
(2014) 07 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3760 of 2014 and C.M. Appl. No. 7594 of 2014

Ramesh Kumar

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 309 ELT 214

Hon'ble Judges : Vibhu Bakhru, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Prem Ranjan Kumar, Advocate for the Appellant; Satish Kumar, Sr. Standing Counsel, Shruti Yadav, Advocate and Deepak Aggarwal, Proxy Counsel, Advocate for the Respondent

Judgement

1. The petitioner imported a consignment of 1700 kgs. of alkalised cocoa powder and filed a bill of entry at ICD, Tughlakabad on 19-4-2014. Apparently, the consignment was inspected on 1-5-2014 by the second respondent, i.e. Food Safety and Standards Authority of India (FSSAI). Subsequently, on 5-5-2014, the authorized officer of the FSSAI was of the opinion that the "expiry date" or the "use by date" was not mentioned in the original label which was a mandatory requirement under Paragraph 2.2.2(1) of the FSS (Packaging and Labelling) Regulations, 2011. The said order/letter written to the Deputy Commissioner of Customs, ICD, Tughlakabad reads as follows:-

"Dated: 5-5-2014

To,

The Dy. Commissioner

ICD, Tughlakabad,

New Delhi-110020.

Subject: Non-Compliance of labeling requirements on food Articles imported vide

B/E No. 5247482 dated 19-4-2014 - Reg.

Sir,

This is regarding import of Alkalised Cocoa Powder Line 2 from Malaysia, by M/s. MR. Scientific Suppliers vide Bill of entry No. 5247482 dated 19-4-2014, which is under possession of ICD/TKD. The consignment was inspected on 1-5-2014 in presence of importer/CHA's representative. The following discrepancy was observed:-

Expiry date or best before date or use by date is not mentioned on the original label which is a mandatory requirement as per 2.2.2(10) of FSS (Packaging and Labeling) Regulations, 2011. Sticking of mandatory requirements is not permitted as per Guideline of FSSAI issued from time to time.

Safety of the product cannot be assessed without knowing the mandatory labeling requirements as per FSS Regulations, 2011 and guidelines issued by FSSAI time to time. Hence, the NOC could not be issued."

2. The petitioner's contention is that the label which was affixed on the imported packaging is permissible having regard to the terms of Paragraph 2.2.2(10). Reliance is placed upon the guidelines issued by the FSSAI on 24-1-2013 in this regard. The relevant part of the said guidelines reads as follows:-

"1. Guidelines/Clarifications related to Labelling Requirements for Wholesale Packages:

(a) If the labels attached by the manufacturer are from the country of origin on the container of wholesale packages, which fulfil the labelling requirements of the FSSAI Regulations, then the same may be allowed. However, tampering of label and pasting of one label over the other label will not be permitted.

(b) A wholesale package can have either best before date/expiry date/use by date. In the case of wholesale packages, if both best before date and expiry date are given, then the two should be different and clearly specified."

3. It is urged that a look at a label in this case would reveal that it was affixed by the Malaysian exporter and, therefore, fulfilled the conditions spelt out in the guidelines. A sample copy of the label has also been annexed to these proceedings.

4. Counsel for the respondents contend that the inspection which resulted in the rejection report of 5-5-2014 has to be given due weight in the present case and that the petitioner cannot be allowed to say that the label relied upon was originally issued by the Malaysian exporter. It was argued that food safety standards are paramount and cannot be diluted under any circumstances in view of the mandatory nature.

5. This Court is of the opinion that the disputes with respect to the label is not one that can be gone into in writ proceedings. As to whether the labels on the

various packages, imported by the petitioner, were originally affixed by the manufacturer/exporter of the country of origin or not is an aspect which does not appear to have been considered or addressed by the authorized officer in his report of 5-5-2014. In the circumstances, the authorized officer shall after giving due notice to the petitioner inspect the said consignments and prepare an appropriate report within two weeks. While doing so, the authorized officer shall take into consideration not only the requirements of guidelines and clarifications issued by the FSSAI, but also the guidelines contained in Circular/Notice, dated 24-1-2013 enclosed as Annexure-6 to the writ petition in this case. The writ petition is disposed of in the above terms.