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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 31.10.2022*

+ **W.P.(C) 1987/2022, CM Nos.5721/2022 & 46513/2022**

M/S. M.M. TRADERS

..... Petitioner

Through: Mr Priyadarshi Manish, Mrs Anjali Jha Manish and Mr Ritaj Kacker, Advs.

versus

COMMISSIONER OF CUSTOMS & ORS. Respondents

Through: Mr Aditya Singla, Sr. Standing Counsel with Ms Sahitya Veena and Ms Neha Tyagi, Advs. for R-1, 2 & 4. Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor and Ms Vidhi Jain, Advs. for R-3.

Mr Hariom Miglani, Sr. Law Officer, Dr Brijesh Tripathi, Deputy Director (Chemistry), Dr S.K. Jain, Consultant (Toxicology) and Dr Mahesh Chandra, Asst. Director for R-3.

+ **W.P.(C) 1988/2022, CM Nos.5723/2022 & 46510/2022**

M/S. M.V. TRADERS

..... Petitioner

Through: Mr Priyadarshi Manish, Mrs Anjali Jha Manish and Mr Ritaj Kacker, Advs.

versus

COMMISSIONER OF CUSTOMS & ORS. Respondents

Through: Mr Aditya Singla, Sr. Standing Counsel with Ms Sahitya Veena and Ms Neha Tyagi, Advs. for R-1, 2 & 4. Mr Kirtiman Singh, CGSC with Mr Waize Ali Noor and Ms Vidhi Jain,

Advs. for R-3.
Mr Hariom Miglani, Sr. Law Officer,
Dr Brijesh Tripathi, Deputy Director
(Chemistry), Dr S.K. Jain, Consultant
(Toxicology) and Dr Mahesh
Chandra, Asst. Director for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.46513/2022 in W.P.(C) 1987/2022

CM No.46510/2022 in W.P.(C) 1988/2022

1. These are the applications moved on behalf of the petitioners to bring on record the extract of the bill of entry bearing no.7112572 dated 17.01.2022.
2. According to the counsel for the applicants/petitioners, the extract of the bill of entry has been obtained from the ICEGATE website.
3. Issue notice.
- 3.1. Mr Aditya Singla accepts notice on behalf of respondent nos.1, 2 and 4, while Mr Kirtiman Singh accepts notice on behalf of the respondent no.3.
4. The counsels for the respondents say that without prejudice to the rights and contentions of the respondents, the aforementioned document may be brought on record.
5. The prayers made in the above-captioned applications are, accordingly, allowed, subject to just exceptions.
6. The applications are disposed of in the aforesaid terms.

W.P.(C) 1987/2022 & CM No.5721/2022

W.P.(C) 1988/2022 & CM No.5723/2022*[Applications filed on behalf of the petitioners seeking interim relief]*

7. We have heard the matter for quite some time.

8. The discussion has led to an iteration of what is required from the petitioners in order to obtain an import permit from respondent no.3/Central Insecticide Board and Registration Committee [in short, “CIB&RC”], although, it has been the petitioners’ contention that in view of the provisions of Section 38 (1) (b) of the Insecticides Act, 1968 [hereafter referred to as “1968 Act”], none of the other provisions of the said Act would apply.

9. We may note that Mr Kirtiman Singh, who appears on behalf of respondent no.3/CIB&RC, says that, in any event, the notification dated 01.01.2015 would apply.

9.1 It is important to bear in mind that the said notification has been issued by the Director General of Foreign Trade [hereafter referred to as “DGFT”] in exercise of powers under Section 3 of Foreign Trade (Development and Regulation) Act, 1992 [hereafter referred to as “1992 Act”] read with paragraphs 1.3 and 2.1 of the Foreign Trade Policy, 2009-2014. The relevant portion of this notification reads as follows:

“S.O.(E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.3 and 2.1 of the Foreign Trade Policy, 2009-2014, the Central Government hereby inserts the following Policy condition as Policy Condition no. 3 under Chapter 38 of ITC (HS), 2012 – Schedule – 1 (Import Policy):

3. Under Section [9] of the Insecticides Act, 1968 all chemicals intended to be used as insecticides, rodenticides, fungicides, herbicides etc. [referred to as ‘insecticides’ under the Act] require

mandatory registration for import. In cases, where the 'insecticide' is imported for non-insecticidal purpose, an import permit is necessary from the Registration Committee under the Department of Agriculture and Cooperation. The Registration Committee while granting registration or a permit for import of an insecticide spells out the conditions for import which inter alia, may include reference to the source of import. No 'insecticide' can be imported from a source other than that specified on the certificate of registration or the permit, as the case may be. In addition, the Registration Committee may issue regulatory guidelines from time to time with respect to safety, efficacy, quality etc. which warrant full compliance from importers."

