

M/S Bismilla Food Enterprises vs Union Of India on 19 September, 2022

Author: N.V.Anjaria

Bench: N.V.Anjaria, Bhargav D. Karia

C/SCA/16715/2022

ORDER DATED: 19/09/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16715 of 2022

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M/S BISMILLA FOOD ENTERPRISES
Versus
UNION OF INDIA

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Appearance:

MR D K TRIVEDI(5283) for the Petitioner(s) No. 1
MR CHIRAYU A MEHTA(3256) for the Respondent(s) No. 3
PRIYANK P LODHA(7852) for the Respondent(s) No. 2
SERVED BY RPAD (N) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 19/09/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA) Heard learned advocate Mr. D. K. Trivedi for the petitioner, learned advocate Mr. Priyank Lodha for respondent No.2 and learned advocate Mr. Chirayu Mehta for respondent No.3.

2. The controversy in this petition relates to the goods such as Instant Coffee Nescafe, Chewing Gum Trident, Samyang Mix Noodles, Waffer Chocolate Ferrero, Chocolate Bar Kinder Bueno, Chocolate paste Nutella, Sugar Confectionery Candy Fruitella, Chocolate Bar Bounty, Chocolate Bar Snickers, Chocolates bar Mars, Chocolate Bar Twix, Chocolate Bar Cadbury etc..

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2.1 The petitioner made the following prayer,

"to direct the Respondent No.3 to immediately order for provisional release and re-export of the goods being seized under "Seizure Memo- cum-No Objection for Provisional Release" dtd. 13.4.2002 by respondent No.2 herein."

3. The goods were being transported by the petitioner from Mundra Port to Mumbai in a vehicle bearing registration No. GJ-12-BW-9272, which was a truck. The truck was intercepted with the assistance of Customs authorities on 24.3.2022. It was found that the truck trailer was loaded with the container No. CLHU 8381224 and the same was sealed with bottle seal.

3.1 Pursuant to seizure of goods, Seizure Memo-cum-No Objection dated 13.4.2022 for provisional release was issued to the petitioner. The grounds for seizure were indicated in detail in the said seizure memo. The goods were valued in accordance with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The goods imported by the petitioner were valued at Rs. 1,44,72,392/-. The vehicle in question was valued at Rs. 19,58,900/-.

3.2 The authorities exercised powers under section 110(1) of the Customs Act, 1962 and placed the truck and the goods under confiscation C/SCA/16715/2022 ORDER DATED: 19/09/2022 treating them as liable to be confiscated under section 111 read with section 115 of the Customs Act. The seizure memo mentioned that the custodian of the goods at ICD, Sanand to whom imported goods were handed over under Supratnama dated 25.4.2022, was not to remove, part with or otherwise deal with the said seized goods. 3.3 The goods have been seized by the authorities on the ground of non-observance of conditions of Food Safety and Standards Act, 2006 read with Food Safety Standard Rules, 2011 as well as the Food Safety and Standard (Import) Regulation, 2017 and other applicable FSSAI norms and other safeguarding conditions. It was provided in the seizure memo that the importer or transporter may approach to the Principal Commissioner or any other competent authority mentioned in the seizure memo for provisional release of the goods under section 110A of the Customs Act.

4. The petition was contested by filing affidavit-in-reply by respondent No.2, in which it was stated that the goods of the petitioner so transported and intercepted did not meet with the essential requirements under the Food Safety Act and the relevant Regulations mentioned above. The non-compliance was with regard to mentioning of incorrect quantity, not having Food Safety and Standards Logo, not having license number, C/SCA/16715/2022 ORDER DATED: 19/09/2022 not having the details much less accurate details about the importer of the goods, not having the logo about the Non-Veg or Veg items. Other aspects as found by the authorities under the Food Safety Standard norms were allegedly not complied with.

5. Section 110A of the Customs Act, 1962, reads as under, "110A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication : Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder

on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

5.1 While the petitioner has prayed for direction against the respondent no.3 to order provisional release and permit re-export of the goods seized under the seizure memo in question dated 13.4.2022, on admitted facts, the court found the part of the prayer relating to permission to re-export of the goods to the petitioner, could hardly be granted inasmuch as the goods were already transported away from the Mundra Port and came to be intercepted admittedly at a place near Sanand and thereafter, the authorities have kept the goods in a warehouse near Ahmedabad. 5.1.1 We do not express anything about petitioner's claim for re-export.

C/SCA/16715/2022 ORDER DATED: 19/09/2022 The petitioner may take legal recourse in this regard by approaching authorities, as may be available and permissible under the law. 5.2 As far as the prayer for provisional release of the seized goods is considered, the provisional release is granted in terms of section 110A of the Customs Act. In this regard, it is to be noticed from the contents of the affidavit-in-reply filed by respondent No.3 Customs that the petitioner has already made applications in form of letters dated 4.6.2022 and 1.7.22 seeking provisional release of the goods. The affidavit-in-reply in para 8.9 inter alia mentions that while seeking provisional release, the petitioner has expressed its inability to give bank guarantee as required for safeguarding the interest of the Customs.

5.3 Learned advocate for the petitioner in support of the prayer for provisional release attempted to rely on the decision of the Division Bench of this Court in Zip Zap Exim (P) Ltd. vs. Union of India [2020 (35) GST 387 (Guj.)] to submit on that basis that in the said decision the court directed release of the goods and permitted the petitioner thereon to re-export them on furnishing of 25% of the Customs Duty. In the same case, interim order dated 4.10.2018 was also relied on. 5.3.1 We could immediately notice that the decision of this court in Zip C/SCA/16715/2022 ORDER DATED: 19/09/2022 Zap Exim (P) Ltd. (supra) was based on different facts including on the ground of value of the goods, whereas the present controversy involves allegation of serious breaches on the part of the petitioner regarding non-compliance of the Food Safety Standards. Furthermore, there is no gainsaying that under section 110A of the Customs Act, the authorities are empowered to consider the question of release and put appropriate conditions for such release. Therefore, the judgment relied on by learned advocate for the petitioner, which stands true on its own facts, could not be applied in the present case.

5.4 In view of the above position obtaining and in the totality of facts and circumstances, it would be a proper course if the letters-cum-applications of the petitioner pending with the authorities seeking provisional release of the goods are decided by the authorities in exercise of powers under section 110A of the Act. It will be for the competent Customs authorities to take a proper decision about the provisional release imposing conditions for such release as may be deemed fit by the authorities.

6. When the applications seeking provisional release are pending before the authorities, it is entirely for the authorities to consider the same and to further assess the requirements of the nature of the

security to be C/SCA/16715/2022 ORDER DATED: 19/09/2022 obtained for the provisional release.

6.1 We direct that the competent authority of the Customs department shall consider the pending applications/letters containing the prayer of the petitioner for provisional release of the goods by imposing appropriate conditions within a period of one week from today. 6.2 We do not express any opinion about the merits of the case, including about the nature of the conditions to be imposed.

7. The petition is disposed of in terms of above.

Direct service is permitted today.

(N.V.ANJARIA, J) (BHARGAV D. KARIA, J) C.M. JOSHI/pps