

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

% *Judgment Pronounced on: 19.12.2017*

+ **CRL.L.P. 458/2015**

FOOD INSPECTOR PETITIONER

Through: Mr. Amit Chadha, APP for State.

versus

RUPESH JAIN & ORS. RESPONDENTS

Through: None.

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

VINOD GOEL, J.

1. Challenge in this Criminal Leave to Appeal no. 458/2015 is to order dated 09.02.2010 passed by the Court of Additional Chief Metropolitan Magistrate (in short 'Ld. ACMM'), New Delhi in Complaint Case no.29/10 whereby the Ld. ACMM decided not to take cognizance of the report submitted by the Public Analyst on 29.04.2008 with respect to the sample lifted by Food Inspector of 'Premium Chewing Tobacco' on 05.04.2008.
2. The facts leading to the filing of the present Criminal Leave to Appeal are that the Food Inspector Suniti Kumar Gupta took a sample consisting of 18 x 50 grams of 'Premium Chewing Tobacco' from the accused on 05.04.2008 and sent the same for analysis to the Public Analyst.

3. The Public Analyst submitted his report on 29.04.2008 which stated that the sample was covered under the The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (in short 'CPT Act') and it was found not containing any extraneous matter as adulterant.
4. A corrigendum dated 07.04.2008 was later issued by the Public Analyst where it was mentioned that the sample was misbranded and not in compliance with Rule 32 (i) of the Prevention of Food Adulteration Rules, 1955 (In short 'PF Rules').
5. According to the corrigendum dated 07.04.2008 the declaration on the sample as per Rule 32(i) of the PF Rules was as follows:

“Best before within six months from the date of packing”.
6. The Public Analyst in the Corrigendum dated 07.04.2008 opined that the product was not labelled correctly as per Rule 32(i) of the PF Rules because it was supposed to be labelled as follows:

“Best before months from packaging”
7. As per the report of the Public Analyst, the sample contained 3.78% Nicotine which was in violation of Rule 44J of the PF Rules. The Public Analyst further opined that the sample of “Premium Chewing Tobacco” was adulterated as it contained Tobacco and Nicotine which are injurious to health.
8. The complaint was filed by the Food Inspector after taking consent of the Director, Prevention of Food Adulteration, Govt. Of NCT of Delhi in exercise of power vested in him under Section 20 of the Prevention of Food Adulteration Act, 1954 (in short 'PFA, 1954') as the Director

found that the sample violated the provisions of section 2 (ia), section 2(ia)(h), Rule 37A(2)(c) and Rule 44J of the PF Rules which are punishable under section 16(1A) of the PFA, 1954.

9. The Ld. ACMM held that the sample of “Premium Chewing Tobacco” is covered under the CPT Act and therefore cannot be said to be within the definition of ‘food’ as per Section 2(v) of the PFA, 1954. Ld. ACMM further held that Rule 44J of the PF Rules would not apply to “Chewing Tobacco”. The Ld. ACMM also held that the complaint filed by the Food Inspector did not mention anywhere that the use of tobacco was completely prohibited thus necessitating the filing of the complaint. As far as the issue of labelling was concerned, the Ld. ACMM held that since that label reflecting “**Best Before within six months from the date of packaging**” was not misleading at all and conveys the expiration date of the product without any confusion, the same would not be in violation of Rule 32(i) of the PF Rules.
10. The APP for the State had argued that the impugned judgment was not based on the correct position of law and therefore deserves to be set aside.
11. He argued that the sample containing “Chewing Tobacco” was in violation of Rule 44J of the PFA Rules as it was found to contain tobacco as one of its ingredients. He contended that no product which comes within the definition of a “food” item as per section 2(v) (a) can contain tobacco as one of its ingredient. He placed heavy reliance on the judgment of the Hon’ble Supreme Court in **Pyarali K. Tejani v**

Mahadeo Ramchandra Dange & others. AIR 1974 SC 228 (para 10).

12. I have heard the learned APP for the State.
13. It important to refer to Section 2(v)(a) of the PFA, 1954 which defines food as under:

“(v) “food” means any article used as food or drink for human consumption other than drug and water and includes—

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,”

14. Rule 44J of the PF Rules reads as under:

“44J. Product not to contain any substances which may be injurious to health—

Tobacco and nicotine shall not be used as ingredients in any food products.”

15. Appendix B of the PF Rules provides the definition and standards of quality of all food articles which are within the ambit of the PFA, 1954. In this Appendix, *Pan Masala* finds mention at Item no.30 and is defined as under:

**“A. 30 Pan Masala means the food generally taken as such or in conjunction with Pan. It may contain:-
Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non-prohibited flavours.**

It shall free from added coal-tar colouring matter, and any other ingredient injurious to health. It shall also conform to the following standards, namely:-

Total ash - Not more than 8.0 per cent by weight (on dry basis)

Ash insoluble in dilute hydrochloric acid - Not more than 0.5 per cent by weight (on dry basis).”

