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Beekey Enterprises Vs. Quarantine Officer (Sr) Chennai the State of Tamil Nadu, Animal Quarantine and Certification Services,

Beekey Enterprises Vs. Quarantine Officer (Sr) Chennai the State of Tamil Nadu, Animal Quarantine and Certification Services,

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Court : Chennai

Decided On : Mar-05-2008

Reported in : 2008(127)ECC137; 2008(153)LC137(Madras);
2008(228)ELT182(Mad)

Judge : K. Chandru, J.

Acts : Livestock Importation Act, 1898 - Sections 3(1) and 3A

Appeal No. : W.P. No. 24408 of 2007 and M.P. Nos. 1 and 2 of 2007

Appellant : Beekey Enterprises

Respondent : Quarantine Officer (Sr) Chennai the State of Tamil Nadu, Animal Quarantine and Certification Service

Advocate for Def. : P. Wilson, ASG

Advocate for Pet/Ap. : B. Kumar, SC for ;S.S. Radhakrishnan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Chandru, J.

1. I have heard the arguments of Mr. B. Kumar, learned Senior Counsel leading Mr. S.S. Radhakrishnan, learned Counsel appearing for the petitioner and Mr. P. Wilson, learned Assistant Solicitor General of India representing the respondents and have perused the records.

2. The writ petitioner is a proprietary concern and being aggrieved by the order of the first respondent Quarantine Officer in passing an order dated 19.4.2007 wherein and by which permission for clearing the consignment of Pig Bristles was refused on the ground of outbreak of Avian Influenza in the People's Republic of China. The consignment was in respect of a Bill of Entry No. 436649 dated 11.4.2007.

3. The petitioner claims to be a trader in supply of Processed Pig Bristles to the manufacturers of paint brushes since August 2006. It is stated that all the manufacturers of paint brushes procure the Pig Bristles from various parts of the world including the People's Republic of China. The Government of India, Ministry of Agriculture, by a Notification dated 02.02.2007, prohibited the entry of 'live pig and pig meat products' along with some other products. Thereafter, the Government of India vide Ministry of Commerce and Industry, by a further Notification dated 13.3.2007 issued similar Notification prohibiting the entry of live pig and pig meat products. In both the Notifications, the prohibited items were only pigs and pig meat products and import restriction for entry into India was placed.

4. However, subsequently, on 05.6.2007, by a Notification No. S.O. 881 (E), the said item was replaced with the following entry:

Live Pig and Pig Products (including Pig Bristles).

This was in replacement of the Notification dated 02.02.2007.

5. In the meanwhile, the petitioner company have imported 1566 Kilos of double boiled white bristles (pig) from China under B.E. No. 436649 dated 11.4.2007. The clearance for this consignment was rejected by the first respondent Quarantine Officer by making a reference to the Notification dated 02.02.2007 as well as

Office Notice dated 19.4.2007 issued by him.

6. The relevant order passed by the first respondent reads as follows:

The above consignment of Pig Bristles cannot be allowed to enter into India keeping in view the outbreak of Avian Influenza in China.

It is therefore requested that the consignment may please be sent back to the country of origin or destroyed as the case may be under intimation to the Undersigned.

The petitioner was ordered to send the consignment back to the country of origin or destroy the same. Aggrieved by the same, the present writ petition has been filed.

7. Mr. B. Kumar, learned Senior Counsel appearing for the petitioner brought to the notice of this Court the latest Notification dated 01.11.2007 issued by the second respondent in S.O. No. 1859 (E) which reads as follows:

S.O. 1859 (E).--In exercise of the powers conferred by Sub-section (1) of Section 3 and Section 3A of the Livestock Importation Act, 1898 (9 of 1898), the Central Government hereby amends the notification of the Government of India in the Ministry of Agriculture (Department of Animal Husbandry, Dairying and Fisheries) number S.O. 1311 (E) dated 1st August, 2007, as follows:

In the said notification in the first paragraph, for item number (vii), the following shall be substituted, namely:

(vii) live pig and pig products (except processed pig bristles).

This notification shall come into force from the date of publication of the notification.

8. A perusal of this Notification shows that within a period of 9 months, the Union of India issued three different Notifications on the same issue thereby shifting their stand from time to time. The reasons behind the same has not been fully disclosed to this Court.

9. Mr. P. Wilson, learned Assistant Solicitor General of India representing the respondents argued that in a matter of this nature, immediate action will have to be taken and each time, the Government of India had taken decision only on the basis of materials available to them.

