
(2012) 02 GUJ CK 0139

Gujarat High Court

Case No: Special Civil Application No. 1016 of 2012

N.K. Proteins Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Feb. 17, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 290 ELT 212

Hon'ble Judges: Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench: Division Bench

Advocate: R.J. Oza and Mrs. V.D. Nanavati, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhaskar Bhattacharya, Actg.C.J.

1. In this Special Civil Application under Article 226 of the Constitution of India, the writ-petitioner, an importer of "Cottonseed Oil of Edible Grade" (fit for human consumption after further refining), has challenged an order dated October 28, 2011 passed by the Central Food Laboratory, Mysore which is Annexure-O to the present writ-application by which the said Laboratory found that after refinement the writ-petitioner could not bring the material within the permissible Iodine Value, which is 98-112 as per the standard laid down by the provisions of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules") because the reprocessed material after refinement was found to have Iodine content of 97, which is less by 1 as prescribed under the Rules. It appears that in respect of selfsame material another sample was examined in a different laboratory being S.G.S. India, where Iodine Value was found to be 108-109 which is within the parameters of 98-112 as per the standard laid down by the provisions of the Rules. Based on the aforesaid report made by the S.G.S. India, the writ-petitioner has prayed for quashing the aforesaid order passed by the Central Food Laboratory, Mysore.

2. There is no dispute that in the past in respect of the selfsame article, the matter came up before this Court and ultimately, a Division Bench of this Court passed the following order:

8. In view of the aforesaid discussion, paragraph 18 of the order dated 17-1-2011 passed in Special Civil Application No. 15744 of 2007 is modified in the following terms:

18. The respondent-authorities are directed as under:

(i) At the first instance, the petitioners shall be permitted to reprocess 135.950 MT of imported cargo, which is lying at its plant at Thor, District-Mehsana;

(ii) After the goods have been reprocessed, the respondents shall send samples of the re-processed goods to the Central Food Laboratory, Mysore, for testing as to whether the re-processed goods are fit for human consumption conforming to the standards of cottonseed oil prescribed in the Prevention of Food Adulteration Rules, 1955. The Laboratory shall submit its report within a period of one week of the receipt of the sample. If the Laboratory submits the report in favour of the petitioner, the goods shall not be detained on this ground and shall be released in accordance with law;

(iii) If the report is against the petitioner, then the respondents shall take appropriate steps under the provisions of the Customs Act;

(iv) After the aforesaid exercise is carried out in respect of 135.950 MT of imported cargo, the remaining cargo shall be permitted to be reprocessed and upon reprocessing samples thereof shall be forwarded to the Central Food Laboratory for testing as to whether the re-processed goods are fit for human consumption conforming to the standards of cottonseed oil prescribed in the Prevention of Food Adulteration Rules, 1955. The Laboratory shall submit its report within a period of one week of the receipt of the sample.

(v) If the Laboratory submits the report in favour of the petitioner, the goods shall not be detained on this ground and shall be released in accordance with law;

(vi) If the report is against the petitioner, then the respondents shall take appropriate steps under the provisions of the Customs Act.

3. After hearing the learned counsel for the parties and after going through the aforesaid material, we are of the opinion that in view of specific direction given by a Division Bench of this Court to examine the reprocessed goods at Central Food Laboratory, Mysore, for testing as to whether the reprocessed goods are fit for human consumption conforming to the standard of Cottonseed Oil prescribed in the Rules, there is no scope of setting aside the result of the said Laboratory on the basis of result obtained on testing by a different laboratory.

4. We, however, find substance in the contention of Mr. Trivedi, learned Senior Advocate appearing on behalf of the petitioner that the sole intention of the earlier order of this Court was to see that the consignment in question is not released so long as it does not meet the standard prescribed by the Rules, 1955, on the basis of testing by that particular Laboratory. In such circumstances, if on refinement on the first occasion, the petitioner's reprocessed goods could not pass the said standard, another opportunity should be given to the petitioner for further reprocessing, so that on such further reprocessing the consignment can be brought within the norms prescribed under the Rules.

5. In such circumstances, we give further opportunity to the petitioner for reprocessing the material further so as to bring it within the norms laid down under the Rules and to present the sample for further examination by the said Laboratory. In other words, so long the Central Food Laboratory, Mysore, will not clear the material on such test after further processing, the Directorate of Revenue Intelligence (D.R.I.) Authority will not release the goods for the purpose of human consumption. The petitioner is, therefore, at liberty to further reprocess the material and to present the sample on such reprocessing for the purpose of testing. The D.R.I. Authority is directed to render all assistance for further reprocessing of the material. The time-limit prescribed in the earlier order quoted above will be maintained for further reprocessing. Special Civil Application is, thus, disposed of with above order. In the facts and circumstances, there will be, however, no order as to costs.