

(2016) 03 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 9870 of 2016 & W.M.P. No. 8840 of 2016

Akshaya Global Trade

APPELLANT

Vs

Commissioner of Customs, Thoothukudi

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 336 ELT 519

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : M. Abdul Nazeer, Advocate, for the Petitioner; S. Haja Mohideen Gisthi, SCGSC and H. Yaseem Ali, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R. Subbiah, J.—The petitioner has filed this Writ Petition for issuance of a Writ of Mandamus to direct the second respondent to draw fresh samples from the Container Nos. BLZU 2129198 and TEMU 2852212 covered under Bill of Entry No. BE No. 3285038, dated 17-11-2015 on the file of the first respondent and to forward the samples to the Notified Laboratory and to get their report and forward the same to the first respondent for the purpose of clearance of the perishable goods imported by the petitioner.

2. The petitioner-Company, based on the experience in the trade of Dates in Tamil Nadu, has been importing wet Dates from Gulf Countries and selling them. They placed an order for supply of wet Dates with foreign supplier Mohamed Hussain Gani Foodstuff Trading (LLC), P.O. Box No. 252280, Dubai Hamariya Customs BLD U.A.E., who in turn imports wet Dates from Iraq and Iran and re-export them to India and other countries. The petitioner's representative Mr. Hussain, who hails from Trichy and working in Dubai, has placed the order after satisfying himself with the fresh crop of the Dates with the foreign supplier for supply of 1,51,000 Kgs. of wet Dates packed in PP bags for exporting them to the petitioner and those Dates were packed in 4,400 bags and sent by Vessel SSL, Mumbai in six containers. The said consignments were sent from the Port of

Loading - Jabel Ali/Dubai and the goods reached the Port of Discharge -Tuticorin/ India; on arrival of the goods, the petitioner filed Bill of Entries for home consumption bearing BE. No. 3285038, dated 17-11-2015 to the first respondent through their Customs House Agent Accord Logistics (India) Private Limited for clearance of the said goods. Along with the Bill of Entry, Invoice, Bill of Lading, Packing List, Country of Origin, Phyto Sanitary Certificate for re-export issued by the Government of Dubai, Certificate of Origin, Certificate of Fumigation, etc., were filed.

3. It is the further case of the petitioner that the Customs Officers of the first respondent issued Examination Order, dated 18-11-2015 for inspecting the Containers and verifying the marks and numbers of the Containers and they directed to verify the description, quantity, weight, packing list, Country of Origin, Phyto Sanitary Certificate of Load Port and to get Certificates from Plant Protection and Quarantine Department and Food Safety and Standards Authority of India (FSSAI). The first respondent's Officers also verified the Containers and the above stated documents and also the original Import documents. The Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India, examined the Dates and recommended for release of the Consignment on 27-11-2015. The second respondent issued No Objection Certificate (NOC) only in respect of three Containers, namely BLZU 2147859, BLZU 2171156 and TCKU 2820587, vide NOC No. 201600000039, dated 1-1-2016, which were ordered to be released on 8-1-2016.

4. The petitioner further stated that they have submitted a letter on 11-1-2016 to the Assistant Commissioner of Customs, Tuticorin, requesting him to take re-sampling for Lab analysis by the second respondent, from the remaining three Containers, as it was stated that the three Containers, namely BLZU 2118640, BLZU 2129198 and TEMU 2852212 were damaged in floods. By letter 13-1-2016, the Assistant Commissioner of Customs, Tuticorin informed that they do not have any objection to draw samples from the remaining three Containers by the second respondent.

5. It is further stated by the petitioner that the second respondent inspected the Consignment on 27/29-1-2016 and took samples only from Container BLZU 2118640 and sent them for Lab analysis and they were confirming to the standards laid down under Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011 and they gave NOC only in respect of Container BLZU 2118640. It is stated in their letter, dated 10-2-2016 addressed to the Customs Officers, Tuticorin that they have not taken the samples from the remaining two Containers, namely BLZU 2129198 and TEMU 2852212 for Lab analysis, as the shelf life in respect of these two Containers were below 60%.

