
(1993) 12 MAD CK 0034
In the Madras High Court
Case No : Writ Appeal No. 58 of 1992

State Trading Corporation of India Limited	APPELLANT
Vs	
Tirumala Tirupathi Devasthanam and Others	RESPONDENT

Date of Decision : 10-12-1993

Acts Referred:

Citation : (1994) 46 ECC 44

Hon'ble Judges : Somasundaram, J; Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—This writ appeal has been preferred by the State Trading Corporation of India against the order in W.P. No. 10611 of 1991

(printed at page 48 infra) filed by the first respondent herein praying for the issue of a writ of mandamus directing the appellant herein to reship two

consignments of 20 tonnes each of raisins lying with the second respondent back to the supplier at Turkey after complying with the proceedings of

the second respondent dated 11.7.1991. Pursuant to a licence obtained by the first respondent for the import of dried grapes (raisins), two

containers of 20 tonnes each of raisins were imported through the appellant and the consignment reached the Madras harbour on 24.12.1990.

Even before the consignment of the imported raisins reached Madras harbour, the consignment was sold by the appellant to the first respondent by

endorsing the shipping documents. When steps were taken by the clearing agents of the first respondent for clearing the consignment, the Port

Health Authorities declined to do so and on enquiry, it was learnt by the first respondent that the consignment of raisins imported did not conform

to the standards laid down for raisins under the Prevention of Food Adulteration

Act and the Rules. Thereupon, the first respondent informed the appellant that the goods had not been cleared by the Port Health Authorities and the clearances had been held up for want of a final report from the Central Food and Technological Research Institute; (C.F.T.R.I., for short). The first respondent also claimed to have informed the appellant that if the report of the C.F.T.R.I. was adverse, the goods might have to be shipped back to Turkey and the appellant was requested to advise the first respondent about the procedure to be followed. The fourth respondent, meanwhile, on 31.1.1991 informed the first respondent that the consignment of imported raisins did not conform to the standards laid down under the Prevention of Food Adulteration Act and the Rules and that there had been a delay of nearly two months between the date of discharge of the cargo and its rejection. Subsequently, according to the first respondent, which had remitted the entire consideration for the consignment to the appellant, the appellant was asked to get a report from the C.F.T.R.I. to take up the matter with the foreign supplier and though the matter was under correspondence between the appellant and the foreign supplier and the goods had not been cleared, the consignment had not been reshipped and a letter had been written by the first respondent to the appellant on 17/2/1991 to the effect that the goods will have to be reshipped back to Turkey. Stating that the goods had not been accepted by it and that the goods also should be reshipped and further, that the appellant had not taken steps for the reshipment of the goods and also the refund of the purchase consideration, the first respondent approached this Court praying for the relief set out earlier. In the counter filed by the appellant, who was the main contesting respondent in the writ petition, it took up the stand that it merely acted upon the order placed by the first respondent and the appellant cannot, therefore, be held responsible for any of the consequences. It was also stated by the appellant that after endorsing the shipping documents in favour of the first respondent, it did not have any title to or control over the goods and the first respondent alone was responsible for the clearance of the goods. The appellant also disclaimed any responsibility for reshipment of the goods. Alleging that the first respondent had not extended its co-operation to the appellant, it stated that owing to the passage of time since the arrival of the goods, the

overseas seller was not interested in taking back the goods and it was, therefore, not possible to reship the goods. Reiterating that the appellant had sold the goods to the first respondent while the goods were on the high seas, the appellant put forward the plea that the first respondent was not entitled to the issue of the writ as prayed for. In the counter filed by the Port Trust, it took the stand that it has to look only to the first respondent for payment of the dues to the Port Trust and that the appellant being only a canalising agent, cannot be made responsible for the dues, especially when the cargo had been sold on the high seas to the first respondent by the appellant. A claim for demurrage charges was also set up by the second respondent.

