be made to the



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guidelines specified in section 49: Provided that no offence, for which punishment of imprisonment has been prescribed under this Act, shall be compounded.

A proceeding issued in terms of the aforesaid provision cannot be invoked to validate an act of sealing. The authority cannot insist that unless the compounding penalty is paid, the shop will be sealed or not de-sealed. That would amount to rank coercion. Compounding is a consensual affair. If the offender comes forward to compound the offence by paying the penalty, the official may accept the payment and close the prosecution. It cannot be imposed on the accused.

10.An FIR has been registered against the writ petitioner. He wants to contest the proceedings. He cannot be pressurised into pleading guilty by paying the compounding penalty. Once penalty is paid, it may legally amount to an acquittal but nevertheless it is an admission of guilt.

11.We have already held that the twin conditions mentioned above are absent in this case. The sealing is illegal and the shop shall be de-sealed immediately. The learned Single Judge had made it clear that the



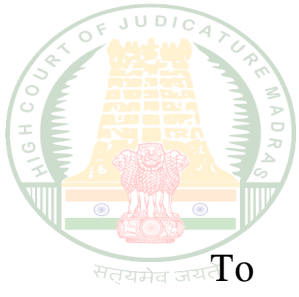
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writ petitioner has to face the prosecution. We go one step further. The writ petitioner has to avail the appeal remedy as regards the cancellation of his business license. The relief granted to him is two fold : a) De-sealing of the business premises and b) quashing the levy of compounding penalty.

12.With the aforesaid clarification, we sustain the order of the learned Single Judge and dismiss this writ appeal. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) (K.R.S., J.)
25.08.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM



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- To
- 1.The Commissioner,
Tamil Nadu Food Safety
and Drug Administration
Department,
DMS Campus, Teynampet,
Chennai – 600 006.
 - 2.The Designated Officer,
Tamil Nadu Food Safety and
Drug Administration
Department,
Food Safety Wing,
Sivagangai District.



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