

M/S Nutripure Fods Private Limited ... vs Union Of India on 10 February, 2022

Author: Vaibhavi D. Nanavati

Bench: Vaibhavi D. Nanavati

C/SCA/19953/2021

ORDER DATED: 10/02/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19953 of 2021

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M/S NUTRIPURE FODS PRIVATE LIMITED THROUGH ITS DIRECTOR
DHARMESH GORDHANDAS RATANGHAYRA
Versus
UNION OF INDIA

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Appearance:

MR.NANDISH H THACKAR(7008) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 1
MR ISHAN MIHIR PATEL(6508) for the Respondent(s) No. 2,3

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 10/02/2022

ORAL ORDER

1. The writ-applicant herein is a Company registered with the Registrar of Companies. The writ-applicant is in the business of importing food products following all the rules and regulations prescribed under the Food Safety and Standards Act, 2006 and the Rules framed thereunder.

2. The writ-applicant had imported organic food products from Italy which had arrived at Mundra Port. The products were (I) Sweet Potato, Pear, Banana and Carrot Puree (ii) Blue berry, Banana and Strawberry Puree and (iii) Plums and Puree vide Bill Entry No.5235754. The authorities at the port had demanded all the products from the writ-applicant and accordingly the writ-applicant had provided all the requisite documents. After examining all the documents supplied by the C/SCA/19953/2021 ORDER DATED: 10/02/2022 writ-applicant, the authority has issued NOC for only one product out of the three and rejected the NOC application of two other products on the following grounds which reads thus :-

"Article violates Clause 2.3.14(4) of Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011 as 6+ months is printed on the packet of the product, however Bureau of Indian Standards Certification has not been taken for the product under consideration. Conclusively, article also violates section-22, section-23, section-26 read with section-25 of the Food Safety and Standards Act, 2006 and clause (6) of the Food Safety and Standards (Import) Regulations, 2017. "

3. Being aggrieved by rejection of the NOC dated 1.10.2021 the writ-applicant approached the Director (Import), New Delhi by way of preferring an appeal. The said appeal came to be rejected. The rejection of the NOC was only on the ground of mentioning 6+ months on the packet as the same were not in accordance with the BIS standards.

3.1 Being aggrieved by the said order the writ-applicant preferred review application. The said application came to be disposed of with the following observations, which reads thus:-

"In view of the above-mentioned points, it is decided that the said consignment may be considered for sampling and testing C/SCA/19953/2021 ORDER DATED: 10/02/2022 by treating it as conventional food for which the imported has to strike out the word 'organic' and 'certifications logos related to Organic' with indelible ink wherever mentioned on the product labels. Further the importer will submit an undertaking to the Authorised officer that the product will not be sold as Organic in the domestic market, in view of the point (vi) above. Further, in view of point (vii) above, the imported shall rectify the product labels by striking out the term 'Proprietary Food' and the associated food category mentioned along with it. The importer shall also rectify the product labels by striking out the term "6+ M" with indelible ink, wherever mentioned on the labels on the product under consideration, in view of points (iii), (iv) and (v) above.

Further, in view of the point (viii) above, it has been decided that the imported has to comply with the above decision for the product 'Pear Banana Carrot Sweet Potato 120X100G- Nutripure-114 CTNS', that has been approved for NOC, as well and has to rectify the product labels accordingly, as mentioned above and the same has to be intimated to the Authorised Officer by the Importer."

3.2 Being aggrieved by the aforesaid decision dated 1.10.2021 the writ-applicant preferred second appeal which came to be disposed of by the respondent authority by an order dated 12.12.2021 which reads thus :-

"Sir,

(i) The importer (M/S NUTRIPURE FOODS PRIVATE C/SCA/19953/2021 ORDER DATED: 10/02/2022 LIMITED) has imported the said consignment of 'APPLE STRAWBERRY BANANA BLUEBERRY PUREE 120X120G NUTRIPURE114 CTNS TOTAL 10 PALLETS)' and É PLUM PUREE 120X120GR NUTRIPURE INDIA-111

CTNS)' from the Manufacturer/ Exporter M/S DO.DA.CO. SRL, Italy, having an invoice value of Rs.6,20,600,59.

(ii) The said products were rejected by the Authorised Officer on the grounds that:

"i)Article violates Clause 2.3.14(4) of Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011 as 6+ months is printed on the packet of the product however Bureau of Indian Standards Certification has not been taken for the product under consideration. Conclusively, article violates Section- 22, Section 23, Section-26 read with section-

25 of Food Safety and Standards Act, 2006 and clause (6) of Food Safety and Standards (Import) Regulations, 2017."

