

Shri Abhishek Goyal vs Union Of India Through The Secretary on 17 December, 2021

Author: C.Saravanan

Bench: C.Saravanan

W.P.No.23547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.23547 of 2021
and
W.M.P.No.24774 of 2021

(Through Video Conferencing)

Shri Abhishek Goyal,
Proprietor of M/s.Shree Durga Traders,
having office at 1st Floor,
Room No.216, 19, Armenian Street,
Kolkata - 700 001.

... Petitioner

Vs.

- 1.Union of India through the Secretary,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhavan,
New Delhi – 110 011.
- 2.The Director,
Food Safety and Standards Authority of India,
Chennai Regional Office,
Central Documentation Blocks (South Wing),
Rajaji Salai, Chennai – 600 001.
- 3.The Deputy Director (Authorized Officer
- Chennai Seaport and Airport),
Food Safety and Standards Authority of India,
Chennai Regional Office,

<https://www.mhc.tn.gov.in/judis>

Central Documentation Blocks (South Wing),
Rajaji Salai, Chennai – 600 001.

4.The Director – Imports (Review Officer),
Food Safety and Standards Authority of India,
Kotla Road, New Delhi.

5.The Chief Executive Officer,
Food Safety and Standards Authority of India,
Kotla Road, New Delhi.

6.The Technical Officer,
Food Safety and Standards Authority of India,
Kotla Road, New Delhi.

7.The Commissioner of Customs,
Customs House, 60,
Rajaji Salai, Chennai – 600 001.

... Responde

Writ Petition filed under Article 226 of Constitution of India
issuance of a Writ of Certiorari and Mandamus, to call for the records
second to sixth respondents rejecting all the Review Application as
communicated under e-mail dated 24.08.2021 and decision on Second
Review / Appeal as communicated under e-mail dated 10.09.2021 to the
petitioner before this Court and quash the same as illegal and direct
second to sixth respondents forthwith to draw re-sample from the import
consignment of petitioner under Bill of Entry No.4609997, dated 08.07.
for the purpose of testing from any FSSAI accredited lab and to issue
Objection Certificate in release of the said import consignment in favor
the petitioner in case in report the sample is found to be in conformity

<https://www.mhc.tn.gov.in/judis>

Page No. 2 of 10

the parameters under the Food Safety and Standards (Food Product
Standards and Food Additive) Regulations, 2021.

For Petitioner : Mr.S.Siva Sankar

For R1 : Mr.T.L.Thirumalaisamy,
Central Government Standing Counsel

For R2 to R6 : Mr.Su.Srinivas,

For R7

: Mr.A.P.Srinivas, Senior Standing Co

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to :-

- i. call for the records of the second to sixth respondents rejecting all the Review Application as communicated under e-mail dated 24.08.2021 and decision on Second Review / Appeal as communicated under e-mail dated 10.09.2021 to the petitioner before this Court;
- ii. quash the same as illegal; and iii. direct the second to sixth respondents forthwith to draw re-sample from the imported consignment of petitioner under Bill of Entry No.4609997, dated 08.07.2021 for the purpose of testing from any FSSAI accredited lab _____
<https://www.mhc.tn.gov.in/judis> and to issue No Objection Certificate in release of the said import consignment in favour of the petitioner in case in report the sample is found to be in conformity with the parameters under the Food Safety and Standards (Food Product Standards and Food Additive) Regulations, 2021.
2. It is case of the petitioner that the petitioner had imported a consignment of Arecanut and filed a Bill of Entry No.4609997 on 08.07.2021. The petitioner had classified imported Arecanut under Item No.08028090 in Chapter 8 to the Customs Tariff Act, 1975. The imported consignment being a food article was subjected to test under the provisions of the Food Safety and Standards Act, 2006 read with Food Safety and Standards (Import) Regulations, 2017.
3. Two (2) samples from 23 packages out of 450 packages of imported Arecanut were drawn in terms of Regulation 9 of the aforesaid Regulations. The sample was sent to local authority in Chennai (i.e. Chennai Mettex Lab Private Limited) who by their report dated 20.07.2021 concluded that the imported consignment did not confirm to the specifications laid down in the Act for the parameters (Moisture, Damaged Nuts, Damages by moulds and _____
<https://www.mhc.tn.gov.in/judis> insects) in the Act and the Rules and Regulations made thereunder.
4. Aggrieved by the same, the petitioner filed an application for review and therefore a fresh test was done from the other sample that was drawn. Even in the said report of the Referral Laboratory, the sample was found not having passed the standards prescribed under the Food Safety and Standards Act, 2006 and Food Safety and Standards (Import) Regulations, 2017.
5. It is now the case of the petitioner that there were about 450 Packages and samples were drawn only from 23 Packages and that Rule 13(2)(g) of the aforesaid Regulations contemplates of collection of additional samples from imported goods on payment of invoice value of the food articles for re-testing. It is submitted that re-test can be done by drawing the rest of the packages to see if the

samples meet the standards as the petitioner is facing huge loss on the imported goods.

