
(2006) 09 P&H CK 0281
In the Punjab And Haryana At Chandigarh

Super Tech Agro Oils Private Limited

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Customs Act, 1962 — Section 108

Citation : (2007) 207 ELT 343

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Judgement

1. This petition has been filed with a prayer for quashing seizure memo dated 5.7.2006, Annexure P. 21, whereby certain containers of Hydrogenated Vegetable Oil (Vanaspati) imported by the petitioner, were seized. Further prayer is for quashing letter dated 9.8.2006, Annexure P. 45 by the Joint Director, Revenue Intelligence informing the petitioner that samples of certain containers had failed in specifications laid down for Vanaspati under Appendix-B of Prevention of Food Adulteration Rules, 1955 and, thus, the goods mentioned in the Bill of Entry did not conform to the description given and, therefore, the same was liable to be re-exported or destroyed, thereby request of the petitioner for provisional release of the goods was rejected. Prayer has also been made for a direction for awarding to the petitioner demurrage, detention charges and interest for illegal detention.

2. Case of the petitioner is that it is a private limited company and imported Hydrogenated Vegetable Oil (Vanaspati) from Sri Lanka under the Free Trade Agreement. It filed Bill of Entry for custom clearance. The Customs authorities took samples and sent for analysis. Samples were found conforming to the standards laid down under the Prevention of Food Adulteration Act, 1954 (for short, "the PFA Act")- On 27.6.2006, when the petitioner tried to take delivery of the containers, the Customs authorities refused permission. On 29.6.2006, respondent No. 5 served summons u/s 108 of the Customs Act, 1962 (for short, "the Customs Act") on the partner of the petitioner-company. Thereafter, goods were sealed on 5.7.2006, alleging violation of the provisions of the Customs Act.

3. On 24.7.2006, the Director General of Foreign Trade (DGFT) made an amendment in the policy under which import of Vanaspati from Sri Lanka was to be allowed in cases where the Bill of Lading was 1st of June, 2006 or before. On 4.8.2006, partner of the petitioner was informed that three out of seven samples had failed. Vide letter dated 9.8.2006, the petitioner was informed that seven samples did not conform to the PFA Act and the said containers were liable to be confiscated. Remaining five containers were proposed to be released subject to fulfilment of certain conditions. The present writ petition was filed on 23.8.2006.

4. In the reply filed, it has been stated that on scrutiny of record, it was found that Bill of Lading filed by the petitioner was ante-dated. Further, intelligence was gathered that consignments of Vanaspati Ghee of non-edible grade were being imported in the guise of Vanaspati Ghee (Hydrogenated Vegetable Oil). In the case of Vanaspati Ghee and Vanaspati Ghee of non-edible grade, it was found that in the former, melting point was 31-41 degrees while in the latter, it was higher. It has been stated that import was freely allowed up to 2.6.2006. The petitioner ante-dated the Bill of Lading as 31.5.2006 while the ship came to Sri Lanka only on 4.6.2006 and goods were loaded on 5.6.2006. In the test reports in respect of sample drawn from the three containers in dispute, melting point was found to be 44.5 and 43.6 degree. In respect of three other containers, samples failed on account of "Synthetic Vitamin A" not meeting requirement to conform to IS:10633-1999 (Reaff. 2004).

5. In the application filed, stand taken in the petition has been reiterated.

6. On 12.9.2006, following order was passed:

Learned Counsel for the respondents has produced a copy of the notification dated 11.9.2006.

Week from the date of receipt of copy of this order.

Copy of the order be given to the Counsel for the parties under the signatures of the Bench Secretary. Adjourned to 19.9.2006 for further consideration.

7. Today, it has been stated that no order has been passed in respect of seven containers in dispute. It is stated that though, on account of notification dated 11.9.2006, the question of ante-dating of Bill of Lading may not stand in the way of goods being released, the issue of goods not conforming to the standard, is yet to be finalised.

8. Learned Counsel for the petitioner submitted that delay in finalisation of the matter is causing loss to the petitioner and respondents could not detain the goods for indefinite period without passing any order.

9. We are of the view that there should be no difficulty for the respondents to pass an order one way or the other after considering the stand of the petitioner and if goods are required to be detained for any valid reason, the same must be conveyed to the petitioner.

10. In view of the above, we direct the respondents to pass an appropriate order in respect of the goods of the petitioner within two weeks from the date of receipt of a copy of this order. It is made clear that we have not expressed any opinion on merits of the justification or otherwise for detention.

11. The writ petition is disposed of accordingly.