(iii) It has been noted that the products under consideration are fruit puree but the product labels contain the statement "6+ M", which gives the impression that the product is intended for infants and children. In this regard, a clarification was sought from the importer.

(iv) The importer has clarified vide email dated 13.10.2021 that "The products can be consumed by individuals above the age of 6 months including children, adults, marathon runners and senior citizens as the products consist of 100% fruit puree (there are no added preservatives, salt, sugars). The product is C/SCA/19953/2021 ORDER DATED: 10/02/2022 not intended for new born infants below the age of 6 months,"

(v) Further, it has been noted that since the said product is not covered under infant milk food, infant formula and milk cereal based weaning food, processed cereal based weaning food and follow up formula, thus the requirement for BIS certification mark as per the Provisions of sub reg. 2.3.14(4) of the Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011, is not applicable.

(vi) However, it has been noted that the products under consideration have been depicted as organic products although at present, there is no bilateral agreement between India & Italy for mutual recognition of organic certification.

(vii) It has also been noted that the said products have been depicted as proprietary food on the product labels, however, as per the ingredients list available on the labels and the same submitted by the importer vide email dated 13.10.2021, the products have been found to be standardized product as per sub reg. 2.3.12 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011.

(viii) In view of Points (vi) and (vii) above, It has also been noted that one of the product in the said consignment, 'PEAR BANANA CARROT SWEET POTATO 120XIOOG-NUTRIPURE-

114 CTNS', has been approved for NOC, although it has also been depicted as organic product and Proprietary food.

C/SCA/19953/2021 ORDER DATED: 10/02/2022 In view of the above mentioned points, it is decided that the said consignment may be considered for sampling and testing by treating it as conventional food for which the importer has to strike out the word 'Organic' and 'certifications logos related to Organic' with indelible ink wherever mentioned on the product labels. Further the importer will submit an undertaking to Authorised Officer that the product will not be sold as organic in the domestic market, in view of point (vi) above. Further, in view of point (vii) above, the importer shall rectify the product labels by striking out the term 'Proprietary Food' and the associated food category mentioned along with it.

Further, in view of point (viii) above, it has been decided that the the importer has to comply with the above decision for the product 'PEAR BANANA CARROT SWEET POTATO 120X100G-NUTRIPUPÆ-114 CTNS', that has been approved for NOC, as well and has to rectify the product labels accordingly, as mentioned above and the same has to be intimated to the Authorised Officer by the Importer.

Further, the Authorised Officer shall ensure that all other requirements as per FSS Act, 2006 and Rules and Regulations made thereunder are fulfilled before sending the samples for analysis.

However, this relaxation is only one time and the importer has to comply with all requirements of FSS Act, Rules and Regulations made thereunder in all future consignments."

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4. Being aggrieved and dissatisfied with the orders dated 4.12.2021 and 12.12.2021 the writ-applicant approached this Court seeking the following reliefs :-

"(A) YOUR LORDSHIPS may be pleased to admit and allow this petition.

(B) YOUR LORDSHIPS may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction by quashing and setting aside the impugned orders at Annexure-A dated 4.12.2021 and 12-12.2021 passed by the respondents, in the interest of justice;

(C) YOUR LORDSHIPS may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction by quashing and setting aside the impugned orders dated 01.10.2021 passed by the respondents being NCC202100063441 and NCC202100063442 and further be pleased to direct the respondents to issue NOC on the products of petitioner imported on 28.08.2021 vide Bill of Entry No. 5235754, in the interest of justice;

(D) Pending admission, hearing and final disposal of this petition, YOUR LORDSHIPS may be pleased to permit the petitioner to sell the products of petitioner imported on 28.08.2021 vide Bill of Entry No. 5235754, as the same is having a Shelf Life, in the interest of justice;

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(E) Such other and further relief or relieves as may be

deem fit, just and proper, in the facts and circumstances of the case;"

5. Mr. Nandish H. Thackar, the learned advocate appearing for the writ-applicant submitted that the respondent authority had rejected the two products out of the three merely on the ground of mentioning "6+ M" on the packing was contrary to the Bureau of Indian Standards and, therefore, the NOC of the two products were rejected.

5.1 Mr. Thackar, the learned advocate submitted that the products imported by the writ-applicant do not require certification from the Bureau of Indian Standards. He further submitted that the writ-applicant is clearly complying with the Regulation-9 of the Food Safety and Standards (Organic Foods) Regulations, 2017. He submitted that the products of the writ-applicant are organic certified with the ICEA, Italy. He relied on the FSSAI's website, NPOP has an equivalence agreement with organic food regulations of European Union. He submitted that Italy is covered under the EU list of Control Bodies and Control Authorities in the Organic Sector.

