

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.33531 of 2019
and
W.M.P.No.33993 of 2019
and
W.M.P.No.33991 of 2019

Urmin Products Private Limited
Rep.by its Authorized Signatory,
Mr.V.Ravichandran
Having its Corporate office at
Urmin House, Sindhu Bhavan Marg,
Sarkhej – Gandhinagar Hwy,
Ahmedabad, Gujarat – 380059.

.. Petitioner

..Vs..

1.The Commissioner of Food Safety
O/o. The Commissioner of Food Safety
Having office at,
5th Floor, DMS Building, 259 Anna Salai,
DMS Campus, Teynampet,
Chennai – 600 006.

2.The Commissioner of Police, Chennai,
No.132, E.V.K.Sampath Road,
Vepey, Chennai – 600 007.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Notification No.1418/2013/S12/FSSA dated 23.05.2019 issued by the 1st Respondent herein and to quash the

same and consequently, direct the 2nd respondent not to detain or seize vehicle carrying consignments of tobacco products meant for sale in Port Blair or any other place other than the state of Tamil Nadu in pursuance of the impugned notification.

For Petitioner : Mr.Aditya Mukerje

For Respondents : Mr.R.Govindasamy,
Special Government Pleader

ORDER

This Writ Petition has been filed by the petitioner's Company, who is engaged in the business of manufacture of various products including chewable tobacco and supply of the same to various parts of the country, in the nature of Certiorarified Mandamus to call for the records in respect of the notification issued by the 1st respondent and directing the 2nd respondent not to detain or seize vehicles carrying consignments of Tobacco products when they are in transportation within the State of Tamil Nadu.

2. The petitioner has challenged the Notification No.1418/2013/S12/FSSA.) dated 23.05.2019, issued by the 1st respondent, Commissioner of Food Safety, Chennai. The Notification had been published in the Tamil Nadu Government Gazette on the

issue dated 23.05.2019. The said Notification reads as follows:

"The Hon'ble Supreme Court of India in Central ARECANUT Marketing Corporation and Others Vs. Union of India (Transfer case (c) 1 of 2010) in its order dated 23-09-2016 observed that to circumvent the ban on the sale of Gutkha, the manufacturers are selling pan masala (without tobacco) with flavoured chewing tobacco in separate sachets but often conjoint and sold together by the same vendors from the same premises, so that consumers can buy the pan masala and flavoured chewing tobacco and mix them both and consume the same. Hence, instead of the earlier "ready to consume mixes", chewing tobacco companies are selling Gutkha in twin packs to be mixed as one".

The Hon'ble Supreme Court of India in view of the above has directed the concerned statutory authorities to comply with the above mandate of law of regulation 2.3.4 and directed the secretaries, health department of all the states and union territories to ensure total compliance of the ban imposed on manufacturing and sale of Gutkha and panmasala with tobacco and/or nicotine.

On compliance of the directions given by the Hon'ble Supreme Court of India, in its interim order dated 23-09-2016 in Transfer Case (Civil) No.

1/2010, The FSSAI's issued a letter dated 5th October 2016 and 9th October, 2017 vide file No 13(25)2017/Tobacco Issues/RCD/FSSAI, The Secretary Department Health and Family Welfare, Government of India issued a letter dated 5th December 2016 vide D.O.No. 16019/2/2014-PH-I, and in pursuance of regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011, manufacture, storage, transport, distribution or sale of all food products chewable or otherwise, which is either flavoured, scented or mixed with any of the said additives, and whether going by the name or form of gutka, pan masala, flavoured or scented chewable food products, by whatsoever names called, whether packaged or unpackaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer which contains tobacco and / or nicotine as ingredients.

Now therefore, in exercise of the powers conferred by clause (a) of sub-section (2) of Section 30 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006), the Commissioner of Food Safety of the State of Tamil Nadu, in the interest of public health, hereby prohibits the manufacture, storage, transport, distribution or sale of all food

*products chewable or otherwise which is either flavoured or scented or mixed with any of the said additives, and whether going by the name or form of gutkha, pan masala, flavoured or scented food products or chewable food products by whatsoever name called, whether packaged or unpackaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer and any other food products **containing tobacco and/or nicotine as ingredients**, by whatsoever name it is available in the whole of the State of Tamil Nadu for a further period of one year with effect from 23-05-2019."*

3. The learned counsel for the petitioner has taken objection for the word 'Transport' and it is stated that the products of the petitioner have been transported to Port Blair via Chennai. It is stated that when the lorries carrying the products reach the godown at Chennai, they are then loaded on containers which are thereafter transported by way of ships which sail to Port Blair. It is stated that on an average, about 5 containers of 20 tons each are shipped every month from Chennai to Port Blair or to any other place other than Tamil Nadu.

4. It is stated that despite the transport contractors and their agents possessing and showing all the requisite documents to prove that the said consignments are meant for shipment to Port Blair or any other place other than the state of Tamil Nadu, the 2nd respondent had been detaining the vehicles along with the said consignments. It is stated that the Notification had been issued beyond the scope of the provisions of the Food Safety and Standards (Prohibition and Restriction on sales) Act, 2006. It was stated that under Section 30 of the said Act, the Commissioner of Food Safety is empowered to prohibit in the interest of public health, the 'manufacture, sale and storage for distribution or sale of any food or article and the word 'transport' is not included in Section 30 of Act. It is also stated that in ***Criminal Writ Petition No.793 of 2019, M/s.M.S.S.Foods and Processor Vs. The Commissioner of Food Safety and Drug Administration, Mah. State and Ors.***, the Nagpur Bench of Bombay High Court had an occasion to examine the provision of Section 30 of the said Act and had stayed the ban on transport through vehicles of the offending products subject to producing valid documents of transport permit from one State to another. The learned counsel for the petitioner therefore stated that the Notification has to be quashed.