[Emphasis is ours]

10. Insofar as this notification is concerned, it is, *inter alia*, indicated that insecticides which are imported for "non-insecticidal" purpose would require an import permit to be issued by the registration committee working under the aegis of the Department of Agriculture and Cooperation.

11. Though it is the submission of Mr Priyadarshi Manish, who appears on behalf of the petitioners, that DGFT could not have issued a direction, *via* the aforementioned notification, which trenches upon the provisions of the 1968 Act, he goes on to submit that in order to hasten the process of issuance of an import permit, the petitioners would supply the relevant information, as sought, to respondent no. 3/CIB&RC.

11.1. The standard form which has been framed by respondent no. 3/CIB&RC, insofar as it is applicable to the petitioners, requires them to furnish the following information:

“Application for grant of permission for import of Insecticides for Non-Insecticidal Use.”

1.	Name of the applicant along with complete address	
2.	Address of premises, where the imported insecticide shall be stocked/used.	
3.	Name of the insecticide proposed to be imported along with the minimum purity.	
4.	Source of import with complete address	
5.	(i) Name of the Item being manufactured using the imported insecticide. (ii) Licensed Capacity of item proposed to be manufactured. (iii) Installed Capacity of item proposed to be manufactured. (iv) Function of the insecticide in the process of manufacture of the item & the % required.	
6.	Annual quantity (in MT) of the insecticide proposed to be imported.	
xxx	xxx	xxx
9.	Year-wise quantity of the insecticide consumed (imported and indigenous) during the last three years along with corresponding production of end-product, duly certified by the Excise Authority concerned, or Chartered Accountant if the item is not excisable: [Attach in original – Annexure III (as per Proforma (sic: Proforma) attached)]	
10.	(a) Quantity recommended for import of the insecticide by the Nodal Ministry/department or DIC/State Department of industry giving detailed calculation and justification for the recommended quantity for the unit (should normally be Average Consumption during	

	<i>last three years + 10%</i>): detailed justification along with documentary proof be provided.				
	<i>(b) In case of new unit, quantity for import may be recommended mentioning norms of consumption along with literature support and a Certificate from a Chartered Engineer also certifying that the unit is ready for commercial procedure (Annexure-IV):</i>				
11.	<i>(a) Whether the imported material is for Domestic consumption or export or both:</i>				
	<i>(b) If for export, name & address of foreign buyer to whom the finished product is to be exported, enclosing a copy of the advance license, if applicable:</i>				
12.	<i>In case the variation in the quantity recommended for import (S.No.9) and average consumption during last three years (S.No.8, Annexure-III) is more than 10%, detailed technical justification of the Nodal Ministry/Department/State Department of Industry for recommending higher quantity:</i>				
13.	<i>Details of purchase & consumption</i>				
<i>Year (Financial)</i>	<i>Quantity of the Insecticide (in MT)</i>				
	<i>Imported</i>	<i>Domestic purchase</i>	<i>Total</i>	<i>Consumed</i>	<i>Corresponding Final Product</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4(2+3)</i>	<i>5</i>	
<i>Total Quantity</i>					
<i>Average consumption of last three years</i>					<i>-----</i>

Place:

Date:

Signature of the applicant with seal

xxx

xxx

xxx

*Imported
(Sic:Important)
Note :*

- (i) Attach End-use Certificate/recommendation in original. Ensure attaching calculation sheet in case of recommendation by State Director of Industries of DIC, duly signed by the authority.*
- (ii) Copy of each document, attached to this application, should be notarized.*
- (iii) Fill up each column even if the information is 'Nil' of 'Not Application (N.A.)'.*
- (iv) Attach all relevant Annexure even if the information is 'Nil'.*
- (v) Two self address [sic-addressed] envelop with postal stamp and acknowledgement card.*
- (vi) Incomplete application is liable to be rejected, without prior notice."*

12. Mr Manish says that the petitioners will furnish the information, as sought by respondent no.3/CIB&RC, within the next three days.