6. The petitioner further averred that as per the procedures stipulated under the provisions of the Food Safety and Standards Authority of India Act, the samples have to be taken and sent to the Food Analyst of the Notified Laboratory for

analysis and report, and to find out the fitness of the Dates/samples for human consumption. It is not proper for the second respondent in confining the samples by visual inspection. It is stated that the Customs will clear only after the NOC letter/Certificate from the second respondent in respect of the two Containers, namely BLZU 2129198 and TEMU 2852212. As the shipment is made in the month of November, 2015, the colour of the Dates will become dark and the market price will be substantially affected. The petitioner informed the second respondent that similar goods imported by the petitioner and others, were cleared after getting the report from the second respondent and the Ministry of Agriculture. The petitioner's supplier purchases the goods from Iraq and they are the actual importer at Dubai and in turn, they re-export the goods to India.

7. It is the grievance of the petitioner that they have informed the second respondent that the petitioner is not familiar with the FSSAI Label Standards, as the Customs have instructed to get FSSAI Certificate only from November, 2015, and therefore, the suppliers have not followed the Label Standards. The petitioner requested the second respondent to collect the samples and forward the same to Laboratory for testing. The petitioner further states that packing lapse is only curable defect. As the crops are very fresh and new crops, the wet Dates will be fit for human consumption for about two years and due to scarcity of PP bags, the foreign supplier might have packed them in old bags and it is only an agricultural produce. Already, the Ministry of Environment and Water, Dubai gave Phyto Sanitary Certificate for re-export and again, on arrival of the said Consignment, the Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation, Directorate of Plant Protection, Quarantine and Storage, examined and recommended for release of the Consignment. Already, four Containers' goods were released after getting NOC from FSSAI. Unless the samples from the above two Containers, namely BLZU 2129198 and TEMU 2852212 are sent for Laboratory Test, they will not be cleared. In spite of the petitioner's request on 10-2-2016 for drawing the samples and to send them for Lab Test, the second respondent has not taken action. Since the petitioner has been incurring demurrage charges and as the goods imported, namely, Dates, being agricultural products, are perishable in nature, the petitioner is before this court with the above prayer.

8. Learned counsel for the petitioner submitted that the authorities of the Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India, inspected the goods and issued Certificate recommending release of the goods and only thereafter, the petitioner requested the second respondent to send the samples for Laboratory analysis. But the said request has not been considered by the second respondent. Learned counsel for the second respondent submitted that the goods were manufactured long back and according to them, it may not be suitable for human consumption. On the other hand, learned counsel for the petitioner submitted that without any laboratory test, by mere visual examination, it cannot be stated that the goods are unfit for human

consumption. This Court also heard the submissions of the learned SCGSC appearing for the first respondent on the above aspects.

9. Considering the submissions of both sides and the facts and circumstances of the case, without going into the merits of the case, the petitioner is directed to submit fresh representation to the second respondent, for the above claim, along with a copy of this order and shall produce all the relevant documents, including the Origin Certificate to the authorities for consideration, within a period of one week from the date of receipt of a copy of this order. On receipt of such a representation, the second respondent is directed to draw the samples from the Consignment(s)/goods/Containers in question and forward them to the Notified Laboratory for their report, within a period of one week thereafter. The Notified Laboratory is directed to submit a report to the concerned authority within a period of one week thereafter. After receipt of the report to be given by the Laboratory Authorities, the respondents are directed to consider the above claim of the petitioner and pass appropriate orders, on merits and in accordance with law and also by taking note of the recommendations already made by the Government of India and dispose of the said representation, within a period of two weeks thereafter, in respect of the release of the Consignment(s)/goods/Containers, namely BLZU 2129198 and TEMU 2852212, forming part of the Consignment filed under Bill of Entry bearing B.E. No. 3285038, dated 17-11-2015 on the file of the first respondent.

10. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.