

(2012) 04 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 626 of 2012

Indian Products Ltd.

APPELLANT

Vs

Commissioner of Customs, Kochi

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2013) 287 ELT 52

Hon'ble Judges : Manjula Chellur, Acting C.J.;V. Chitambaresh, J

Bench : Division Bench

Advocate : Joseph Kodianthara, V. Abraham Markos, Mathews K. Uthuppachan, Binu Mathew, Terry V. James, B.J. John Parakash and Tom Thomas Kakkuzhiyil, for the Appellant; Saiby Jose Kidangoor, SSC, for the Respondent

Final Decision : Allowed

Judgement

Manjula Chellur, Actg. C.J.

1. Heard Sri. Joseph Kodianthara, learned Senior Counsel for the appellant as well as Sri. Saiby Jose Kidangoor, learned Senior Standing Counsel representing the Department. The facts that lead to the filing of the present appeal are as under. The appellant, being an exporter, exported some consignment of Cardamom to a purchaser outside the Country, i.e., Israel. The foreign purchaser however did not find it suitable for consumption by the people of that Country and therefore it was returned back to India. On re-import of the product, as per the procedure, the Port Health Inspector examined the consignment and sent the same for testing at CFTRI, Mysore (Food Analysis Institution). After testing the same, the report was sent indicating the standards and according to the respondent authorities, the test report did not conform to the standards prescribed by the Prevention of Food Adulteration Act. Therefore the only course open to the Department is either to re-export or to destroy the same. In that view of the matter, when the intimation was sent to the appellant, he approached the learned single Judge seeking the following directions:-

(i) issue a writ of mandamus or any other writ, direction or order, directing the respondent No. 1 to allow release of goods under Bill of Entry No. 4605474, dated 12-9-2011.

(ii) issue an appropriate writ or direction or order directing respondent No. 2 to re-examine the goods.

The learned single Judge opined that when the foreign purchaser did not find it a product for consumption of that Country, the Product being the food item, it cannot be allowed to be dumped on the local consumers. This judgment of the learned single Judge is under challenge before us.

2. We have heard the learned senior counsel for the appellant as also the learned standing counsel for the Department. The contention of the appellant is that the product can be allowed to be re-processed depending upon the nature of the deficit and then re-export the same and the entire process could be done under the supervision of the official of the second respondent at the specified warehouse made for EOU. Therefore, the opinion of the learned single Judge that it cannot be dumped on the public in India has to be set aside.

3. According to the learned standing counsel, the Department has to follow the Circulars in strict compliance, especially when it is a food item. He refers to general conditions regarding the import policy and also Circular No. 58 of 2001, dated 25-10-2001. According to the Department, unless the Port Health Officer certifies the product, the authority of the Department or the scope for the Department is much less. Therefore, if the Port Health Officer certifies it, then only the case could be re-assigned or re-exported in accordance with the procedure. As per Annexure-A order and Ext. P9 judgment, on earlier occasions, with regard to the product of tea, such concession was given to the exporter for reprocessing the product and then re-export the same in accordance with the procedure, after the same is being certified by the concerned Port Health Officer.

4. The food product in question is Cardamom. The test report and the details at Exts. P8 and P9 nowhere indicates that the product is dangerous for human consumption. In that view of the matter, the question of dumping the product on local consumers resulting in some health problem to the consumers is not in question. It is only with regard to the standards to be maintained for exporting the product. If there is a process available to the exporter to make the product consumable conforming to the standards required for exporting the same, in the absence of any opinion with regard to the contamination of the product, we are of the opinion, the appellant must be given a chance and allowed to re-process under the supervision of the concerned official at the warehouse and then re-export the same subject to test report to be obtained from CFTRI, Mysore at the instance of the Port Health Officer.

5. In view of the above reasoning and the facts pertaining to the case, we are of the opinion, the judgment of the learned single Judge in W.P. (C) No. 31365 of 2011, dated 16-1-2012 deserves to be set aside. Accordingly, the appeal is

allowed directing the second respondent to allow the appellant to re-process the product to bring the product in conformity with the standards prescribed, and the second respondent shall permit the appellant to re-export the same after the Port Health Officer being satisfied with regard to the standards prescribed for exporting the goods and then permit the appellant to re-export.