

A.F.R.

Neutral Citation No. - 2023:AHC:178890-DB

Court No. - 39

Case :- WRIT TAX No. - 495 of 2021

Petitioner :- M/S Gold Ripe International Private Limited

Respondent :- Directorate Of Revenue Intelligence And 4 Others

Counsel for Petitioner :- Mohit Singh, Ajay Kumar Rai, Nishant Mishra, Pratima Srivastava, Priyanka Midha, Ram M. Kaushik

Counsel for Respondent :- Ashok Singh, C.S.C., Krishna Agarawal, Sudhanshu Kumar, Swapnil Kumar, Uma Nath Pandey

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Sri Pridarshi Manish (through video conferencing) along with Sri Anil Kumar holding brief of Sri Mohit Singh, learned counsel for the petitioner and Sri Krishna Agrawal, learned counsel for the Revenue. None other has appeared in these proceedings.

2. The present writ petition has been filed for various relief described in the Relief clause. However, at present Sri Pridarshi Manish has pressed the prayer nos. B, D, E and F. They read as below:

“B. Issue a writ, order or direction in the nature of mandamus to the Respondents to release the goods detained at the factory premises of the Petitioner Company; and / or

D. Issue a writ of declaration to declare the search conducted at the factory premises, office premises as well as the residential premises of one of the directors of the Petitioner Company is illegal; and/or

E. Issue a writ, order or direction in the nature of mandamus to direct the Respondent to release the goods which has been illegally detained by panchanama dated 08.07.2021 (Annexure P-38); and/or

F. Issue a writ, order or directions in the nature of certiorari to set-aside the seizure memorandum dated 23.07.2021; and/or”

3. The petitioner is a duly incorporated company. It is engaged in the business of import, manufacture, and trading in Ethylene Ripener/Ethephon. For that, it imports bulk quantities of that commodity from China and repacks the same in smaller packings. At present, the petitioner imported 23 metric tons Ethylene Ripener/Ethephon 20%, in bags weighing 25 Kgs. Each, against Invoice dated 18.05.2021. Those, goods were shipped from China on 24.05.2021 and arrived at I.C.D. Dadri against Bill of Entry bearing No. 4477470 dated 28.06.2021. There is no dispute about the computation of custom duty and its payment thereof. In the meanwhile, on 24.06.2021, a team of Directorate of Revenue Intelligence, Noida conducted a search at the business premises of the petitioner at *Khasra* No. 1310, village, Kashi, Gagol Road, Meerut. Occasioned by the facts discovered during that search and on account of nature of goods being presently imported by the petitioner, first, the goods being imported i.e., 982 bags of Ethylene Ripener/Ethephon weighing 24.5 Metric Tons and finished goods Ethylene Ripener (Mango), 573 bags weighing 100 kgs and Ethylene Ripener (Banana), 57 bags weighing 250 Kg. were detained. At that stage, the petitioner filed its reply to the detention memo being reply dated 01.07.2021. While that reply was pending, the petitioner filed the present writ petition to assail the Detention Memo as also search and seizure operation. During the pendency of the writ petition, seizure order dated 23.07.2021 came to be passed. That has been annexed to the Amendment Application (allowed earlier). Thus, the entire quantity of goods detained have been seized under Section 110 of **Customs Act, 1969** (hereinafter referred to as 'the Act'). At present, the petitioner has also been issued a Show Cause Notice under Section 124 of the Act dated 21.12.2021. Confiscation proceedings are pending.

4. First it may be noted, upon urgency pressed, the matter was fixed for a final hearing, today. Since, the issue of validity of the search was involved, we put a query to the learned counsel for the petitioner, if he would be pressing that challenge raised as it would entail summoning of the original records before any firm conclusion may be drawn as to existence or otherwise of any 'reason to believe' to justify the authorization for the search. Due to the urgency, learned counsel for the petitioner stated, the challenge to the search is not being pressed as that would involve further delay in adjudication of the dispute pertaining to seizure. Accordingly, prayer no. C and D of the writ petition are not pressed, at this stage, without prejudice to the rights of the petitioner to raise appropriate grounds of challenge (as may otherwise be available), in the statutory proceedings.

5. As to the detention and seizure, first it is the submission of the learned counsel for the petitioner - under Section 110 read with Section 111(d) of the Act, only such goods may be seized and or be confiscated as may have been imported contrary to any prohibition imposed either under the Act or any other law for the time being in force. Referring to the provisions of the Act, it has been submitted that no such prohibition has been imposed either on Ethephon or Ethylene Ripener.

