

(2012) 03 MAD CK 0179

In the Madras High Court

Case No : Writ Petition No. 2027 of 2012 and M.P. No. 2 of 2012

M/s. Foodlever India Pvt. Ltd.

APPELLANT

Vs

Senior Inspecting Officer and Another

RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Food Safety and Standards Act, 2006 — Section 23, 25, 3(1)(z), 4(1), 45

Citation : (2013) 1 Crimes 621

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Hari Radhakrishnan, for the Appellant; R. Sureshkumar, Advocate, for the Respondent No. 1 and Mr. R.K. Sekinareshma, (CGSC) for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. It has been stated that the petitioner company is engaged in the business of importing and distribution of chocolates and other related products. The petitioner company had imported 18000 kilograms of dark compound chocolates, from Singapore, vide Bill of Entry No. 5660421, dated 5.1.2012, and had presented the same for assessment, before the second respondent. The second respondent had instructed his officers to physically examine the goods, to verify whether the contents matched with the declaration given in the Bill of Entry. The imported goods were also to be verified for compliance with the provisions of the Food Safety and Standards Act, 2006, (hereinafter referred to as "the Act) and the rules framed thereunder. Accordingly, the matter has been referred to the first respondent, to certify whether the goods in question had fulfilled all the necessary requirements.

2. It had been further stated that the first respondent had refused to draw samples from the imported consignment of goods for the reason that the date of

manufacture, the date of expiry and the other declarations required to be made on the products were not mentioned in the printed form, as required by the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, (hereinafter referred as "the Regulations") and as the required declarations, in respect of the imported goods, had been made on a label, which had been stuck to the product. As such, the first respondent and his subordinates had refused to take samples of the imported goods, for testing, to see if such goods are fit for human consumption. Instead the first respondent had sent a letter to the Deputy Commissioner (Customs-Docks) Seaport, Chennai, informing that the consignment imported by the petitioner had been inspected on 10.1.2012, for drawing the samples.

3. It had been further stated that the samples could not be drawn for analysis, as they did not meet the labelling requirements prescribed by the Act and the Rules framed thereunder. It had been stated that the date of manufacture, the date of expiry, the net weight, the name and the address of the manufacturer, the name and address of the importer, batch number and the ingredients had not been mentioned in the printed form and that such information had been provided on the sticker pasted on the original package. Due to the said reasons the samples could not be taken, for analysis.

The learned counsel appearing on behalf of the petitioner had stated that the samples of the imported goods had not been taken, in spite of several representations made by the petitioner, to the first respondent. In such circumstances, the petitioner has preferred the present writ petition, before this Court, under Article 226 of the Constitution of India.

4. The learned counsel appearing on behalf of the petitioner had submitted that the decision of the first respondent not to take samples of the goods imported by the petitioner is arbitrary and illegal. The communication, dated 12.1.2012, issued by the first respondent, is not in accordance with the law governing the subject. Regulation 2.2 of the of the Regulations stipulates the manner in which an article or food has to be labelled. There is no requirement that the declarations required to be made under the Act and the Regulations, in respect of the food items, have to be printed on the cover or the wrapper of the product. In fact, Regulation 2.2.1.1 states that every pre-packaged food shall carry a label containing information, as required thereunder. 2.2.1.4 states that the labels in prepackaged foods shall be applied in such a manner that they will not become separated from the container. It only means that the necessary declarations can be made on a label, which has to be securely affixed on the package.

5. It had also been stated that Section 3(1)(z) of the Act, defines a Label. It states that a "Label means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed, graphic, perforated, stamped or impressed on or attached to a container, cover, lid or crown of any food package and includes a product insert. Thus, it is clear that a label could be attached to the cover or the wrapper of a package. There is no Regulation which

states that the declarations should only be printed directly on the cover or the wrapper of the product.

6. The learned counsel had further stated that the petitioner company had imported similar products, on previous occasions following similar labelling procedures, vide Bill of Entry No. 4701753, dated 21.9.2011. The officers of the Customs Department, at Bangalore, had allowed the taking of samples for the purpose of testing the goods imported by the petitioner. The samples were tested in accordance with the requirements of the Food Safety and Standards Authority of India, and the food products imported by the petitioner had been certified to be fit for human consumption. However, in the present case, the first respondent had objected to the taking of samples from the goods imported by the petitioner, without having any proper reasons to do so.