6. Opposing prayer, the learned Senior Central Government Standing Counsel for the second to sixth respondents submits that the imported consignments were subjected to test by drawing two (2) samples from the _____ <https://www.mhc.tn.gov.in/judis> consignment imported by the petitioner for being released into the domestic area. He further submits that the samples were subjected to test for the second time, wherein, it has also been confirmed that the sample did not meet the standards prescribed under the Act and Regulations and therefore, there is no case made out for taking fresh samples for testing as prayed by the petitioner. It is submitted that at best, the petitioner can be given liberty to re-export the goods to mitigate the alleged loss.

7. Heard the learned counsel for the petitioner and the learned Central Government Standing Counsel for the first respondent and the learned Senior Central Government Standing Counsel for the second to sixth respondents and the learned Senior Standing Counsel for the seventh respondent.

8. Rule 13(2)(g) of the Food Safety and Standards (Import) Regulations, 2017 contemplates that it is the duties and responsibilities of the Authorised Officer to collect the additional sample of imported articles for re- testing on payment of invoice value of the articles of food. Rule 13(2)(g) of the Regulations reads as under:-

13. (2) The Authorised Officer shall have the following powers and duties, namely:-

_____ <https://www.mhc.tn.gov.in/judis>

(a).....

.....

(g) to collect additional sample of imported articles of food on payment of invoice value of the articles of food;

9. There are about 450 packages imported. Samples from 23 packages were drawn for testing. It is quite possible that the samples from the remaining packages may meet or not meet the standards prescribed under the Food Safety and Standards Act, 2006 and Food Safety and Standards (Import) Regulations, 2017.

10. Considering the fact that there are remaining 427 packages (450 –

23) which have not been opened so far, the respondents shall draw two samples each from the remaining 427 packages of the imported consignment of the foods articles and test the samples subject to payment of necessary testing charges / tax. This exercise shall be carried out by the respondents, within a period of one week from date of receipt of a copy of this order.

11. The petitioner will be entitled to clear the respective imported packages subject to the respective samples meeting the standards prescribed under the Food Safety and Standards Act, 2006 and Food Safety and _____ <https://www.mhc.tn.gov.in/judis> Standards (Import) Regulations, 2017 and subject to the payment of applicable customs duty. It is made clear, those samples do not meet the standards shall not be allowed to be cleared into the Domestic Tariff Area and shall be destroyed or allowed to be re-exported as per the applicable Rules.

12. This Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

17.12.2021 Index : Yes/No Internet : Yes/No jen Note : Issue order copy on 20.12.2021.

To

1.The Secretary, Union of India Ministry of Health and Family Welfare, Government of India, Nirman Bhavan, New Delhi – 110 011.

2.The Director, Food Safety and Standards Authority of India, Chennai Regional Office, Central Documentation Blocks (South Wing), Rajaji Salai, Chennai – 600 001.

_____ <https://www.mhc.tn.gov.in/judis>

3.The Deputy Director (Authorized Officer

- Chennai Seaport and Airport), Food Safety and Standards Authority of India, Chennai Regional Office, Central Documentation Blocks (South Wing), Rajaji Salai, Chennai – 600 001.

4.The Director – Imports (Review Officer), Food Safety and Standards Authority of India, Kotla Road, New Delhi.

5.The Chief Executive Officer, Food Safety and Standards Authority of India, Kotla Road, New Delhi.

6.The Technical Officer, Food Safety and Standards Authority of India, Kotla Road, New Delhi.

7.The Commissioner of Customs, Customs House, 60, Rajaji Salai, Chennai – 600 001.

C.SARAVANAN, J.

_____ <https://www.mhc.tn.gov.in/judis> jen W.P.No.23547 of 2021 and 17.12.2021

_____ <https://www.mhc.tn.gov.in/judis>