6. Second, referring to the reason given in the seizure order and the provisions of **Insecticide Act, 1968** (hereinafter referred to as 'Insecticide Act'), it has been submitted though Ethephon is an insecticide yet there is no prohibition in law created under the Insecticide Act on the import or manufacture of Ethephon. Merely because Ethephon is an insecticide and therefore, a registration may be required to be obtained for its manufacturer or import, by virtue of regulatory provision Section 9 of the Insecticide Act, no

prohibition on its manufacture or import may arise or be inferred in law.

7. Third, to make that submission complete, heavy reliance has been placed on the language of Section 38(1)(b) of the Act to submit Ethephon is not an insecticide used either to prevent, destroy, repel, or mitigate any animal or plant life, not useful to human beings. Being a ripening agent, it does not cause such harmful effects on any plant or animal life form. Therefore, in his submission the commodity Ethephon remains exempt from the regulatory provisions of the Insecticides Act, 1968. Though it is an insecticide, it falls within the sub-category of those goods that are exempt.

8. Fourth, it has been submitted that the petitioner had taken a specific objection in that regard in its reply dated 01.07.2021 (Annexure P-35). However, the same has not been dealt with or decided while passing the seizure order dated 23.07.2021.

9. Last reference has been made to section 11(3) of the Act to submit no proceeding under the Customs Act may be undertaken on the strength of any prohibition in law created under any other law i.e., other than the Custom Act unless specifically authorized by a notification issued under Section 11(3) of the Act. Since, no such notification has been issued in the present facts, the entire proceedings of search, seizure, detention, and confiscation are without jurisdiction.

10. Replying to the above submissions, Shri. Krishna Agarwal learned counsel for the revenue would rely on Section 17(1)(c) of the Insecticide Act to submit - no person may import or manufacture any insecticide except in accordance with the conditions for registration. Referring to Section 17(2) of the

Insecticide Act, it has been submitted no person may manufacture any Insecticide except in accordance with conditions of license issued to him for that purpose. In so far as the petitioner had not obtained any registration to import Ethephon and further in so far as it has not obtained license to manufacture Ethephon, it was prohibited under the Insecticide Act to import or manufacture that commodity. Here reliance has been placed on the definition of the terms of Insecticide. It has been further emphasized, undisputedly the commodity Ethephon is an insecticide.

11. As to the exemption claimed, it has been submitted that Section 38(1) (b), does not apply to the commodity Ethephon. In any case, it has been submitted that that is a factual claim which would require evidence to be led and facts to be considered by the statutory authorities before any firm conclusion may be drawn. That stage is still open to the petitioner in view of the confiscation proceeding initiated under Section 124 of the Act, being pending.

12. Referring to Section 2(33) of the Act, it has been submitted by virtue of operation of law, noted above Ethephon remains prohibited goods that may be proceeded against under the Act, without any further notification being required in terms of Section 11(3) of the Act.

13. Having heard learned counsel for the parties and having perused the record, Section 110(1) of the Act reads as below:

"110. Seizure of goods, documents and things.

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer."

14. Section 111(d) of the Act reads as below:

"111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation—

(a)

(b)

(c)

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;"

15. *Per se* the import of the commodity Ethephon is not prohibited under the Act. To that extent, the submission being advanced by learned counsel for the petitioner is correct. However, it is also plain from the reading of Section 111(d) of the Act that the consequence of confiscation of any goods being imported may also arise if such goods are attempted to be imported contrary to any prohibition imposed under any 'other law' for the time being in force. Undoubtedly, the Insecticides Act is a law that was in force when the import of Ethephon was attempted by the petitioner. Therefore, it must be seen if there existed (on the relevant date), any prohibition on the import of Ethephon, under the provisions of the Insecticides Act.

16. Section 9(1) of the Insecticides Act reads as under:

"9. Registration of insecticides.

(1) Any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide and there shall be a separate application for each such insecticide:

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of this section shall make an application to the Registration Committee within a period of [seventeen months] from the date of such commencement for the registration of any

insecticide which he has been importing or manufacturing before that date:

[Provided further that where any person referred to in the preceding proviso fails to make an application under the proviso within the period specified therein, he may make such application at any time thereafter on payment of a penalty of one hundred rupees for every month or part thereof after the expiry of such period for the registration of each such insecticide.]"

17. Then, Section 17(1)(c) of the Insecticides Act reads as below:

"17. Prohibition of import and manufacture of certain insecticides.