7. The learned counsel appearing on behalf of the petitioner had further stated that it would be open to the respondents to initiate appropriate action and to prescribe the necessary conditions for the release of the goods in question, after the samples of the imported products are tested, and the tested product is made available to the petitioner, by the authorities concerned. The learned counsel appearing on behalf of the petitioner had relied on a decision of this Court, dated 12.1.2012, made in W.P.No.30323 of 2011, in stating that the respondents should release the goods in question, after conducting the necessary tests to find out if the imported food items are fit for human consumption,

8. In the counter affidavit filed on behalf of the first respondent, it has been stated that the Central Government has established an authority called the Food Safety and Standards Authority of India, u/s 4(1) of the Act. u/s 25 of the Act, all imported articles of food are subject to the provisions of the Act. Section 23 of the Act deals with the packaging and labelling of goods. Section 45 deals with food analysis, while section 46 enumerates the functions of the food analysts. Further, Section 47 of the Act deals with sampling and analysis.

9. It had been further stated that, in exercise of the power conferred by Clause (k) of sub-Section 2 of Section 92, read with Section 23 of the Act, the authority concerned had framed the Regulations, called the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Sub-clause 3(1) of Clause 2.1.1 ensures that all containers shall be securely packed and sealed. Clause 2.2, under the heading "Labelling" deals with the labelling procedures relating to the pre-packaged foods. Subclause (4) of Clause 2.2.1 states that the label on a pre-packaged foods shall be in such a manner that they will not become separated from the container. Sub Clause (6) also states that when the container is covered by a wrapper, the wrapper shall carry the necessary information. As such, it is clear that the mandatory requirements under the labelling procedures prescribed in the Regulations had not been followed by the petitioner, while importing the goods in question.

10. It has also been stated that stringent procedures are prescribed under the

Act and the Regulations. Even though the stickers had been stuck on the products, by the exporter, at Singapore, it cannot be said that it complies with the requirements of law.

11. The learned counsel appearing on behalf of the respondents had submitted that Section 23 of the Act states that no person shall manufacture, distribute, sell or expose for sale or despatch or deliver to any agent or broker for the purpose of sale, any packaged food products, which are not marked and labelled, in the manner specified by the regulations.

12. He had further stated that Section 25 of the Act, says that no person shall import to India, any unsafe or misbranded or sub-standard food or food containing extraneous matter. He had also stated that Section 45 provides for food analysts appointed by the Commissioner of Food Safety, by way appropriate notifications. Section 46 of the Act enumerates the function of the food analysts. Section 47 of the Act prescribes the procedures to be followed by the Food Safety Officer, while taking samples for analysis. He had also submitted that the Regulations, 2011, had been made, in accordance with Section 92 of the Act.

13. The learned counsel appearing on behalf of the first respondent has further submitted that, as per Regulation 2.3.2 of the Regulations, the information required under the regulations shall be given on the display panel of the package or the container. AH information should be grouped together and given at one place or the pre-printed information may be grouped together and given in one place and the online information or those not pre-printed be grouped together in another place. Accordingly, the petitioner ought to have given all the necessary information in a printed form on the cover or the wrapper of the imported items. He had further stated that the food product imported by the petitioner does not comply with the strict requirements of the Act and the Regulations, as the necessary information had been printed on a label, which had been stuck on the wrapper of the product in the question. As such, the prayer of the petitioner in the present writ petition cannot be granted.

14. In reply, the learned counsel appearing on behalf of the petitioner had submitted that, as per Regulation 1.2.12, "Wholesale Package" means a package containing a number of retail packages, where such first mentioned package is intended for sale, distribution, or delivery to an intermediary and is not intended for sale, direct to a single consumer. He had further stated that, Regulation 2.6.5 of the Regulations, states that, in case of wholesale packages the particulars regarding list of ingredients, date of manufacture/packing, best before, expiry date, labelling of irradiated food and vegetarian logo/non-vegetarian logo, may not be specified.

15. He had further submitted that certain ad hoc guidelines related to food import clearance process had been issued by the Food Safety and Standards Authority of India. By a communication, dated 12.10.2011, the Director of Food Safety and Standards Authority of India, Ministry of Health and Family Welfare,

Government of India, had issued certain adhoc guidelines relating to food import clearance process. Paragraph 6 of the said guidelines reads as follows:

Information on Vegetarian/Non-vegetarian logo, Name and Address of the importer which are mandatory labelling requirements under PFA/FSS Act, and Regulations made there under are considered as rectifiable labelling deficiencies since these are not commonly practiced globally. Such information if missing on the imported food consignments can be affixed by the importer/CHA upon arrival of import on Indian shores however strictly in the custom bonded warehouses. In this context, the label requirements which are not rectifiable are, Name of the Manufacturer; List of ingredients in descending order of composition by weight/volume; name and address of the manufacturer; information to determine date of manufacture and Best before date of expiry date; Batch No. or code No. or lot No.; Net weight or volume; and nutritional information in accordance with the provisions of the of the labelling Regulations.

