2013 (2) ECS (10) (Mad-HC)

IN THE HIGH COURT OFJUDICATURE AT MADRAS

DATED : 08.10.2012

THE HONOURABLE MR. JUSTICE C. NAGAPPAN
AND
THE HONOURABLE MR. JUSTICE M. STHYANARAYANAN

C.M.A. NO. 1088 OF 2012

M.P. NOS. 1& 2 OF 2012

The commissioner of Customs,
Chennai — Appellant/Respondent

Vs.

1. M/s Avenue Impex, Chennai
2. Customs Excise and Service Tax — Respondent/Applicant

Appeal filed U/Sec. 130 A of the customs Act 1962 against the impugned final order No. 1166 dated 27.10.2011 of the customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai passed against the order in original No. 17004 of 2011 dated 2.8.2011 of the Commissioner of Customs, Chennai.

For Appellant : Mr. Xevier Felix, SCGSC

For Respondent : Mr. B. Satish Sundar for R - 1
R2 : Tribunal

"It is settled position of law, the facts narrated by the judicial / quasi - judicial authority are presumed to be correct and if the concerned person is of the view that the facts have not been properly narrated, or given in the order, his remedy, if any, is to approach the same authority". (Para 33).

"The circulars/ instructions given by the concerned authority would bind the customs authorities and the circulars/ instructions pointed out would clearly indicate that the package of food products imported by the first respondent/ importer shall contain all the details, more particularly, the name and address of the manufacturer and the date of manufacture and, admittedly, the package do not contain the said details". (Para 34).

"Though it is contended by the learned counsel for the first respondent/ importer that the subsequent guidelines have been issued by the FSSAI dated 231-6 Jan, 2012, dispensing with such a requirement, in the considered opinion of this High court, the said notification only has prospective effect and it is settled position of law that administrative instructions do not have retrospective effect". (Para 35).

"It is obligatory on the part of the first respondent/ importer to strictly adhere to the PFA Act and Rules framed there under and if the statue prescribed a thing to be done in a particular manner, it should be done only in that manner and not in any other manner. Since the first respondent/ importer has failed to adhere to the said statue and rules framed there under, and the Customs authorities were also mandated in the above said circulars/ instructions to strictly comply with the provisions of the PFA Act and rules framed there under, the non-furnishing of the full address of the manufacturer and the date of manufacturer, on the part of the first respondent/ importer, cannot be condoned".(Para 36).

JUDGMENT

M.SATHYANARAYANAN, J

1. This appeal is preferred against the Final order in No. 1166/11 dated 27.10.2011 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. Briefly stated, the case of the 1st respondent is that. The 1st respondent Firm engaged in the business of import and trading of cereals, especially .white Oats from countries like Australia, Argentina etc, and it imported a consignment of Oats (Rolled and Flaked) in 2080 Bags of 20 kgs, each and the goods were supplied by the foreign supplier M/s. 3 Arroyos, Buenos Aires Argentine and the consignment way referred to the PHO, FSSAI, chennai for clearance under the Prevention of Food Adulteration Act (for short, "

PFA Act') and they, by their: letter. dated ;30.06.2011 informed that the goods do not contain the name, and, address, of •: the manufacturer and also the date of manufacture and, hence, .the remaining shelf life cannot be ascertained as per the DGFT Notification dated 30.07.2011 and, therefore, the sample could not be drawn for analysis. The importer replied that the items were imported in bulk packs and they have to be fumigated for five days to kill insetcs and after further processing, they have to be packed into retail pacs and exemption is available to them as per clause (f) and (g) of Rule 32 of the Prevention of Food Adulteration Rules, 1955 (for short 'PFA Rules') Adjuction proceedings were initiated and the Additional Commissioner of Customs (Group - I) by order dated 2.8.2011, by confiscating the goods under Section 111 (d) of the Customs Act, 1962 and allowed redemption for the purposed of re – export on payment of fine of Rs. 2 lakhs and penalty of Rs. 1 Lakh. Challenging the said order, the 1st respondent herein preferred appeal and the commissioner of Customs (Appeals), by order dated 26.8.2011, upheld the order of confiscation, but reduced the fine and penalty to Rs. 1,00,000/- and Rs. 50,000/- respectively and declared that the goods are not allowed for home clearance. Aggrieved by the same, the 1st respondent herein filed further appeal before the Customs, Excise and service Tax Appellate. Tribunals South Zonal Bench, Chennai , and the Tribunal, by impugned order dated 27.10.2011, held that the packs containing 20 kgs. of oats, bear the necessary details regarding the supplier's name, brand, address and the date of expiry as, ',April,.2012 and the first respondent herein has also undertaken to provide any other details required to comply with the local laws at the time of re - packing and re - labelling the impugned goods in the Customs bonded area before customs clearance and they are also undertaking to ensure that the Port, Health Authorities would be called upon to test the consignment before the customs clearance and, hence the prayer made by them is reasonable ands accordingly, set aside the impugned order and directed the. customs authorities to allowed the 1st 'respondent herein to re-Pack and re label the impugned goods in a customs bonded premises ;and there after,it could be open to the Port Health Authorities to. test and certify the impugned goods ,and fresh, order may be passed by the original authority after certification is done by the Port Health Authorities and allowed the appeal in the above terms. Aggrieved by the said impugned order, the Commissioner of Customs has: preferred this statutory appeal under Section 130 of the Customs Act.