(1) No person shall, himself or by any person on his behalf, import or manufacture—

(a)

(b)

(c) any insecticide except in accordance with the conditions on which it was registered;"

18. The term "insecticide" has been defined under Section 3(e) of the Insecticides Act. It reads as below:

"3. Definitions.

In this Act, unless the context otherwise requires,

(a)

(b)

(c)

(d)

(e) "Insecticide" means—

(i) any substance specified in the Schedule; or

(ii) such other substances (including fungicides and weedicides) as the Central Government may, after consultation with the Board, by notification in the Official Gazette, include in the Schedule from time to time; or

(iii) any preparation containing any one or more of such substances;"

19. It is an admitted fact, Ethephon is a scheduled commodity under the Insecticides Act. Therefore, by virtue of the language of section 17(1)(c) read with Section 3(e)(i) of the Insecticides Act, a

stipulation in law does arise on the import of Ethephon to allow its import only upon fulfillment of conditions of prior registration obtained under Section 9 of the Insecticides Act. To that extent, the second submission advanced by learned counsel for the petitioner that the requirement to obtain a prior registration under the Insecticides Act is only a regulatory measure not provided with any consequence (for its non-compliance), is misconceived.

20. Then, Section 2(33) of the Act defines the term "prohibited goods". It reads:

"2. Definitions.

In this Act, unless the context otherwise requires,--

(1)

(2)

.....

.....

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;"

21. In view of the above, the existence of prior registration becomes a condition essential to be fulfilled before a Scheduled commodity may be imported into the country. By employing the words *"no person shall import or manufacture any insecticide except in accordance with the conditions on which it was registered"*, a prohibition in law has been set in place against import of an insecticide, in absence of registration under the Insecticides Act. Unless such registration pre-exists, the occasion to comply with the conditions of registration may never arise.

22. Consequently, a person holding a Registration Certificate under the Insecticides Act, particularly with respect to Ethephon

alone may be eligible to import the same, for reason of that commodity being a Scheduled insecticide. Second, that person would earn the right to import Ethephon, upon fulfillment of the conditions of its registration.

23. On the converse, any person not holding such registration or not fulfilling the further conditions subject to which he may have been registered would remain ineligible to cause import of such goods. At his hands Ethephon would remain “prohibited goods”, by virtue of the definition given to that term, under Section 2(33) of the Act.

24. As to the third submission advanced by learned counsel for the petitioner, that Ethephon is exempt from the operation of Insecticides Act, Section 38 of the Insecticides Act reads as below :

“38. Exemption. - (1) Nothing in this Act shall apply to -

(a) the use of any insecticide by any person for his own household purposes or for kitchen garden or in respect of any land under his cultivation;

(b) any substance specified or included in the Schedule or any preparation containing any one or more such substances, if such substance or preparation is intended for purposes other than preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds and other forms of plant or animal life not useful to human beings.”

25. First, by virtue of Section 38(1)(a) the Insecticides Act does not apply to household insecticides or garden insecticides or such insecticides that may be used with respect to land under a persons’ cultivation. Second, by virtue of Section 38(1)(b), the provisions of the Insecticides Act would not apply to any scheduled commodity or any other commodity containing the scheduled commodity if the same were intended for any purpose - other than (i) preventing, (ii) destroying, (iii) repelling and, (iv) mitigating insects, rodents, fungi and other forms of plant or animal life *'not useful to human beings'*.

26. Thus, Section 38(1)(a) excludes the applicability of the Insecticides Act, directly, viz a viz types of insecticides that may be used for household purposes or for kitchen garden purposes or in respect of land under cultivation. Section 38(1)(b) excludes those insecticides from the operation of the Insecticides Act if they are not used for the purpose of (i) preventing, (ii) destroying, (iii) repelling and, (iv) mitigating various types of plant and animal life that may not be useful to human beings.

27. Thus, any insecticide that may be harmful to the occurrence, sustenance, growth, and propagation of various types of plant and animal life would continue to fall under the regulatory law and therefore the prohibitory umbrella of the Insecticides Act. Thus, an insecticide that may cause any of the above-described effects on any insect or rodent or fungus or weed or other form of plant or animal life, would not be exempt from the applicability of the Insecticides Act.

28. In general terms, the Parliament has been extra careful. It has first excluded the goods that have limited/specific use such as household insecticides, kitchen garden insecticides and agricultural insecticides. Then, it has excluded from the applicability of the Act any insecticide that may not potentially harm either any insects or rodents or fungi or other forms of plant or animal life though such life form may not be perceived to be useful to human beings.

