

# M/S. M.M. Traders vs Commissioner Of Customs & Ors on 1 June, 2022

**Author: Rajiv Shakdher**

**Bench: Rajiv Shakdher**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1987/2022 & CM APPL. 5721/2022

M/S. M.M. TRADERS

Through:

..... Peti  
Mr Priyadarshi Manish, Ms Anja  
Jha Manish, Ms Deepali Sharma&  
Ritaj Kacker, Advs.

Versus

COMMISSIONER OF CUSTOMS & ORS.

..... Respondents

Through: Mr Kirtiman Singh, CGSC along

with Ms Srirupa Nag, adv for R-3

alongwith Mr Hariom Miglani, Sr Law

Officer and Mr Subhash Chand, Joint  
Director, CBI.

Mr Aditya Singla, Sr. Standing

Counsel with Mr Adhishwar Suri and Mr

Yatharth Singh, Advs. for R-1, 2 & 4.

W.P.(C) 1988/2022 & CM APPL. 5721/2022

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CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

Signature Not Verified

Digitally Signed

W.P. (C)

By:VIPIN KUMAR RAI1987/2022 & connected

Signing Date:06.06.2022

00:10:12

ORDER

% 01.06.2022 [Physical Hearing/Hybrid Hearing (as per request)]

1. Pursuant to the order passed by this Court on 17.05.2022, Mr Aditya Singla, who, inter alia, appears on behalf of Food Safety and Standards Authority of India [in short „FSSAI ] i.e., respondent no.4, has placed before us a copy of the Minutes of the 20th Meeting of the Scientific Panel on Fruits & Vegetables and their Products (including dried fruits and nuts.) 1.1. The said scientific panel, inter alia, examined the substance "Ethephon" and in that context, made the following observations:

"3.If ethylene gas has been permitted to be used for fruit ripening in any law in-force, it has to be generated by some source which could be solid (powder/sachet), liquid or gas. As per the Guidance note, artificial ripening has been recommended to be carried out using ethylene gas, which can be generated from different sources, with a condition that the source shall never come in contact with the ripening fruits. Therefore, there are no safety risks or health hazards associated with the use of ethephon

4. Ethephon was evaluated for toxicology by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) in 1977, 1978, 1993, 1995, 1997 and 2002. In 1993, the Meeting established an acceptable daily intake (ADI) of 0-0.05 mg/kg body weight (bw) on the basis of a no observed-adverse-effect level (NOAEL) of 0.5 mg/kg bw per day in studies in humans given repeated ethephon doses and application of a 10-fold safety factor. It was concluded that it is unlikely to pose a carcinogenic risk to humans from the diet.

5. The Guidance note on Artificial ripening mentions the use of Ethephon as one of the sources for generation of ethylene, a natural plant hormone used for ripening of fruits and the specified composition is found to generate ethylene up to a maximum concentration of 100 ppm. Further, the Guidance note mentions that the ethylene source should not come in contact of fruit at any point in time. Scientific Panel reiterates that the Guidance note from FSSAI is very comprehensive and straight-forward and the information given in it, needs to be understood and followed in the perspective, as it is intended to be conveyed."

W.P.(C) Signing Date:06.06.2022 00:10:12 1.2. A perusal of these observations does indicate that the substance, if converted into ethylene gas is „unlikely to pose a carcinogenic risk to humans... .

2. That said, Mr Singla has relied upon the counter-affidavit filed by FSSAI, albeit in another matter i.e., W.P.(C.) No.1584/2022, titled Gold Ripe International Pvt. Ltd. vs. Union of India and Ors. 2.1. In the said counter-affidavit, FSSAI, has, inter alia, taken the following position with regard to the aforementioned substance:

"16. I say that Ethephon is chemical substance and it is also known by its synonym "Ethrel". Ethephon is registered as an insecticide under the provisions of Insecticides Act, 1968. Thus, the requirement of providing Registration/License from CIB and RC for the said product before [sic : ] procuring the license from the Licensing Authority is a desired requirement to ensure that Safe Food is made available [sic : ] to the human masses."