3. Mr. S. Xavier Felix, learned Central Government Standing Counsel appearing for the appellant submits that Rule 32 of the PFA Act stipulates

that the date. " of manufacture should be indicated on the package in order to ascertain, the remaining shelf life of the product and in the present case, the package of goods imported by the petitioner did not have the date of manufacture on them and further, the name and complete, address of the manufacturer of the product are also not mentioned and the goods are also not covered under the exemption provided under Rule 32 and since the article of food is not labeled in accordance` with the requirements of the PFA Act, it shall be deemed to be misbranded and Section 5 (ii) of the PFA Act prohibits import of such misbranded food article into India and the Tribunal has passed the impugned order without considering the said provisions and allowed the importer to re-label the pack with the date of 11 manufacture , ands hence, the impugned order is liable to be set aside.

4. Per contra, the learned counsel for the 1st respondent submits that the 1st respondent is a genuine importer and it has imported the consignment of Oats for home consumption in bulk packs of 20 kgs. each and the label contains the batch number, best before date, country of origin, details and manufacture's name and the packs are not sold as such to retail customers but these are subjected to an elaborate process of re – packing into 500 gms./1 kg. cartons and the 1st respondent has intended to repack the same in the customs bonded premises and after re – packing, they would ensure that all the details required under the PFA Rules as well as DGFT Notification are provided on the retail packs and the Tribunal having found the prayer of the 1st respondent herein reasonable, accordingly directed the 1st respondent to re – pack and re – label the goods in a custom bonded premises and directed the port Authorities to test and certify the same and the impugned order is sustainable both on facts and in law. It is the further submission of the learned counsel for the 1st respondent that FSSAI in tis recent guidelines, dated 23 rd March, 2012, related to Food Import Clearances Process, has observed that in case of wholesale packages, if the date of manufacture is not given in the labels and only the date of expiry / best before date is mentioned in the labels, then it may be verified from the relevant documents provided by the importer along with the Bill of Entry and if complete address is not given in labels and only name of the manufacturer is given, then his address may be verified from the relevant documents like certificate of analysis, invoice, etc. Though the present consignment does not carry date of manufacture on the label but it indicates the expiry date as best before April, 2012 and it contains the manufacturers name and the 1st respondent has produced the declaration from the exporters regarding the expiry date of the product and also produced the relevant documents and in view of the above, the Tribunal held that the prayer made by the 1st respondent is reasonable and

passed the impugned order and the conclusion of the Tribunal is just and proper. In support of his submission, learned counsel for the 1st respondent relied on the following decisions : -

(1) Chandna Impex Pvt. Ltd.- Vs. – Commissioner of Customs, New Delhi (2011 (269) ELT 433 (S.C.));

(2) Commissioner of Customs (Import), Raigad V. Amrit Banaspati Co. Ltd. (2007 (218) ELT 336 (Bom)); and

(3) Gokul Refoils Solvents Pvt. Ltd. – Vs – Union of India (2012 (278) E L T 433 (Cal.)).

