
(2010) 01 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No's. 11-12 of 2010

Pancham International Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2, 5, 6

Citation : (2010) 253 ELT 411

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : R.K. Chowdhury, for the Appellant; Tapas Hazra, for the Respondent

Judgement

Soumitra Pal, J.—Since issues involved are similar, the writ petitions are taken up for hearing analogously. However, for the sake of brevity, facts mentioned in W. P. No. 12 of 2010 are mentioned in this order.

2. In the writ petition the petitioner has prayed for a direction upon the customs authorities to release the primary food Whole Yellow peas of Ukraine origin under Bill of Entry No. 503010 dated 3rd November, 2009.

3. It has been stated that on or about 3rd November, 2009 the consignment in question had arrived at the port of Kolkata. Immediately thereafter Bill of Entry was filed. During appraisement the customs authorities passed an order dated 3rd November, 2009 for drawing of representative samples of the said imported consignment and testing thereof by the Port Health Officer and also sought for no objection from the Plant Quarantine authorities before assessment and clearance of the goods. I find from page-43 of the writ petition that the Plant Quarantine Station had recommended the goods for release. Be that as it may, pursuant to the directions by the customs authorities, the Port Health Officer drew samples and got the same tested first by the Export Inspection Agency. Since the petitioner was not satisfied with the first report, the Port Health Officer, Marine House, Kolkata, as evident from page-47 of the writ petition, forwarded samples

of the consignment for retest at the Central Food Laboratory ("CFL" for short). CFL retested the goods as it appears from Annexure-P/5 of the writ petition. During retest the sample was found adulterated as it did not conform to the standards laid down under Item No. A.18.06.14 of Appendix-B of Prevention of Food Adulteration Rules, 1955. Being aggrieved by the result of the second test this writ petition has been filed.

4. Learned advocate appearing on behalf of the petitioner referring to Section 2(ia)(m) of the Prevention of Food Adulteration Act, 1954 submits that since such adulteration was due to natural causes and beyond the control of human agency it should not be deemed to be adulterated.

5. Learned advocates appearing on behalf of the respondents submit that since pursuant to the public notice dated 6th July, 2009 Central Food Laboratory, Kolkata is the appellate laboratory in the region as per existing rules, the petitioner if aggrieved should have preferred appeal before the said laboratory.

6. Heard the learned advocates for the parties. In my view, since the question whether the goods are adulterated or not is a technical one and as the public notice as mentioned has designated the CFL, Kolkata as the appellate laboratory, the petitioner if aggrieved should have preferred appeal before the said body though the second test has been conducted and order has been passed by CFL. Therefore, the petitioner is at liberty to prefer appeal before the CFL. I make it clear in the event appeal is filed, CFL would be acting as an Appellate laboratory and the test done and order passed shall be passed by an officer other than the officer who had passed the order dated 11th December, 2009. Such order, in the facts and circumstances, shall be passed after taking into consideration the provisions contained in Sections 2(ia)(l), (m), 2(ia)(xiia), 5 and 6 of the Prevention of Food Adulteration Act, 1954 and Rules framed thereunder. Be it noted that the order shall be reasoned and shall be passed within a fortnight from the date of communication of this order.

7. Both the writ petitions are disposed of. No order as to costs.

8. All parties concerned are to act on a xerox signed copy of this order on the usual undertakings.