29. By employing the phrase “*other forms of plant and animal life*”, the scope and stretch of the Insecticides Act has been extended to involve the widest possible inclusion – of protecting all or any life forms, whether plant or animal. Then, upon employment of the phrase “*is intended for purposes other than*” in conjunction with the phrase “*not useful to human beings*”, the Parliament has

included within the ambit of the Insecticides Act all insecticides that may have the effect of either preventing or destroying or repelling or mitigating, any type of plant and/or animal life form, notwithstanding the fact that such life form may itself be perceived to be useless or non-essential to human existence. The existence of such interaction, or the perception of its uselessness to human beings or its invisibility to the naked eye would not militate against its inclusion in the list of insecticides whose import and manufacture must be regulated under the Insecticides Act.

30. Though couched in a single sub-Section, Section 38(1)(b) of the Insecticides Act, beautifully encapsulates the ancient Indian tenet “*Vasudhaiva Kutumbakam*”. The world we live in, is shared and it belongs to one family i.e. human beings share it with all life forms – plant and animal. Just as one may never look to do anything, even inadvertently, that may unduly harm a member of his family howsoever far removed (in degree and distance) the latter may be located, so also human beings (as a species), may not employ insecticides that may cause specified harms to another species of either plant or animal life forms, since we share our wonderful planet with them, even though we may not perceive a direct or visible interaction or inter-dependency with them. So even a simple fungus or an algae, is an important member of our world. In the interest of each life form, any insecticide that may have the potential to cause a specified harm, through (its use), would remain regulated under the Insecticide Act.

31. In the context of potential vast devastation that may arise upon unregulated use of insecticides, Section 38 of the Insecticides Act consciously does not employ any word or phrase to restrict the operation of the Insecticides Act to only such insecticides as may be 'intended' to cause any of the four specified harmful effects. The

correlation between intention and harm, does not exist. On the contrary, if an insecticide by nature of its properties and effect, has the potential to cause such harmful effect, then, even if such harmful effect may arise incidentally or as a bye-product, either upon its use or in the process of its manufacture or import, it will remain regulated by that law.

32. Read in its entirety, Section 38(1)(b) of the Insecticides Act only seeks to exclude from its applicability such insecticides as may not have any deleterious effect to the survival and well-being of various forms of plant and animal life, generally. While it is difficult to imagine, any man made insecticide that may not cause any harmful effect to any form of plant and/or animal life at an individual specimen/micro level, for that is the exact purpose of its manufacture and use, perhaps the legislature intends to exempt from the applicability of the Insecticides Act, only such insecticides as may not cause specified harm to any form of plant and / or animal life, at the existential/macro level.

33. Thus, Section 38(1)(a) of the Insecticides Act, seeks to exclude household insecticides, kitchen garden insecticides and such insecticides that may be used in the cultivation over land. Truly, it is an exception or a proviso to the main provision contained in Section 38(1)(b) of that Act. Thus, though an insecticide 'X' may cause an effect specified under Section 38(1)(b), on any form of plant or animal life and may therefore require its import and/or manufacture to be regulated yet, if 'X' were a household or kitchen garden or agricultural insecticide, having limited ability to influence other plant and / or animal life forms, both in the context of area to be covered by it and its long term and other reach/influence, it may still remain exempt from the operation of the Insecticides Act.

34. Seen in that light, it would be premature for the writ Court to reach a fact conclusion whether Ethephon is an insecticide that may not cause any of the specified harm to any form of plant or animal life, generally. Neither the Court is an expert in the science of chemistry or environment, nor it has any expert jurisprudential material available to it as may safely lead it to the conclusion that import and/or manufacture of Ethephon may not cause the effect of preventing or destroying or repelling or mitigating any insect or rodent or fungi or weed or any other form of plant or animal life.

35. A fact enquiry would be required to be conducted before the contention being canvassed by the learned counsel for the petitioner may be accepted. That consideration has become necessary in the face of the claim of exemption set up by the petitioner. That claim must arise and be tested before the fact-finding authority i.e., the statutory authorities.

