

(2015) 05 CAL CK 0096
In the Calcutta High Court
Case No : W.P. No. 9124 (W) of 2015

Bimal Kumar Modi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 324 ELT 68

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Kishore Dutta and Shakeel Mohammed Akhter, for the Appellant;
Pradip Kumar Roy and T.M. Siddiqui, for the Respondent

Judgement

Sanjib Banerjee, J.—Prima facie, the acts of the Customs Authorities complained of appear to be arbitrary and without basis, particularly since there was no occasion to draw a second sample after the first sample was found to be satisfactory; and, even if intelligence reports prompted the second sample being drawn, the same should have been drawn in the presence of the petitioner. A negative report as to the second sample has been obtained from a laboratory in Mysore, though, under the Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011, the test could not have been conducted at the Mysore laboratory. The third sample was drawn in the presence of the petitioner and at the behest of the petitioner. The result vindicated the petitioner's stand.

2. It is nearly 18 months that the goods have remained in a limbo. Even if the food articles - the petitioner says that they are betel nuts - were originally fit for human consumption, they may have deteriorated in quality in the interregnum. It is necessary, in the circumstances, that samples be drawn in the presence of the petitioner's representative to ascertain from the Central Food Laboratory, Kolkata as to whether the goods are still fit for human consumption. It is proposed that the goods may be released to the petitioner upon the same being found to be fit for human consumption and after obtaining sufficient guarantee or deposit. But at the same time, this exercise must be taken to its logical

conclusion and the concerned officials of the Customs department should be made accountable in the event the acts complained of are ultimately found to be illegal or improper or without jurisdiction. The samples should be drawn within a week from date upon notice to the petitioner.

3. Affidavit-in-opposition be filed within one week after the reopening of Court following the summer vacation; reply thereto, if any, may be filed within four days thereafter.

4. The petition will appear as the last Motion on June 16, 2015.

5. The petitioner will not be required to make the payment in terms of the order impugned dated March 15, 2015 pending disposal of this petition. The goods will not be destroyed without the express previous leave of Court. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.