16. He had also submitted that further instructions had also been issued by the Senior Inspecting Officer, Food Safety and Standards Authority of India, dated 20.5.2011. Paragraph 2 of the communication, dated 20.5.2011, reads as follows:

Clearance of imported alcoholic beverages may be considered as per usual procedure subject to the condition that minor labelling defects viz. Name and address of importer, Veg./Non-Veg. Symbols and Best before/Expiry date, may be rectified in the custom's warehouse under supervision of customs department and the custom department shall ensure the labelling requirements prior to release of such consignments. This relaxation will be applicable for two months from date of issue of this letter or notification of FSSAI's Rules/Regulations, whichever is earlier.

17. He had also relied on a decision of this Court, dated 12.1.2012, made in W.P. No. 30323 of 2011, wherein it had been held that it would be open to the Port Health Authorities concerned to test and certify the detained goods. Paragraphs 17 and 18 of the said order reads as follows:

17. It had also been stated that it would be open to the Port Health Authorities concerned to test and to certify the detain goods. IT had also been made clear that a fresh order may be passed by the original authority after the certification was done by the Port Health Authorities. Therefore, it is clear that the petitioner would have to comply with a number of conditions before the goods in question are released. Sufficient safeguards had been incorporated in the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, to make sure that the goods in question are fit for human consumption, as they would be released only after appropriate inspection by the Port Health Authorities.

18. Further, the petitioner shall abide by any further condition to be imposed by the respondents before the goods are released. The respondents shall not release the goods, unless they are found to be fit for human consumption. As such, with the above conditions, the respondents are directed to implement the

order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011, within a period of two weeks from the date of receipt of a copy of this order.

18. The learned counsel appearing on behalf of the petitioner had also relied on the decision of the Central Excise and Sales Tax Tribunal, made in Commissioner of Cus (Prev.), Kolkata v. Dipika Enterprise 2009 (246) E.L.T. 407 (Tri.-Kol.), wherein it had been held that certain deficiencies in the labelling requirements can be rectified by putting the necessary information on the imported goods, by way of stickers. The goods concerned can be cleared after the removal of such defects.

19. He had also relied on a decision of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011, in Ms. Avenue Impex v. CC, Chennai wherein the customs authorities were directed to allow the appellants therein to repack and re-label the goods in question, in a customs bonded premises, subject to mutual convenience. It had been further stated that it would be open to the Port Health Authorities to test and to certify the impugned goods before they were cleared.

20. The learned counsel appearing on behalf of the petitioner had also submitted that the food safety regulations would be applicable not only to the food items, which are imported from outside India, but also to those which are manufactured within the country. The labelling procedures are similar in nature for both the imported, as well as the locally manufactured items. As such, it can be seen that most of the food items sold in the local retail outlets contain the necessary information only from the labels, which are stuck on the containers, covers or wrappers. While so, the respondents cannot insist that the necessary information, relating to the goods imported by the petitioner, should be on display on the covers or wrappers, by online printing, by the original manufacturers. There is no such specification in the food safety regulations making it mandatory for the printing of such information on the covers or the wrappers, as claimed by the respondents. When the customs authorities concerned, at Bangalore, had cleared similar goods, there are no good reasons for the respondents herein to raise objections for the testing of the goods in question, based on the allegation of irregular or inappropriate labelling.

21. In the counter affidavit filed on behalf of the second respondent it has been stated that, in case the deficiency on the label is beyond rectification, such products should not be allowed to be imported into India, as per the guidelines issued by the Director General of Health Services, dated 30.10.2002. If the necessary information relating to the name and address of the manufacturer, the date of manufacture, the list of ingredients, best before date or expiry date batch number or code number, net weight or volume are not given in the label, then such deficiency would be deemed to be beyond rectification. Samples of such products would not be sent to the laboratories for analysis.

22. It had also been stated that the practice followed by the customs authorities, at Bangalore, is not strictly in consonance with the Regulations. It had been further stated that the Regulations permit the declaration of the necessary information, by way of tags, brand, mark, etc. However, stickers have not been included in the said category, as they are susceptible to alteration, modification or manipulation, and as they could be removed easily.

23. The learned counsels appearing on behalf of the respondents had relied on a decision of this Court, dated 29.9.2011, made in W.P.No.19279 of 2011, wherein, it had been held that, if the conditions imposed, with regard to the import of food items are violated, the question of sending such imported items, for laboratory testing, would not arise.

24. The learned counsel appearing on behalf of the petitioner had submitted that the black chocolates imported by the petitioner are perishable in nature. Considering the said fact, this Court had passed an order of interim direction, dated 8.2.2012. directing the first respondent herein to take the samples of the goods in question for the purpose of testing the same and to file a report before this Court, on 20.2.2012. However, the respondent concerned had not obeyed the said order, till date.

