

UNION OF INDIA AND ORS.

v.

M/S EXIM RAJATHI INDIA PVT. LTD.

(Civil Appeal No. 6854 of 2008)

NOVEMBER 26, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

Export-Import – Permit for import of consignment – Withholding of – Garlic imported from China found infected with fungus – Direction by High Court for fumigation by using methyl bromide on garlic lying in warehouse – Thereafter, permitting clearance of articles on payment of duty – On appeal, held: Methyl bromide treated garlic is dangerous for human consumption and for Indian Agriculture –More so garlic was treated with methyl bromide fumigation before loading in China and the same is not the treatment for killing fungi – Hence, direction issued to destroy articles by fire.

The respondents imported 56 metric tons of garlic from China. It was found to be infected with fungus. The appellants withheld the permit for import of consignment. Respondent nos.1 and 2 filed writ petition. High Court directed respondent no. 3 to carry out fumigation treatment by using methyl bromide on the articles lying in the warehouse. After fumigation, it permitted clearance of articles upon payment of duties. Review petition was filed and the same was dismissed. Hence the present appeal.

Disposing of the appeal, the Court

HELD: In the instant case, before the garlic was loaded in China for import into India by the respondents, it was treated with methyl bromide fumigation. But this

- A is a treatment for killing insects and pests and not for killing fungi. Fungi can be killed by fungicides and if earlier treated with fungicides it becomes harmful for human consumption. The methyl bromide fumigation treatment is not found to be effective against fungi as found on testing by IARI, New Delhi. Methyl bromide treatment is generally not recommended for perishable goods/commodities like garlic as it has phyto-toxic effects and may deteriorate the quality by absorption of bromide gas in the commodity. Methyl bromide fumigation treatment is given for propagative material and not for consumption. Thus, such treated garlic is dangerous for human consumption and also for Indian Agriculture. In view of the peculiar circumstances of the case, it is directed that the articles would be taken from the Customs Warehouse to the decided place for destruction by fire. [Paras 4 and 7] [699-H; 700-A-E-F]
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- C
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- E From the final Judgment and Order dated 16.2.2006 and 12.4.2006 of the High Court of Judicature at Bombay in Writ Petition No. 642 of 2006 and Review Petition No. 65 of 2006 in Writ Petition No. 642 of 2006 respectively.

- F Nagender Rai, Rekha Pandey, D.S. Mahra and V.K. Verma for the Appellants.

Senthil Jagadeesan for the Respondent.

The Judgment of the Court was delivered by

- G **DR. ARIJIT PASAYAT, J. 1. Leave granted.**

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court in Writ Petition No. 642/2006. The respondents had imported 56 metric tons of garlic from China which was found to be infected with *Embellisia*
- H

alli (fungus) and traces of Urocystis Capulae. The appellants withheld the permit for import of consignment until further orders. Respondent nos.1 and 2 filed a writ petition in the Bombay High Court which was directed as follows:

"The third respondent is directed to carry out fumigation treatment by using Methyl Bromide as prescribed in the Plant Quarantine (regulation of Import into India) Order 2003 on the 56 metric tones of Chinese garlic imported by the petitioners and lying in the bonded warehouse at the Petitioner's costs.

After fumigation is complete which generally takes 48 hours, the Respondent no.3 and 4 are directed to forthwith permit the Petitioners to clear the 56 metric tones of Chinese garlic imported by the Petitioners and lying in the bonded warehouse upon payment of necessary duties on the actual weight of the garlic (since the weight of the garlic has reduced since it landed on the JNPT port) and completion of formalities, without any further orders.

The order dated 6th October, 2005 passed by the Third respondent and the order dated 28th December, 2005 are hereby set aside."

3. Review petition was filed which was dismissed. According to learned counsel for the appellants there is strong risk of this fungus (at present totality absent in India) affecting the future cultivation in India for the reason that the scales of such infected garlic are peeled off for its use, thrown into dust bins as garbage and used as manure. This is one of the ways by which some of the fungus got introduced in countries including India and elsewhere and caused permanent damage to the crops which the agricultural experts found difficult to solve.

4. In the instant case, before the garlic was loaded in China for import into India by the respondents, it was treated with methyl bromide fumigation. But this is a treatment for killing

- A insects and pests and not for killing fungi. Fungi can be killed by fungicides and if earlier treated with fungicides it becomes harmful for human consumption. The methyl bromide fumigation treatment is not found to be effective against fungi as found on testing by IARI, New Delhi. Methyl bromide treatment is
- B generally not recommended for perishable goods/commodities like garlic as it has phyto-toxic effects and may deteriorate the quality by absorption of bromide gas in the commodity. Methyl bromide fumigation treatment is given for propagative material and not for consumption. Thus, such treated garlic is dangerous
- C for human consumption and also for Indian Agriculture.

5. Learned counsel for the respondent disputes the aforesaid stand of the appellant.

6. With reference to the order dated 2.9.2008, learned
- D counsel for the respondent stated that the garlic which is the subject matter of dispute may be destroyed by firing it in an acceptable manner in an open space.

7. In view of the peculiar circumstances of the case, we
- E direct that the articles shall be taken from the Customs Warehouse to a place where destruction is to be made. The date, time and place shall be indicated by the respondent nos. 1 and 2 to the appellants. The articles shall be destroyed by fire in the presence of an authorized officer of appellant no.1. The cost of the transportation from the Customs Warehouse to
- F the place of destruction shall be borne by respondent nos. 1 and 2.

8. The appeal is accordingly disposed of.

G N.J.

Appeal disposed of.