10. A counter affidavit was also filed on behalf of the respondents 1 and 2 wherein it is claimed that in terms of Section 3A of the Livestock Importation Act, 1898, the Central Government has power to restrict the import into India of all livestock products which includes pig and only by getting a Sanitary Import Permit [SIP] issued by the Department of Animal Husbandry, such an import can be made by any importer. It is stated that the Pig Bristles imported do not have the SIP and also in the light of the Notification dated 02.02.2007, the term Pig Bristles will also be included in the term pig products.

11. With reference to the subsequent Notification dated 05.6.2007, it only removed the ambiguity in the earlier Notification dated 02.02.2007. Therefore, there is no inconsistency between the two Notifications and the petitioner cannot take advantage of the absence of the word 'Pig Bristles' found in the Notification dated 02.02.2007. Even though the petitioners have produced the Quality Certificate issued by the authorities from the country of origin, the same need not be acted upon. The learned Assistant Solicitor General also circulated certain report on the nature of Avian Influenza taken from fax sheet published by the World Health Organisation and downloaded from the internet.

12. He also relied upon the Notification dated 07.7.2001 issued by the Ministry of Agriculture wherein guidelines for import for such products have been mentioned in the schedule for Notification. In paragraphs 5(1) and 5(2) of the guidelines, it is stated as follows:

5 (i) On arrival at the entry point, the livestock product shall be inspected by the Officer-in-charge of the Animal Quarantine & Certification Services Station or any other veterinary officer duly authorised by the Department of Animal Husbandry and Dairying, wherever required, in accordance with the specific conditions laid down in the sanitary import permit and with general guidelines issued by the Department of Animal Husbandry and Dairying from time to time.

(ii) After inspection and testing, where-ever required, the concerned quarantine or veterinary authority shall accord quarantine clearance for the entry of the livestock product into India or, if required in public interest, order its destruction or its return to the country of origin.

[Emphasis added]

13. He brought to the notice of this Court the requirement of import licence from the Director General of Foreign Trade [DGFT] in terms of the Notification wherein the term live swine (pig) is mentioned. He also brought to the notice of this Court the Notification dated 01.3.2007 issued by the Ministry of Agriculture wherein in Schedule III, importing of certain products from the country reporting Avian Influenza is provided in which Pig Bristles were also mentioned as item No. 1 and stated that this was the basis for issuance of the circular dated 09.4.2007 and that China was also a country which is not free from Avian Influenza and import from that country may not be allowed.

14. He also brought to the notice of this Court the letter dated 18.5.2007 written by the Joint Commissioner of Ministry of Agriculture to the petitioner wherein it is stated that the request of the petitioner cannot be considered favourably and the action taken by the Quarantine Officer, viz., the first respondent, was fully justified. He also stated that the subsequent Notification dated 05.6.2007 was only a clarification of the previous Notification and it is not an introduction of a new product, viz., Pig Bristles.

15. According to the learned ASGI, the term 'live pig and pig products' includes all parts of a pig and, therefore, even without inclusion of the product in the subsequent Notification, the impugned order can be justified. But, however, the learned ASGI had no answer when confronted with the latest Notification dated 01.11.2007 wherein Processed Pig Bristles are exempted from the ban on imports.

16. At this juncture, Mr. B. Kumar, the learned Senior Counsel submitted that when the petitioner produced the bill of entry, the Wile Life Inspector made an endorsement dated 17.4.2007 on it, which reads as follows:

Examined the consignment randomly. No objection to the import of Pig Bristles vide BE No. 436649 dated 11.4.2007.

Sd.-

Wild Life Inspector

dated 17.4.2007

17. But, whereas the first respondent without any justification, made a counter endorsement dated 19.4.2007 and wrote as follows:

The consignment cannot be allowed to enter India keeping in view the disease outbreaks (NPAI) in China.

The consignment may be sent back to China or Destroyed as the case may be. Vide notification - 2.2.07 SO 102(E).

Sd.

dated 19.4.2007

18. Therefore, the learned Senior Counsel submitted that under the Schedule to the Notification dated 07.7.2001 issued by the second respondent, guideline No. 5 gives a direction to the authorities to make an inspection on the product and then certify the same as to whether it was free from any infection. In the present case, the Wild Life Inspector, who had examined the consignment though at random, had certified that the products are not having any infection and they can be allowed to be imported. Therefore, the only question remains to be decided is that whether the products are banned in terms of Notification dated 02.02.2007 and whether the subsequent Notification dated 05.6.2007 additionally banning the Pig Bristles can be read into the Notification dated 02.7.2007. Further, the ipsi dixit observation by the first respondent, who, without examining the said consignment and refused to grant no objection, can be said to be an order passed in terms of the statute.