25. In view of submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is noted that the first respondent had refused to take samples from the goods imported by the petitioner, for sending them for laboratory testing. It is seen that the first respondent had stated, in his impugned letter, dated 12.1.2012, that the food items imported by the petitioner do not meet the labelling requirements, under the Food Safety and Standards Act, 2006. and the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, and therefore, the samples cannot be drawn for analysis.

26. In the note annexed to the said letter, the reason for his decision has been stated. From the said note it could be gathered that the date of manufacture, date of expiry, net weight, name and address of the manufacturer, the name and address of the importer, batch number, and the ingredients have not been mentioned in the printed form, in respect of the food items imported by the petitioner, as they have been shown only by way of a sticker, stuck over the original package.

27. Even though the learned counsels appearing on behalf of the respondents had contended that the necessary information should be displayed on the cover, wrapper or the container, in a printed form, they have not been in a position to convince this Court that such information cannot be shown on a sticker, stuck on the cover, wrapper or the container, of the imported goods, as the case may be.

28. The definition of a Mabel, as per Section 3(1)(z) of the Food Safety and Standards Act, 2006, means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed, graphic, perforated,

stamped or impressed on or attached to container, cover, lid or crown of any food package and includes a product insert. Thus, it is clear that the necessary information can be declared by way of a sticker attached to the container, cover, lid or crown of any food package.

29. As such, the contention of the learned counsels appearing on behalf of the respondents that the required information has to be only in a printed form, on the cover, wrapper or container containing the food items, cannot be accepted. No doubt the label containing the necessary information, regarding the food items in question should be attached or affixed to the container, cover, lid or crown of any food package, in such a manner that the label or the sticker cannot be detached, easily.

30. When the main purpose of the Regulation requiring the declaration of such information is that the consumer of such products should be aware of the information, while purchasing or using the products in question, the nature and quality of the imported goods can be found out by taking samples of such goods, and by sending them to the laboratory concerned, for analysis. It is not in dispute that the imported items can be released only if it is found to be fit for human consumption. While such information could be obtained by testing the samples taken from the imported goods, there is no good reason shown by the respondents for their refusal to take the samples of the goods, for analysis.

31. It is also noted that, regulation 2.6.5 of the Regulations states that, in case of whole sale packages, the particulars regarding the list of ingredients, date of manufacture/packing, best before, expiry date, labelling of irradiated food and vegetarian logo/non-vegetarian logo, may not be specified. It is the specific case of the petitioner that the dark chocolates imported from Singapore are not meant for retail sale. Therefore, it has been contended that the goods imported by the petitioner, in wholesale packages, need not declare such particulars, contrary to the claims made by the respondents.

32. Further, from the ad hoc guidelines issued by the Director of Food Safety and Standards Authority of India, Ministry of Health and Family Welfare, Government of India, dated 12.10.2011, it is seen that certain labelling deficiencies can be rectified, by providing the necessary information, by affixing a label containing the necessary information. Further, the communication, dated 20.5.2011, issued by the Senior Inspecting Officer. Food Safety and Standards Authority of India, Ministry of Health and Family Welfare, Government of India, makes it clear that certain minor labeling defects may be rectified, in the customs warehouse, under the supervision of the officers of the customs department, prior to the release of the consignments.

33. Further, from the decisions cited by the learned counsel appearing on behalf of the petitioner it is seen that the goods in question could be released, after proper tests are conducted to find out if they are fit for human consumption. It had also been made clear that certain deficiencies in the labelling requirements,

which are rectifiable in nature, could be removed by furnishing the necessary information, by way of stickers, as held by the Customs, Excise and Service Tax Appellate Tribunal. While so, it would not be appropriate for the respondents to reject the request of the petitioner to take samples of the imported goods, to be sent for testing by the laboratories concerned.

34. No doubt the food items imported by the petitioner should not be released if they are found to be unfit for human consumption, or in case they are found to contain other ingredients, which are not declared in the label attached to the cover, wrapper or container, containing such items. As such, this Court is of the considered view that nothing has been shown on behalf of the respondents to substantiate their claims that the necessary information should be furnished, only in a printed format, on the cover, wrapper or container and not by way of a label stuck on them. Further, the respondents have not been in a position to show that they have the power or authority to refuse the request of the petitioner, for taking the samples of the imported goods for the purpose of testing. As such, the impugned letter of the first respondent, dated 12.1.2012, is set aside. The respondents are directed to make the necessary arrangements for taking the samples of the goods in question, imported by the petitioner, and to send the samples for testing, by the authorized laboratories, within a period of seven days from the date of receipt of a copy of this order. On receipt of the report from the laboratory concerned, the goods shall be released only if they are fit for human consumption, on the payment of the appropriate duty, as prescribed by law. Accordingly, the writ petition stands allowed. Consequently, connected miscellaneous petition is closed.