5. This Court, at the time of admission of this appeal, framed the following substantial questions of law : -

1) Whether the CESTAT is right in allowing appeal of the importer when Rule 32 of Prevention of Food Adulteration Rules, 1955, specifies that the name of the goods, list of ingredient, name and complete address of the manufacturer, name and address of the importers, net content by weight or volume, Lot / Code / Batch Identification, date of manufacturing and packing, expiry date / best before date, country of origin and instructions for use, should be indicated on the package, is it correct to allow goods without date of manufacture and name and complete address of the manufacturer into India and allowing them to put the details on repacking in India after import?

2) Whether the CESTAT is right to allowing appeal of the importer, when the goods are misbranded as per clause (k) of Section 2 (ix) of the Prevention of Food Adulteration Act, 1954, being not labeled in accordance with the requirements of this Act or Rules made thereunder?

3) Whether the CESTAT is right to allowing appeal of the importer, which the Ministry of Health and Family Welfare, P.F.A. Division in their letter dated 2.12.2010 has clarified that all authorized officers / PHOs / APHOs are to check the claims on the labels as per the labeling requirements prescribed under PFA Rules, 1955 at their level itself and in case of any deficiencies on the label, such samples may either not be drawn if there are obvious deficiencies noted at the time of sampling or may be returned to Customs

Authorities on the same day but may not be sent to authorized laboratories for analysis?"

Substantial Questions of law Nos. 1 & 3:

1) Whether the CESTAT is right in allowing appeal of the importer when Rule 32 of Prevention of Food Adulteration Rules, 1955, specifies that the name of the goods, list of ingredient, name and complete address of the manufacturer, name and address of the importers, net content by weight or volume, Lot / Code / Batch Identification, date of manufacturing and packing, expiry date / best before date, country of origin and instructions for use, should be indicated on the package, is it correct to allow goods without date of manufacture and name and complete address of the manufacturer into India and allowing them to put the details on repacking in India after import?

3) Whether the CESTAT is right in allowing appeal of the importer, which the Ministry of Health and Family Welfare, P.F.A. Division in their letter dated 2.12.2010 has clarified that all authorized officers / PHOs / APHOs are to check the claims on the labels as per the labeling requirements prescribed under PFA Rules, 1955 at their level itself and in case of any deficiencies on the label, such samples may either not be drawn if there are obvious deficiencies noted at the time of sampling or may be returned to Customs Authorities on the same day but may not be sent to authorized laboratories for analysis?"

6. The ministry of Commerce and Industries, Department of Commerce, Government of India, has issued a notification dated 30th July, 2001, wherein it has been stated among other things that import of all such edible / food products, domestic sale and manufacture of which are governed by Prevention of Food Adulteration Act, 1954 (for short 'PFA Act') shall also be subject to the condition that, at the time of importation, the products are having a valid shelf life of 60% of its original shelf life. Shelf life of the produce is to be calculated, based on the declaration given on the label of the product, regarding its date of manufacture and the due date for expiry (emphasis supplied) and it has been stated in the said notification that it was issued in public interest.

7. The Department of Revenue – Central Board of Excise & Customs, has issued circular No. 58 / 01 – Cus dated 25th Oct., 2001, giving instructions as to the

clearance of consignments of food articles and the application of PFA Act and other Acts. As per clause (c) of para 2.1., the product should meet the labeling requirements under the Prevention of Food Adulteration Rules (for short 'PFA Rules') and Packaged Commodities Rules and this includes ensuring that the label is written not only in any foreign language, but also in English. The details of the ingredients in descending order, date of manufacture, batch no., best before date, etc., are mandatory requirements (emphasis supplied). The products will also have to indicate the details of best before date on all food packages and attention was also drawn to the Ministry of Health Notification No. GSR 537 (E) dated 13th June, 2000.

8. The Director General of Health Services has sent a letter dated 30th Oct., 2002, to all Food (Health) Authorities, all Port Health Officers / Airport Health Officer, all Customs officers and all Central Food Laboratories and Public Analyst Laboratories with regard to the analysis of imported food products. It is stated among other things in the said letter that PHO's / APHO's and Customs officers are requested to check the labels of imported foods as per the provisions of the PFA Act and the Rules as made thereunder before the samples of such products are sent to the laboratories. As per clause (3), it is stated as follows : -

> "(iii) The Port Health Officers / Airport Health Officers and Custom Officer are requested to examine the labels of all the imported food products in their level itself. In case the deficiency on the label is not rectifiable such products should not be allowed to be imported into India. The labeling requirements which are not rectifiable if the information relating to the following are not given on the label : -
>
> a. Name of the manufacturer
> b. List of ingredients in descending order of composition by weight / volume.
> c. The name and address of the Manufacturer
> d. The date of the manufacture
> e. "Best Before Date, or " Expiry Date"
> f. Batch No. or Code No.
> g. Net Weight or Volume

If the imported product is not meeting with the labeling requirement given above, samples of such product shall not be sent to the laboratories for analysis.