5.2 Mr. Thackar, the learned advocate relied on the Notification dated 29.12.2017 issued by the FSSAI introducing the Food Safety and Standards (Organic Foods) Regulations, C/SCA/19953/2021 ORDER DATED: 10/02/2022 2017 and submitted that the product shall not require any re-certification if there is any Bilateral or Multilateral Agreement, however, in absence thereof, the regulations nowhere prescribe that the product shall not be permitted. He submitted that at the most, the said product has to be re-certified by the Indian Authority on import. However, when there is an Equivalence Agreement, such re-certification cannot be sought for. Mr. Thackar submitted that the writ-applicant are importing the said product since 2018 and the products of the writ-applicant are 100% Organic. The authority have earlier permitted the writ-applicant to import the said product.

6. Mr. Devang Vyas, the learned Assistant Solicitor General assisted by Mr. Ishan M. Patel, learned advocate for the respondents relied on the affidavit duly filed by the respondents No.2 and 3 and submitted that the respondent authority issued NOC for only one product out of the three and rejected the NOC application of two other products.

6.1 Mr. Vyas, the learned Assistant Solicitor General relied on the Chapter 3 of the FSS (Organic Foods) Regulations, 2017 which reads thus :-

"(1) Organic food imports under bilateral or multilateral agreements on the basis of equivalence of standards between National Programme for Organic Production and the organic standards of the respective exporting countries shall not be required to be re-certified on import to India subject to their C/SCA/19953/2021 ORDER DATED: 10/02/2022 compliance with the provisions of the Act, the rules and regulation made there under.

(2) The organic food consignments referred to in sub-

regulation .- (1) shall be accompanied by a transaction certificate issued by an Accredited Certification Body covered under the terms of the equivalence agreement."

Relying on the same he submitted in the present case no bilateral agreement between India and Italy/EU for mutual recognition of organic certification is in existence/force.

6.2 Mr. Vyas, learned Assistant Solicitor General submitted that as per the APEDA website, "The NPOP standards for production and accreditation system have been recognized by the European Commission and Switzerland for unprocessed plant products as equivalent to their country standards. With these recognitions, Indian organic products duly certified by the accredited certification bodies of India are accepted by the importing countries". The recognition is only for organic products exported from India to European Commission and Switzerland.

6.3 Mr. Vyas, learned Assistant Solicitor General submitted that the label of "6+M" in respect of decision on the review application, the review officer it was noted that the label gave the impressions that the product was intended for infants and C/SCA/19953/2021 ORDER DATED: 10/02/2022 children. However, it was also noted that the requirement of BIS certification mark as per provisions of Sub regulations 2.3.14 (4) of FSS (Prohibition and Restriction of Sales) Regulation, 2011 was not applicable, which was dealt with in law in the order passed in the Appeal and the order passed in the Review Application.

6.4 Mr. Vyas, learned Assistant Solicitor General relied on the Regulation 2.12 of FSS (Food Products Standards and Food Additives) Regulations, 2011 which reads thus :-

"For the purpose of these regulations , - (1) Proprietary food means an article of food that has not been standardised under these regulations, but does not include novel foods, foods for special dietary uses, foods for special medical purposes, functional foods, supplements and such other food articles which the Central Government may notify in this behalf. Provided that any deviation in quality parameters of a standardised food, as specified in the Food Safety and Standards Regulations made under the Food Safety and Standards Act, 2006 shall not qualify the resultant product as a proprietary food."

6.5 Mr. Vyas, learned Assistant Solicitor General submitted that imported food product by the writ-applicant is a standardized product as per Regulation 2.3.12 of the FSS (Food Products

Standards and Food Additives) Regulations, 2011.

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6.6 Mr. Vyas, learned Assistant Solicitor General submitted

that one time relaxation was granted to the writ-applicant by the respondent authority and hence it was informed to the writ-applicant that the said consignment may be considered for sampling and testing subject to rectification of the labels and conditions as stipulated in decisions communicated by emails dated 22.10.2021 and 12.11.2021 respectively. He accordingly submitted that in view of above submissions the respondent authority had acted in a fair manner and prayers as prayed for by the writ-applicant be declined.

7. The main grievance of the writ-applicant is with regard to the two products imported by the writ-applicant wherein the respondent authority rejected to grant NOC, while granting NOC for one of the product.