12.1. It is made clear that once the information is furnished, respondent no.3/CIB&RC will consider the same and issue the import permit to the petitioners.

12.2. Needless to state, the import permit will be issued at the earliest if the information furnished is found to be genuine.

13. We may also indicate that once the import permit is issued in favour of the petitioners, respondent nos.1 and 2, in effect, the customs authorities, will act on the same as per law.

14. We may also indicate that the product that the petitioners have

imported goes by the name “ethephon”, which, even according to the petitioners, is also referred to as “ethrel”. To be noted, the chemical and scientific name of ethephon is “2-chloroethylphosphonic acid”. “Ethrel” finds mention in the schedule appended to the 1968 Act.

14.1. Thus, having regard to the provisions of Section 3(e)(i) of the 1968 Act, the imported product will fall within the definition of the term “insecticide”.

15. The core issue before the Court was as to whether, having regard to the provisions of Section 38(1)(b) of the 1968 Act (which is an exemption provision), the other provisions of the 1968 Act would be applicable, given the fact that the petitioners are seeking to use the imported product only for “non-insecticidal” purpose i.e., as an artificial fruit ripener.

16. It is also not in dispute that respondent no.4/Food Safety and Standards Authority of India [in short “FSSAI”] has taken the stand (*albeit*, after having the product examined by a panel of scientists), that ethephon is not carcinogenic i.e., it is fit for human use, as long as it does not come in direct contact with the food substance, which in this case is fruits. The panel constituted by respondent no. 4/FSSAI i.e., the Scientific Panel on Fruits and Vegetables and their Products (including dry fruits and nuts) in its 20th meeting held on 11.07.2020, has recorded the following :

*“4. Ethephon was evaluated for toxicology by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) in 1977, 1978, 1993, 1995, 1997 and 2002. In 1993, the Meeting established an acceptable daily intake (ADI) of 0-0.05 mg/kg body weight (bw) on the basis of a no observed-adverse-effect level (NOAEL) of 0.5 mg/kg bw per day in studies in humans given repeated ethephon doses and application of a 10-fold safety factor. **It was concluded that it is unlikely to pose a carcinogenic risk to humans from the***

diet.

5. **The Guidance note on Artificial ripening mentions the use of Ethephon as one of the sources for generation of ethylene, a natural plant hormone used for ripening of fruits and the specified composition is found to generate ethylene up to a maximum concentration of 100 ppm. Further, the Guidance note mentions that the ethylene source should not come in contact of fruit at any point in time.** Scientific Panel reiterates that the Guidance note from FSSAI is very comprehensive and straight-forward and the information given in it, needs to be understood and followed in the perspective, as it is intended to be conveyed.” [Emphasis is ours]

17. The petitioners’ grievance thus arose from the impediment caused to the clearance of their product for home consumption. It is averred that, even though respondent no.4/FSSAI has indicated that ethylene gas can be used to ripen fruits, the custom authorities have refused to clear the imported product/ethephon on the ground that the petitioners did not have the requisite import permit.

18. Therefore, as indicated hereinabove, since the petitioners have agreed to furnish the necessary information, in this case the issue as to whether information was required to be given or not, has become academic.

19. Accordingly, once an import permit is issued by respondent no.3/CIB&RC, the petitioners will be at liberty to approach the customs authorities. The custom authorities, as alluded to above, will, thereafter, act as per law.

20. Before we conclude, we would like respondent no.4/FSSAI to consider framing a regime whereby fruits and/or vegetables which are ripened artificially with the use of ethylene gas, which in turn is produced through use of ethephon powder, as in this case, or other artificial ripeners

should have the necessary indication placed on it.

20.1. We would, thus, like respondent no.4/FSSAI to draw up a broad framework which takes into account all kinds of artificial ripeners so that the consumer of the fruit and/or vegetable is made aware of the fact that the product in issue has been ripened artificially.

20.2. Mr Aditya Singla, who also appears on behalf of respondent no.4/FSSAI, says that this matter will be deliberated upon and the guidelines framed in this behalf, will be placed before the court.

21. List the above-captioned matters before this court on 30.11.2022 only for the purposes of ascertaining as to whether compliance has been made with the directions contained in paragraphs 20 and 20.1. above.

22. The writ petitions are disposed of.

23. Pending applications shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

OCTOBER 31, 2022

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[Click here to check corrigendum, if any](#)