9. Food Safety & Standards Authority of India of Ministry of Health & Family Welfare, Government of India, has issued a clarification dated 30th June, 2011, stating that in respect of the consignment imported by the 1st respondent herein, viz., M/s. Avenue Impex, Chennai, it was inspected on 29th June, 2011 for drawing the sample by the Technical Assistant, FSSAI, Chennai and it does not meet the labeling requirement under the PFA Act and the Rules framed thereunder and, hence, the sample could not be drawn for analysis.

10. It is the submission of the learned counsel for the appellant before the order, was passed by ,the Original Authority, Viz., Additional Commissioner of Customs – Group I, the 1st respondent furnished two letters of the manufacturer, viz., M/s 3 Arroyos, Buenos Aires, wherein details, with regard to the date of manufacture and expiry date have been given and. the 1st respondent has also submitted a representation dated 8th Julys 2011, to the Deputy Commissioner of customs – Group1, stating` that the supplier, in their export declaration, has clearly mentioned the manufacturing and expiry date and since it is a bulk pack, the manufacturer's name has not been mentioned and if an opportunity is given to. Them, they would re – sticker the entire lot of 41.6 Metric Tons, which is packed in 20 kgs bulk pack and further prayed that they are a small company and returning or rejection of the.` consignment will result in a huge financial loss, which cannot be sustained by them and requested the said official to consider the said request as a special case and grant them one time waiver end clear the consignment: and .they are also prepared to give an undertaking if desired by the official. It as also followed by another representation dated 25th July 2011,wherein, It has been stated that the goods are in 20 kgs. Packs and the label does not contain the manufacturer's full address and the date of manufacture, but, however, the details have been made available by the manufacturer now and in respect of wholesale packages, the provisions of clause (f) – dated of manufacture and clause (g) - date of expiry need not be specified in terms of proviso to Rule 32 of the PFA Rules and, hence, requested the original authority, viz., the Additional Commissioner of Customs – Group I to obtain PFA clearance and allow the 1st respondent / importer to clear the consignment at an early date.

11. It is the submission of the learned counsel for the appellant / Revenue that as per the Public Notice dated 17th March, 2001, Central Board of Excise & Customs Circular dated 25th Oct., 2001, it is obligatory on the part of the importer to comply with the labeling requirements under the PFA Rules and Packaged Commodities Rules, which include the details regarding the date of manufacture and the full name and address of the manufacturer and, admittedly, the said

requirement has not been complied with by the 1st respondent / importer. It is the further submission of the learned counsel for the appellant that as per the letter dated 30th Oct., 2002, issued by the Director General of Health Services, PHO's APHO's and Customs Officers are requested to check the labels of imported foods as per the provisions of the PFA Act and Rules framed thereunder before the samples of such produces are sent to the laboratories and as per para – 3 of the said letter, in case deficiency on the label is not rectifiable, such products are not to be allowed to be imported into India, where, as per the labeling requirements, the requisite information as shown in the circular are not given on the label. As per clause (3), the name and address of the manufacturer, the date of manufacture and best before date are to be given. It has been further indicated in the said letter, if the imported product is not meeting with the label requirements given in the said circular, samples of such products shall not be sent to the laboratories for analysis. Since the notification / circular and letters of the abovesaid authorities had clearly indicated that in the absence of details regarding the address of the manufacturer and the date of manufacture, the sample of the food product imported cannot be drawn and, therefore, the Technical Assistant of FSSAI, Chennai, has not drawn the samples of the imported food for analysis and it has also been indicated by the authorized officer of Food Safety & Standards Authority of India, vide his letter dated 30th June, 2011 address to the Deputy Commissioner (Customs – Docks) Seaport, Custom House, Chennai.

12. Learned counsel appearing for the 1st respondent has drawn the attention of this Court to the judgments cited above and submits that since the deficiency pointed out are technical in nature, which are curable and that the defects pointed out have also been cured, the impugned order passed by the CESTAT is sustainable and also placed reliance upon the above said judgments.