7.1 It is the case of the writ-applicant that the writ-applicant is in the business of importing food products which are organic and the said product clearly comply with the Regulation of the Food Safety and Standards (Import) Regulations, 2017. Rule 9 of the Regulation 2017 reads thus :-

"9. Import of organic food :- (1) Organic food imports under bilateral or multilateral agreements on the basis of equivalence of standards between National Programme for Organic Production and the organic standards of the respective C/SCA/19953/2021 ORDER DATED: 10/02/2022 exporting countries shall not be required to be re-certified on import to India subject to their compliance with the provisions of the Act, the rules and regulation made there under.

(2) The organic food consignments referred to in sub-

regulation :- (1) shall be accompanied by a transaction certificate issued by an Accredited Certification Body covered under the terms of the equivalence agreement."

However, in the present case, the writ-applicant has imported the said product from Italy. There is no existence Bilateral Agreement or Multilateral Agreement between the Ital/EU and India for certification. Further the APEDA website recognizes only organic products exported from India to Europe Commission and Switzerland. Further the writ-applicant imported the product which is a standardized product as per Regulation 2.3.12 of the FSS (Food Products Standards and Food Additives) Regulations, 2011. Therefore the Regulation 2.12 with regard to the proprietary food is not applicable to the writ-applicant. The Regulation 2.3.12 of the FSS (Food Products Standards and Food Additives) Regulations, 2011 reads thus :-

"2.3.12 Thermally Processed Fruit Pulp / Puree And Sweetened Fruit Pulp / Puree other than Mango

1. Thermally Processed Fruit Pulp / Puree And Sweetened Fruit Pulp / Puree other than Mango (Canned, Bottled, Flexible Pack And / Or Aseptically Packed) means C/SCA/19953/2021 ORDER DATED: 10/02/2022 unfermented but fermentable product intended for direct consumption obtained from edible portion of sound, ripe fruit of any suitable kind & variety by sieving the prepared fruits, where as, the puree is obtained by finely dividing the pulp by a finisher or other mechanical means and processed by heat in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage.

2. It may contain one or more nutritive sweeteners in amounts not exceeding 50 gm/Kg. However, the product shall be described as sweetened pulp/puree if the amount of nutritive sweeteners is in excess of 15 gm. /kg.

3. The product may contain food additives permitted in these regulations including Appendix A. The product shall conform to the microbiological requirements given in Appendix B. It shall meet the following requirements:-

(i) Total Soluble Solids (m/m) exclusive of added sugar Not less than 6.0 percent

(ii) Acidity as Citric Acid Not less than 0.3 percent The container shall be filled with the product and shall occupy not less than 90.0 percent of the water capacity of the container, when packed in the rigid containers. The water capacity of the container is the volume of distilled water at 20°C which the sealed container is capable of holding when completely filled."

7.2 The respondent authority having considered the case of the writ-applicant, the writ-applicant is importing the organic food which is not permissible in absence of Bilateral C/SCA/19953/2021 ORDER DATED: 10/02/2022 Agreement between the countries i.e. Italy and India and the products which are imported by the writ-applicant are from Italy. In absence of such agreement the products are required to be re-certified. The respondent authority considering the case of the writ-applicant has facilitated the writ-applicant and permitted the writ-applicant to strike down the word 'Organic'

and certification logo related to organic with inedible ink wherever organic is mentioned on the product and sought an undertaking that the product will not be showed as organic product and has further directed that the writ-applicant shall rectify the product label by striking out the term proprietary food.

7.3 From the above, clearly the food products imported by the writ-applicant are standardized food products as per Regulation 2.3.12 of the FSS (Food Products Standards and Food Additives) Regulations, 2011, no bilateral agreement exists

between India and Italy for mutual recognition for organic certification and, therefore, the writ-applicant cannot have the benefit of Chapter-3 of Food Safety and Standards (Organic Foods) Regulations, 2017.

7.4 In view of the above, this Court is not inclined to interfere with in the impugned orders and no case is made out to exercise extraordinary jurisdiction under Article 226 of the Constitution of India, more particularly in view of the C/SCA/19953/2021 ORDER DATED: 10/02/2022 regulation which do not provide for import of organic products without re-certification.

7.5 By order dated 12.10.2021 the respondent authority as one time measure relaxed the requirements with regard to the products imported by the writ-applicant and directed the writ- applicant to comply with all the requirements of the FSS Act, Rules and Regulations made thereunder for all the future consignment. It is open for the writ-applicant to comply with the said requirement as directed by the respondent authority and if such compliance is carried out by the writ-applicant, the respondent authority may consider the same as one time measure.

8. In view of above, the present writ-application stands disposed of.

(VAIBHAVI D. NANAVATI,J) K.K. SAIYED