5. Mr.R.Govindasamy, learned Special Government Pleader took notice for the respondent. The main Writ Petition is taken up for disposal.

6. In the first place, the order of the Bombay High Court is only an interim order passed on 04.09.2019 and even the next hearing date is given as 03.10.2019. It is not known as to the fate of the final order passed by the Bombay High Court. Even otherwise, I do not agree with the contentions of the learned counsel for the petitioner. Primarily, an earlier Notification was issued on 23.05.2017 and also published by the Tamil Nadu Government Gazette which had not been challenged by the petitioner herein. The Notification which is challenged prohibits the manufacture, storage, transport, distribution or sale of food products in the form of Gutkah, Panmasala, whether packed or unpacked and whether sold or distributed in any manner whatsoever. Section 30 of the said Act prohibits the manufacture, sale and storage for distribution or sale of any such products. Naturally, sale and storage for distribution or sale would necessarily include the transportation.

7. It is the specific case of the petitioner that they manufacture the products in Gujarat and unload products by lorries in godowns in

Chennai. This would squarely come under the definition of storage for distribution or sale. When products surreptitiously removed from the godown by lorries naturally it is only the subsequent event and there cannot be any diverse of activity relating to distribution and transport. Any distribution naturally involves transport from one place to another place. Merely because the word transport had been omitted in the Act, it would not imply that the petitioner can merrily transport the products within the State of Tamil Nadu for distribution to Port Blair or any other places.

8. The Notification of the Tamil Nadu Government Gazette published on 23.05.2015 prohibiting manufacture, storage, distribution and the further Notifications dated 23.05.2016 and 23.05.2017 prohibiting manufacture, storage, transport, sale or distribution of gutkha, panmasala and other chewing products had come for consideration in ***W.P.No.19335 of 2017, J.Anbazhagan V. The Union of India and others***, and the said notifications have been subsequently upheld. The Honourable First Bench of this Court had specifically directed the respondent therein to implement the said Notification in letter and spirit. Attention can also drawn to the decision in ***W.P.(MD)No.778 of 2019, Jeetmal Ramesh Kumar V. The***

Commissioner and others, wherein a learned Single Judge of this Court also had an occasion to examine the said Division Bench Judgment in **J.Anbazhagan V. The Union of India and others**, referred supra and had also held that chewing and chewable tobacco is a banned substance.

9. In view of the above reasons, I have no hesitation to dismiss the Writ Petition. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Index : Yes / No

Internet : Yes / No

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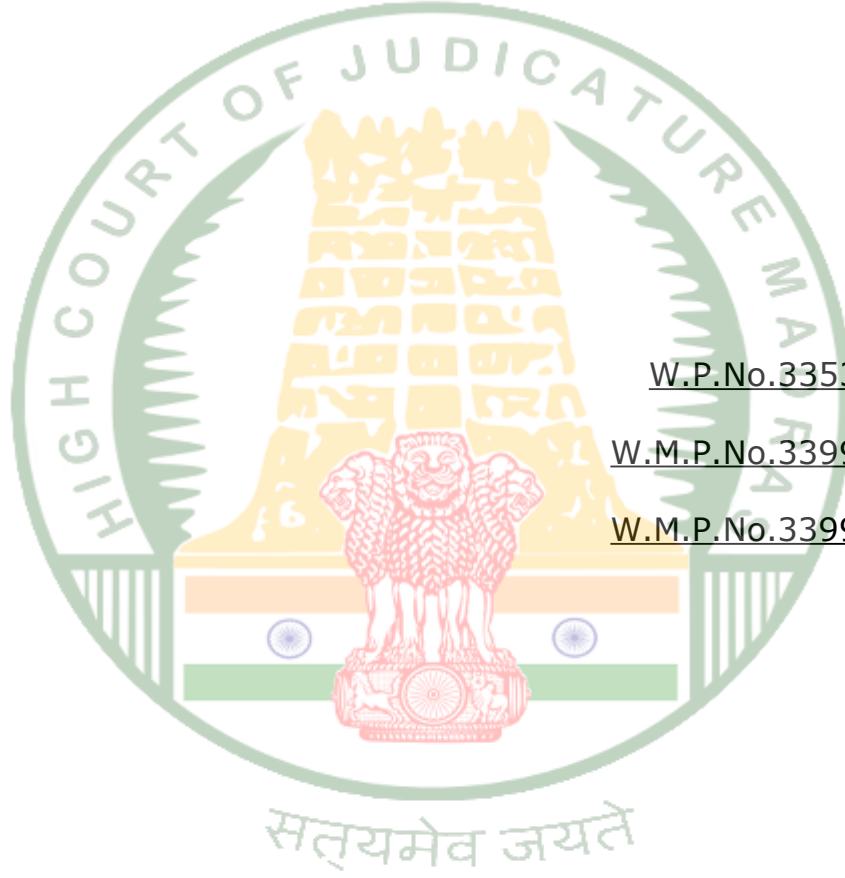
सत्यमेव जयते

1.The Commissioner of Food Safety
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C.V.KARTHIKEYAN.J,

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