13. In the commissioner of Customs (Import), Raigad – vs. – Amrit Banaspati Co. Ltd. (2007 (218) ELT 336 (Bom.)), the Revenue made a challenge to the order passed by CESTAT, wherein the Tribunal has set aside the confiscation / re – export orders passed by the assessing officer and directed the customs authorities to allow reprocessing of the confiscated goods and in the event the goods meet the standards prescribed under the PFA Act, allow clearance for home consumption. The goods involved in the said case were 5 consignments of Hydro generated Edible Oil and it was subjected to analysis, wherein it was found that the goods do not conform to the standards of Vanaspati prescribed under the PFA Rules and, hence, the COmmisisoner of Customs passed an order of adjudication ordering confiscation of the goods under Section 111 (d) of

the Customs Act with option to redeem on payment of nominal fine for the purpose of re – export and also payment of nominal find under Section 112 (a) of the Customs Act. In pursuant to the order passed by the Delhi High Court, samples of the goods imported were once again subjected to analysis by the Central Food Laboratory and it gave a report that the imported goods failed in the melting point test. The importer filed an appeal before the CESTAT and it was allowed and remanded to the adjudicating authority with a direction that the goods to be allowed to be reprocessed, and if found fit for Home consumption on reprocessing, it can be cleared for home consumption.

A Division Bench of the Bombay High Court has considered the applicability of Section 143 of the Customs Act and held that where the application to ship the goods, which conforms to the standards prescribed in India is on the foreign supplier, the importer cannot contend that due to circumstances beyond his control, the goods have been shipped so as to invoke the provisions of Section 143 of the Customs Act. The Court also rejected the argument of the importer that under Section 143 of the Customs Act, the imported goods, which do not fulfill the conditions prescribed under the 1954 Act and Rules made thereunder, can be permitted clearance on execution of a bond, if accepted, would defeat the very object of the Act, which prescribes import / export of goods, which do not conform to the prescribed norms or standards and such an interpretation, which defeats the very object of the Customs Act cannot be accepted.

As regards the stand taken by the Revenue that CESTAT is not barred to permit reprocessing of the imported goods, which are found to be sub – standard and such powers can be exercised only by a court on contemplated under Section 18 of the 1954 Act, it was rejected on the ground that if the deficiency in the confiscated goods can be easily removed by reprocessing at the cost of the importer under the supervision of the customs officer, there is no reason as to why the confiscated goods cannot be permitted redemption, subject to reprocessing and it is not the case of the Revenue that under the Customs Act or under any other law, there is express bar to allow redemption of confiscated goods, subject to reprocessing. The Division Bench of the Bombay High Court, in the said decision, ultimately held that in appropriate cases it would be open to the Tribunal to allow redemption of the confiscated goods on payment of fine and penalty, subject to reprocessing and the reprocessed goods conforming to the prescribed standards and Section 18 of the 1954 Act also empowers the Court to allow clearance of domestic goods subject to reprocessing cannot be a ground to

hold that the Tribunal constituted under the customs Act cannot allow redemption of the confiscated goods subject to reprocessing.

14. In Ashapura Agro Oil Ltd. – Vs –Union of India (2008 (223) E L T 585 (Bom.)), following the above said decision, same order was passed.

15. In Chandna Impex Pvt. Ltd.l – Vs. – Commissioner of Customs, new Delhi (2011 (269) E L T 433 (SC)), the goods imported by the appellant / importer, i.e., plywood, MDF boars and veneers, etc., had been undervalued and, therefore, the Commissioner, of Customs ordered confiscation of the goods, confirmed the demand, besides levying penalty and also imposed personal penalty. The importer preferred an appeal to the Tribunal and it was dismissed. The importer filed an appeal under Section 130 of the Act before the High Court raising several substantial questions of law. The High Court dismissed the statutory appeal and further challenge was made by filing an appeal before the Hon'ble Supreme Court by the importer contending that the statutory appeal was dismissed in limine non – speaking order, without answering the substantial questions of law. The Hon'ble Supreme Court, in the above – cited decision, found that the High Court should have examined each question formulate in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and give its reasons for holding that the question is not a substantial question of law. After analyzing the facts, the Hon'ble Supreme Court found that a bare reading of the six substantial questions of law, questions of law 'b' to 'g' were repeated in the appeal and none of the questions could be said to be a substantial question of law and further found that the Commissioner, in his order, has extensively analyzed the matter and it does not give rise to five substantial questions of law proposed by the appellant. The Hon'ble Supreme Court found that the importer has raised the question of jurisdiction of DRI issuing show cause notice and so also the Commissioner of customs passing the order of adjudication and the High Court has failed to apply its mind as to whether it was substantial question of law or not and, hence, remanded the matter to the Tribunal for fresh adjudication on that question.