19. The learned Senior Counsel submitted that even the Bill of Entry will show that the product was double boiled and the country of origin had granted certificate on the imported products, which was also appended along with the application, which reads as follows:

These Goods have been Disinfected by Industrial Washing and Double Boiling In Temperature more than 120 Centigrades Celcius for not less tan ten hours. Furthermore this lot of commodity was derived from animals which originated from safety and non-epizootic regions in the surrounding of 30 km and were found healthy by ante-mortem and post-mortem inspections. According to the list 'A' of International Office of Animal Diseases (O.I.E. - Paris) and has been found without B. Anthracis and other Pathogenic Germs, Parasites and Harming substances through examination.

The Qualify Certificate and Disinfection Certificate had also accompanied the consignment and submitted along with the bill of entry.

20. It is also brought to the notice that the petitioners' other consignment with B.E. No. 586534 dated 16.4.2007 was cleared by the authorities at other Customs Offices during the relevant time and only in Chennai, this problem was created by the respondents. He also submitted that in respect of the Notifications, a strict construction will have to be made and if so made, the intention of the Notification dated 02.02.2007 was not to include Pig Bristles as it is neither a Pig nor a pig product and it is only a waste and the subsequent Notification dated 05.6.2007 is a fresh Notification identifying Pig Bristles as a separate item. Alternatively, the learned Senior Counsel submitted that if the November 2007 Notification is taken as a clarification, then certainly, it permits the import of Pig Bristles without any prohibition. He also submitted that once it is liable to be imported, the first respondent had not made any separate examination but merely went by a general observation that the country of origin was affected by Avian Influenza and what was required here is the examination of products by him before granting no objection.

21. In the present case, the products have been examined by the Wild Life Inspector, who had found nothing objectionable and, therefore, the learned Senior

Counsel submitted that when the Notification dated 02.02.2007 was in force and as there was no ban on the import of Pig Bristles, the petitioner had invested huge amounts and imported the consignment. The same cannot be sent back on the basis of a subsequent Notification dated 05.6.2007 because on the relevant date of bill of entry, there was no ban on bringing Pig Bristles as it was otherwise not objectionable.

22. Therefore, in respect of any import, what is required is a publication of Notification in the official gazettes and copies to be made available to the concerned without which a Notification cannot be said to have been brought into force. In this context, the judgment of this Court in *Asia Tobacco Co. Ltd. v. Union of India* : [1985]155ITR568(Mad) was approved by the Supreme Court in the judgment relating to *Collector of Central Excise v. New Tobacco Co.* : 1998(97)ELT388(SC) and the following passage found in paragraph 12 may be usefully summarised:

Para 12: We hold that a Central Excise Notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

23. If before 05.6.2007, the Department has been allowing the import of Pig Bristles and the same has been cleared in the other Customs limits, there is no reason as to why the respondents herein should stop the same when it is brought through Chennai.

24. The fact that subsequently on 01.11.2007, the Government had permitted the import of Pig Bristles clearly shows that whenever they permitted or prohibited a particular product, they were specifically mentioned in the Notification. In the absence of any particular reference, the Notification will have to be read so as not to include prohibition of an import of a particular product. If viewed in that context, it is clear that the Notification dated 02.02.2007 and Customs circular dated

12.11.2007 as well as the clearance by other ports will clearly show that the Pig Bristles are not prohibited from being imported to this country.

25. The only other contention would be getting a SIP Certificate and for that, the product will have to be inspected by the authorities to find out any contamination in the consignment. In the present case, the first respondent had not undertaken any such exercise. On the contrary, the petitioners have filed Quality Certificate, Immunisation Certificate as well as a Laboratory Report to show that there was no such contamination. Further, the endorsement of the Wild Life Inspector is also found in the bill of entry, who, after making random examination, found that there was no objection with reference to the specified consignment.

26. In the light of the above, the petitioners must succeed. Accordingly, the writ petition will stand allowed and the impugned orders are set aside. The respondents are directed to permit the petitioner to take delivery of the items covered by B.E. No. 436649 dated 11.4.2007 after complying with other formalities in accordance with law. The respondents shall carry out this direction within a period of four weeks from the date of receipt of a copy of this order. However, the parties are directed to bear their own costs. Connected Miscellaneous Petitions are closed.