16. There is no mention of “Flavoured Chewing Tobacco” in the definition of Pan Masala as per Appendix B. The ingredients mentioned in the definition of Pan Masala are used for human consumption in one form or the other and therefore come within the definition of ‘food’ as per Section 2(v) (a) of the PFA, 1954.
17. It is clear after going through Appendix B that ‘Chewing Tobacco’ or *Pan Masala* containing tobacco has not been included in this Appendix and therefore the same cannot be said to be included within the definition of ‘food’ as per Section 2(v) (a) of the PFA, 1954.
18. Section 3(p) of the CPT Act defines ‘tobacco products’ as under:

“(p) "tobacco products" means the products specified in the Schedule.”
19. The Schedule attached to Section 3 (b) of CPT Act lays down the items which come within the definition of ‘tobacco products’ and the same is reproduced below:

“THE SCHEDULE [See section 3(p)]

1. Cigarettes
2. Cigars
3. Cheroots
4. Beedis
5. **Cigarette tobacco, pipe tobacco and hookah tobacco**
6. **Chewing tobacco**
7. Snuff
8. **Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called).**
9. Gutka

10. Tooth powder containing tobacco.”

20. It is clear after going through the Schedule of the CPT Act that ‘Chewing Tobacco’ and ‘*Pan Masala*’ which has tobacco as one of its ingredients comes within the definition of ‘Tobacco Products’ as per Section 3(p) of the CPT Act. None of the items including chewing tobacco mentioned in the Schedule could be included in the definition of ‘food’ under Section 2(v) (a) of the PFA, 1954 since none of these items could be said to be used as food for human consumption or ordinarily enter into or are used in the composition or preparation of human food. Further if the legislature intended to include *Pan Masala* having tobacco as one of its ingredients or Chewing Tobacco as a “food” item under Section 2(v) (a) of the PFA, 1954 then it would have been specifically mentioned in Appendix B which contains the standards of quality of all food items falling under the PFA, 1954. Therefore since ‘Chewing Tobacco’ and *Pan Masala* containing tobacco as one of its ingredients come within the ambit of the CPT Act, Rule 44J of the PFA, 1954 cannot be said to apply to these products.
21. The Hon’ble Supreme Court in **Godawat Pan Masala Products I.P. Ltd. and Anr. vs. Union of India (2004) 7 SCC 68** while dealing with the issue whether the provisions of the CPT Act which is a special act will override the provisions of the PFA, 1954 held as under:

“6. The provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and

Distribution) Act, 2003 are directly in conflict with the provisions of Section 7(iv) of the Prevention of Food Adulteration Act 1954. The former Act is a special Act intended to deal with tobacco and tobacco products particularly, while the latter enactment is a general enactment. Thus, the Act 34 of 2003 being a special Act and of later origin, overrides the provisions of Section 7(iv) of the Prevention of Food Adulteration Act, 1954 with regard to the power to prohibit the sale or manufacture of tobacco products which are listed in the Schedule to the Act 34 of 2003;”

22. The second issue which was raised by the Petitioner was that the Chewing Tobacco was not labelled as per the requirements of Rule 32(i) of the PF Rules and is therefore ‘misbranded’ as per Section 2(ix) of the PFA, 1954.

23. In the present case the labelling is as follows:

“Best before within six months from the date of packing”

24. Rule 32(i) of the PF Rules provides for certain food items specified therein to carry a label which specifies the date of manufacturing as well as the date of expiry of such food items. Rule 32(i) of the PF Rules itself provides that kind of label that the food items are to bear, the same are reproduced below:

“(i) the month and year in capital letters upto which the product is best for consumption, in the following manner, namely:-

BEST BEFOREMONTHS AND YEAR

OR

BEST BEFOREMONTHS FROM
PACKAGING

OR

BEST BEFOREMONTHS FROM
MANUFACTURE

OR

BEST BEFORE UPTO MONTH AND YEAR

OR

BEST BEFORE WITHIN.....MONTHS FROM
THE DATE OF PACKAGING/MANUFACTURE.

(Note: Blank be filled up)

For the period OR upto and inclusive of 1st September
2001)”

25. The purpose of labelling is to inform the customers about a particular fact which in this case being the expiry date or the period within which the food product is best for consumption. The labelling as appearing on the product clearly conveys that message and the presence of the word ‘within’ does not mislead the consumer in any way. A similar issue was decided by the Madras High Court in **A. Rajasingh & Others v. The Food Inspector, Lakkampatty Panchayat, Erode District 2007 (1) FAC 299** wherein the Madras High court held as under:

“15. Even though the terminology found in both the terms differ in appearance, actually, no consumer would definitely be misguided, if he happens to see the term “best within four months”. Even if the words “best before four months from manufacture or packaging” are not there, and, instead, the words “best within four months” are there, it will not, in any way, mislead the consumer and, by no stretch of imagination, it could be termed that the product has been misbranded. It is to be seen that the product is not adulterated and only an allegation of misbranding is there.”

26. Therefore in light of the facts and circumstances of the case, no case is made out by the petitioner and the petition seeking leave to appeal is dismissed.

(VINOD GOEL)
JUDGE

DECEMBER 19, 2017

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HIGH COURT OF DELHI



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