16. In Gokul Refoils Solvents Pvt. Ltd. – vs. – Union of India (2012 ()278) ELT 433 (Cal.)), import of crude Palm Oil was made and the appraising officer of the Customs drew samples from the consignment for testing and it was found that the samples do not conform to the standard of Palm Oil laid down under the relevant item numbers of Appendix – B of PFA Rules on the ground that the acid value was higher than the prescribed limit. Writ petition was filed challenging the said order and it was dismissed by learned single Judge and, hence, appeal was

preferred. The principal question of law that arose for consideration before a Division Bench of the Calcutta High Court in the above – cited was "Whether the Palm Oil sought to be imported by the appellant, was a prescribed good within the meaning of the Customs Act" and the Calcutta High Court found that no rules and standards have been formulated yet under the Food Safety & Standards Act, 2006 as well as under the PFA Rules for the purpose of use of Palm Oil as edible oil for human consumption an on factual aspect found that no material has been placed indicating that the intention of the importer to use the imported item in that very form for human consumption.

17. In the considered opinion of the Court, except the decision reported in Amrit Banaspati Co. Ltd.'s case (supra), which was followed in Ashapura Agro Oil Ltd.'s case (supra), by the Bombay High Court, the other decisions have no application to the facts or this case.

18. It is settled position of law that circulars are in the nature of administrative instructions and are binding on the assessing officers of the concerned departments and the Hon'ble Supreme Court, in a catena of decisions has held that department circulars and notifications in the fields of customs, central excise and service tax are not binding on the assessee or quasi – judicial authorities and the assessee can question the correctness of the same before a quasi – Judicial authority and also before a Court.

19. Learned counsel appearing for the 1st respondent has invited the attention of this Court to the guidelines issued by Food Safety & Standards Authority of India dated 23rd March, 2012, with regard to food import clearance proposed by Food safety & Standards Authority of India (in short 'FSSAI') to its authorized officers and invited the attention of this Court to clause 1 (b), wherein it has been stated as follows :-

> "b) If date of manufacture is not given in the labels and only date of expiry / best before date / use by date is mentioned in the labels, then it may be verified from the relevant documents like certificate of analysis. However, if date of manufacture is in – built in the batch / lot number, the Authorised officer, FSSAI may verify the date of manufacture and satisfy himself with the documents provided by the imported along with the bill of entry. If require, he may also seek clarification from the manufacturer / exporter of the source country as regards decoding of the date of manufacture. Balance shelf life of the consignment at the time of import may be calculated from the due date of expiry / best before date printed in

the labels and the date of manufacture verified from the available documents."

20. Learned counsel appearing for the 1st respondent submits that since the imported goods have not crossed the customs barrier, the above said guidelines dated 23rd March, 2012, can be made applicable and even before passing the order of adjudication by the original authority, the details with regard to the full name and address of the manufacture and the date of manufacture have been furnished and, therefore, there is nothing wrong in the impugned order passed by the CESTAT.

21. In response to the said submission, it is the submission of the learned counsel for the petitioner that the instructions / guidelines / circulars that were prevalent at the time of filing the bill of lading on 14th May, 2011 and bill of entry dated 23rd June, 2011 would alone have application an as per the said instructions, it is mandatory on the part of the importer to furnish full address of the manufacturer as well as the date of manufacture and, admittedly, those vital details have not been furnished by the importer and, hence, the samples were not drawn from the food items imported by the 1st respondent / importer and taking into consideration the said aspect, the original authority has rightly ordered confiscation and also imposed redemption fine, penalty and also re –export of the goods imported , which was also confirmed by the appellate authority by passing a detailed order and in any event, the order passed by CESTAT in remanding the matter for fresh consideration for the reason that the Tribunal has failed to apply its mind to the provisions of the PFA Act and Rules framed thereunder as also the relevant circulars /instructions.