3. Mr Kirtiman Singh, who appears on behalf of respondent no.3 i.e., Central Insecticide Board and Registration Committee [in short „CIB&RC ], submits that the exemption under Section 38(1)(b) of the Insecticides Act, 1968 [in short „1968 Act ] is not available to the petitioner, in view of the fact that this substance has dual use i.e., can be used for human beings as well as for „preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life.... .

4. To our minds, this is an aspect which needs further examination, for the reason that the expression at the end of clause (b) of sub-section (1) of Section 38, reads as follows:

Section 38. Exemption.--(1) Nothing in this Act shall apply to--

(a) the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under his cultivation;

W.P.(C) Signing Date:06.06.2022 00:10:12 „not useful to human beings. 4.1. What is required to be interpreted is whether the aforementioned expression is to be read along with what precedes the said expression. 4.2. It is obvious that Mr Priyadarshi Manish, who appears for the petitioners, contends that the expression „not useful to human beings has to be read with what precedes the expression, and not in the manner, in which, Mr Singh has attempted to interpret the aforesaid provision. 4.3. We may also note that clause (b) of sub-section (1) of Section 38 may have to be interpreted in the context of clause (a) of this very provision. A plain reading of clause (a) sub-section (1) of Section 38 shows that it states that nothing in the 1968 Act would apply to „the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under his cultivation .

4.4. Clearly, if insecticide is used for cultivation of a land, which is, under the sway of a private individual, nothing could prevent the product of the land being sold commercially, in the absence of any words of limitation in the provision.

4.5 Therefore, as indicated above, the provision would have to be interpreted one way or the other.

5. That said, there is much weight, at least, at this juncture, in Mr Manish's submission as the Scientific Panel of respondent no.4/FSSAI has approved the use of the substance in gaseous form for ripening fruits.

(b) any substance specified or included in the Schedule or any preparation containing any one or more such substances, if such substance or preparation is intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings.

(2) The Central Government may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify therein, exempt from all or any of the provisions of this Act or the rules made thereunder, any educational, scientific or research organization engaged in carrying out experiments with insecticides.

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6. Since Mr Singh, on behalf of respondent no.3/CIB&RC, insists that provisions of the 1968 Act will have to be adhered to, and this is an aspect which we need to examine further, as indicated above, as an interim measure, as agreed by Mr Manish, the petitioner will take steps, albeit, without prejudice to its rights and contentions, in accordance with the provisions of Section 9 of the 1968 Act.

6.1 Since the substance-in-issue has a limited shelf life, respondent no.3/CIB&RC is requested to hasten the process of examination, once requisite steps are taken by the petitioner under Section 9 of the 1968 Act. 6.2 Mr Manish says that steps, in that behalf, will be taken by the petitioner within the next one week.

6.3. Respondent no.3/CIB&RC will intimate the petitioner once an application is received under Section 9 of the 1968 Act, as to whether or not it requires further information. This communication will be sent within five days of the receipt of the application preferred by the petitioner. 6.4. Once the information is received, a determination will be made by respondent no.3/CIB&RC, within the next six weeks.

7. List the matter on 03.08.2022.

8. For the purposes of good order and record, the Registry will scan and upload the copy of the aforementioned Minutes of the 20<sup>th</sup> meeting of FSSAI and the copy of the counter-affidavit filed by respondent no 4/FSSAI in W.P.(C) No.1584/2022.

9. The Registry will also upload the counter-affidavit filed on behalf of respondent no.3/CIB&RC in the instant matter. 9.1. In the meanwhile, counsel for the petitioner will also have liberty to file a rejoinder in the matter.

10. Furthermore, Mr Singla will inform the Court on the next date of hearing, as to whether or not the Food Safety and Standards Act, 2006 and the rules/guidelines framed thereunder, requires the

vendors to place stickers W.P.(C) Signing Date:06.06.2022 00:10:12 on the product (i.e., fruits), indicating, as to how they are ripened.

RAJIV SHAKDHER, J TARA VITASTA GANJU, J JUNE 1, 2022/ rb Click here to check corrigendum, if any W.P.(C) Signing Date:06.06.2022 00:10:12