2. The learned Judge, who heard the writ petition, found that the goods imported did not conform to the standards specified under the provisions of the Prevention of Food Adulteration Act and the Rules and the certificate issued by the C.F.T.R.I., Mysore, showed that the imported raisins had become useless and had been rendered unfit for human consumption. In addition, the learned Judge was not inclined to accept the stand of the appellant that after the endorsement of the shipping documents in favour of the first respondent, it had lost control over the goods and ultimately held that a public authority like the appellant cannot be permitted to evade the performance of its duties on the pretext that the first respondent was the owner of the goods and the appellant had lost title over the goods. Finally, the learned Judge, in the view that the appellant continued to be the owner of the goods, directed it to face the proceedings before the Customs authorities and the Port authorities and also to take appropriate action for the reshipment of the goods and proceed against the first respondent for recovery of damages, if so advised. The writ petition was thus allowed to the extent indicated above, the correctness of which is questioned in this appeal.

3. Though the appeal was heard for sometime, this Court found that it would be hazardous to public interest to release the consignment of the imported raisins found unfit for human consumption, and invited suggestions from all the parties to the writ appeal, as how best the consignment could be dealt with and interest of all the parties concerned could be balanced, in relation to the consignment of the imported raisins. As a first step

towards finding a solution, on 2.9.1992, a direction was given to the effect that the presence of the Customs Department would be necessary in

order to ascertain the precise present condition of the imported raisins and also to find out how best the imported goods could be used or

otherwise disposed of. The Assistant Collector of Customs, Madras 1, was therefore impleaded as the fifth respondent in the writ appeal and the

appellant was directed to forward samples drawn from the two containers in the custody of the customs department for examination, analysis and

report by the C.F.T.R.I., Mysore, regarding its fitness for human consumption and also for utilising it otherwise, if possible. Subsequently, by order

dated 12.10.1992, at the request of the Customs Department, time was extended. Pursuant to the directions issued as aforesaid, the C.F.T.R.I.,

Mysore, examined the samples of raisins drawn from the containers and submitted a report signed by the Director on 23.9.1992 to the effect that

the consignment did not conform to the standards laid down for dry raisins under the provisions of the Prevention of Food Adulteration Act and

the Rules made thereunder and that it was not free from the presence of mineral oil thereby rendering the samples unfit for human consumption.

Later, by another report dated 23.10.1992, the C.F.T.R.I. stated that the raisins could be converted into commercial alcohol. Since the

consignment of raisins imported had been rendered unfit for human consumption, the possibility of utilising the consignment for its conversion into

commercial alcohol was considered and all the parties were directed to find out whether other persons would be interested to buy the consignment

for the purpose of converting it into commercial alcohol.

Though initially, the appellant and other parties stated that some persons were interested, ultimately, the parties were not able to bring to the notice

of the Court that any person was interested in purchasing the consignment on the basis of any firm offer as such. In addition, difficulties were also

expressed by counsel appearing for all the parties, to oversee the proper utilisation of the consignment of imported raisins rendered unfit for human

consumption, if sold, for the purpose of conversion into commercial alcohol. Learned counsel for the Customs Department also brought to our

notice that adjudication proceedings have already been initiated. In view of the resultant situation owing to the aforesaid, it has become necessary

for us to consider as to how best the injurious consignment should be dealt with and disposed of and at the same time, leaving intact the right of the parties to this appeal against one another. Since the consignment of imported raisins has now been declared to be unfit for human consumption and it is also not possible to reship or use it otherwise, and the Customs Department had already started adjudication proceedings, in order to see to it that the consignment is not misused by any one, either for human consumption or otherwise, it is necessary that the Customs Department should be directed to confiscate the consignment and also destroy it and the Customs Department is, accordingly, directed to do so. In order to facilitate the Customs Department to do so, it would be necessary to remove the consignment from the containers and learned counsel for the owner of the containers submitted that the de-stuffing charges should, in the first instance, be borne by the appellant. This appears to us, to be fair and reasonable and we direct the appellant to bear the de-stuffing charges in the first instance. After the removal of the imported raisins from the containers, the concerned authorities are directed to return the empty containers to the third respondent herein. The rights of all the parties to this writ appeal against each other in respect of and arising out of this import transaction, shall be worked out by them against all or any of them, as the case may be, in appropriately instituted proceedings and their rights, in this regard will not, in any manner, be affected by this order. Subject to the directions given as aforesaid, the writ appeal is disposed of as indicated earlier. There will, however, be no order as to costs.