22. Rule 32 of the PFA Rules prescribes that every pre – packaged food to carry a label. Rule 32 (c) (1) to (3) and proviso reads as follows : -

"(c) (i) The name and complete address of the manufacturer and the manufacturing unit, if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be;

(ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under his or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address

of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled;

(iii) Where an article of food is imported into India, the package of food shall also carry the name and complete address of the importer in India;

Provided that where any food article manufactured outside India is backed or bottled in India, the package containing the such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of the packing or bottling in India."

23. In the bill of lading dated 14th May, 2011, the complete name and address of the manufacturer has been given and in the column for description of goods, it has been stated that "1040 bags, each with 20 Kgs. Net containing Rolled & Flaked Oats as per beneficiary's proforma invoice No. 994 / 11 Dtd. 28th Feb, 2011". As per Bill of Entry dated 23rd June, 2011, the address of the manufacturer has been given and the description of the goods is given as " Rolled & Flaked Oats (20 Kgs./ Bag)".

24. It is the submission of the learned counsel for the 1st respondent that before the original authority passed the order dated 2nd Aug, 2011, the manufacturers details as well as the date of manufacture have been furnished and it has not been taken into consideration.

25. A perusal of para – 5 of the order passed by the original authority would disclose that the 1st respondent / importer, vide their reply dated 7th July, 2011, requested the said authority to grant a personal hearing and , accordingly, personal hearing was fixed on 18th Nov., 2011and on that dated, the Managing Partners appeared and produced written submission and stated that although the date of manufacture is not given, best before label is there on the package and, further submitted that the import of oats being the first consignment, in future the address of the manufacturer and date of manufacture will be indicated and also submitted another letter dated 25th July, 2011 stating that since it is a bulk package, clauses (f) and (g) of Rule 32 of PFA Rules have no application. If really the particulars given by the manufacturer with regard to the date of manufacturer is available in paras 17 and 18 of the typed set filed on behalf of the1st respondent were given, it would have been considered by the original authority. But the facts narrated by the original authority would disclosed the

details given by the importer vide their letter dated 29th June, 2011 have not been submitted to the original authority before passing the order dated 2nd Aug. 2011.

26. Before the appellate authority, viz. Commissioner (Appeals), it has been submitted, among other things that if at all there is any defect in labeling, the same is condonable and rectifiable and breach complained is only technical and menial in nature and, hence, there is no justification for imposition of fine or penalty. The appellate authority had extensively dealt with the grounds raised by the 1st respondent in the said appeal and found that the 1st respondent / importer themselves admitted that they had opted for bigger packings and the goods, after processing have been imported in retails packs only and, therefore, clauses (f) and (g) of the PFA Rules would have application. The appellate authority, further found that the importer, without properly adhering to the PFA Act and the Rules framed thereunder, held that such norms should be strictly adhered to because it concerns that health of the public and no remedy post – import would serve the purpose. The appellate authority, having found that when the said import seriously concerns the health of the public and even a slightest deviation would cause grave injury to the law of the land, no compromise can be made to the norms fixed under the rules and citing the said reasons, confirmed the order passed by the original authority.

27. On appeal by the 1st respondent / importer before the CESTAT, the Tribunal has taken into consideration that the appellant / importer had given an undertaking to provide other details required for compliance with the local laws at the time of re – packing and re – labeling and will ensure that the Port Health Authorities to test the consignment before customs clearance and, thereby, permitted the 1st respondent herein / importer to re – pack and re – label the impugned goods in a Customs bonded premises and, thereafter, directed the Port Health Authorities to test and certify the goods.

28. It is also brought to the knowledge of this Court that the 1st respondent / importer filed W. P. No. 30323 of 2011 for implementing the order of CESTAT dated 27th Oct., 2011 and a learned single Judge of this court, vide order, dated 12th Jan., 2012, has passed an order directing the respondent / appellant herein to implement the order of CESTAT within a period of two weeks from the date of receipt of a copy of the order and, thereafter only, the present appeal came to be filed.

29. It was also brought to the knowledge of this Court, the shelf life of the imported food product, viz., Oats, had expired and the authorities constituted under the PFA Act have also launched criminal prosecution against the 1st respondent / importer alleging that the imported goods were misbranded.

30. The judgments of the Bombay High Court, cited above, relied on by the learned counsel for the 1st respondent / importer had rejected the argument of the importers that under Section 143 of the Customs Act, the imported goods, which do not fulfill the conditions prescribed under the PFA Act and Rules framed thereunder can be permitted clearance on execution of bond, if permitted would defeat the very object of the Act and, ultimately passed an order holding that the Tribunal ought to have ordered redemption of confiscated goods on payment of fine and penalty and, thereafter, further ordered for re – processing and allowed clearance for home consumption.

31. A perusal of the order passed by the original authority would disclosed that confiscation of imported produces was ordered and option was also given to the importer to redeem the goods on payment of redemption fine for the purpose of re – export and penalty was also imposed and the Bombay High Court, in the above – cited decision, also held so. The facts of the judgment rendered by the Bombay High Court would disclose that shelf life was available in respect of the imported products and, therefore, it ordered reprocessing for the purpose of home consumption. But in the case on hand, admittedly, the shelf life of the products is already over.

32. The` notifications/ instructions / circulars of the respective authorities would clearly indicated that the imported product should meet the labeling requirements under the PFA Rules and Packaged Commodities Rules, which include the name and full address of the manufacturer as well of the date of manufacture and in the absence of the same , testing of the food product cannot be done. Admittedly, in the case on hand, the label found on the packaged imported by the 1st respondent do not contain the full address of the manufacturer as well as the. date of manufacture and though it , contains, the details with regard to the date before which the product should be used, it serves no purpose for the reason that in the absence of date of manufacture being given, the. truth or otherwise of the best before date cannot be verified. Though it is claimed by the1st respondent / importer, that before the original authority passed the order, the relevant details have been furnished the order passed by the original authority does not show as to whether such details have been furnished by the 1st respondent.

33. It is settled position of law, the facts narrated by the judicial / quasi - judicial authority are presumed to be correct and if the concerned person is of the view that the facts have not been properly narrated, or given in the order, his remedy, if any, is to approach the same authority.

34. The circulars/ instructions given by the concerned authority would bind the customs authorities and the circulars/ instructions pointed out would clearly indicate that the package of food products imported by the first respondent/ importer shall contain all the details, more particularly, the name and address of the manufacturer and the date of manufacture and, admittedly, the package do not contain the said details.

35. Though it is contended by the learned counsel for the first respondent/ importer that the subsequent guidelines have been issued by the FSSAI dated 231-6 Jan, 2012, dispensing with such a requirement, in the considered opinion of this High court, the said notification only has prospective effect and it is settled position of law that administrative instructions do not have retrospective effect.

36. It is obligatory on the part of the first respondent/ importer to strictly adhere to the PFA Act and Rules framed there under and if the statue prescribed a thing to be done in a particular manner, it should be done only in that manner and not in any other manner. Since the first respondent / importer has failed to adhere to the said statue and rules framed there under, and the Customs authorities were also mandated in the above said circulars/ instructions to strictly comply with the provisions of the PFA Act and rules framed there under, the non-furnishing of the full address of the manufacturer and the date of manufacturer, on the part of the first respondent/ importer, cannot be condoned.

37. The Tribunal has not referred to any rules or regulations under which it can direct the authorities to re – pack and re – label the impugned goods in custom bonded premises and, thereafter, test the same. In view of the subsequent development, viz., the shelf life of the product itself has expired. No useful purpose will be served in re – packing and re – labeling the imported food product for the purpose of testing it. Therefore, substantial question of law Nos. 1 & 3 are answered in affirmative and in favour of the appellant / Revenue.

Substantial Question of Law No. 2 :

2) Whether the CESTAT is right in allowing appeal of the importer, when the goods are misbranded as per clause (K) of Section 2 (ix) of the Prevention of Food Adulteration Act, 1954, being not labeled in accordance with the requirements of this Act of Rules made thereunder?

38. It is submitted by the learned counsel for the 1st respondent / importer that criminal prosecution was also launched by the authority constituted under the PFA Act alleging that the 1st respondent is guilty of misbranding the goods.

39. Since the 1st respondent is facing criminal prosecution and any finding given with regard to this question of law will have an effect in the criminal prosecution faced by the 1st respondent, this Court is not expressing any opinion. Moreover, the original authority as well as the appellate authority have not given any finding as: to 'misbranding of goods and, therefore. it is not necessary to answer substantial question of law. No 2.

40. In the result, the civil miscellaneous appeal is allowed. The order dated 27th Oct., 2011, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, is set aside and the order passed by the original authority as modified by the appellate authority is restored. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.