36. As early as in **Commissioner of Income Tax, Madras vs. R. Venkataswamy Naidu, AIR 1956 SC 522**, it came to be settled that the burden to establish an exemption rests on the person who claims its existence. That general principle or rule of evidence was equally applied to taxation laws. Relevant to our discussion, it was observed as under :

12. This contention was rejected by the Income Tax Officer, the Appellate Assistant Commissioner as well as the Income Tax Appellate Tribunal. They were of the opinion that the assessee had failed to furnish proper materials and had failed to discharge the burden which lay on it to prove that the income derived by it from the sale of milk during the accounting year was agricultural income. They rightly placed the burden of proof on the assessee but the High Court erroneously framed the question in the negative form and placed the burden on the Income Tax Authorities of proving that the income from the sale of milk received by the assessee during the accounting year was not agricultural income. In order to claim an exemption from payment of income tax in respect of what the assessee considered agricultural income, the assessee had to put before the Income Tax Authorities proper materials which would enable them to come to a conclusion that the income which was

sought to be assessed was agricultural income. It was not for the Income Tax Authorities to prove that it was not agricultural income. It was this wrong approach to the question which vitiated the judgment of the High Court and led it to an erroneous conclusion.”

37. Also, it may survive to the legislature and/or the executive to make an appropriate declaration in that regard, of course upon due consideration of relevant material yet, such action is not shown to exist, as on date. Thus, at present, Ethephon being a scheduled commodity under the Insecticides Act, it falls outside the scope of any fruitful discussion if it is an insecticide for the purpose of the Insecticide Act. Clearly, it is. In absence of any further fact proven to establish any exemption available to it under section 38 of the Insecticides Act, *prima facie* it stands made out that Ethephon is a regulated insecticide. It may not be imported or manufactured, except under a valid Registration Certificate etc. and upon fulfilment of the conditions thereto.

38. Therefore, in the absence of any further legislative and/or executive declaration expressed, at present, the only authority that may deal with the issue of claim of exemption being made by the petitioner would be the quasi-judicial authority under the Act. At present, the proceedings initiated under Section 124 of the Act are pending. Pending those proceedings, we leave the issue of exemption completely open to be contested in those proceedings, solely on the strength of material that may be produced before that authority.

39. Here it may be noted, issuance of notification under other enactments such as the Order dated 20.07.2020 issued by the Food Safety and Standards Authority of India (FSSAI in short) is extraneous to test if Ethephon is exempt under the Insecticides Act or is not prohibited under the Act. Merely because Ethephon is a permitted ripening agent under the Food Safety and Standards Act,

2006 may only lead to an inference that *per se*, it is not harmful to human health, when used as a ripening agent. Many insecticides are not considered harmful to humans. Yet, they are harmful to other forms of plant and animal life. Precisely, for that reason, the general exemption granted under Section 38(1)(b) of the Insecticides Act is restricted to such insecticides only as may not cause any of the specified harm to any other plant or animal life.

40. The FSSAI established under the Food Safety and Standards Act, 2006 seeks to guard the health interests of the human species only. On the other hand, the Insecticides Act seeks to guard the minimum existential interest of all life forms, from the harmful effects that may be caused by use of an insecticide. To that extent and for that reason, the Insecticides Act is both a special Act and an enactment with wider outreach and spread than the Food Safety and Standards Act, 2006.

41. In the absence of any conflict between the two enactments, the Insecticides Act would play out to the full, in face of the FSSAI Act, such that the permission to use Ethephon as a permitted ripening agent for human beings does not *ipso facto* amount a declaration that it is non-injurious to all other life forms. To that extent the notification issued under the FSSAI Act, remains extraneous to the issue at hand.

42. As to the fourth submission of the learned counsel for the petitioner, it is true that specific objection had been raised by the petitioner that Ethephon was exempt under Section 38 of the Insecticides Act. The same could have been dealt with at the stage of seizure. However, we also cannot overlook the fact that the detention memo was issued on 24.06.2021 and the seizure memorandum was prepared on 23.07.2021. More than two years

have passed since then. Meanwhile the petitioner has been visited with a Show Cause Notice under Section 124 of the Act. That proceeding is still pending.

43. Therefore, for reasons noted above, we find no good ground to set aside the seizure memorandum and remit the matter to the seizing authority to pass a fresh order, at this stage. Under the scheme of the Act, the seizure memorandum would remain subject to outcome of the confiscation proceeding. Those being pending before the adjudicatory authority, keeping in mind the further fact that the adjudication on the issue whether Ethephon is exempt under the Insecticide Act, would have a direct bearing on all subsequent transactions of import and manufacture of that commodity, by the petitioner, we deem it desirable and in the interest of justice that the adjudication proceedings be expedited and concluded without further delay.

44. As to the last submission advanced by the learned counsel for the petitioner, Section 11(3) of the Act reads as below:

"11. Power to prohibit importation or exportation of goods.

.....

....

(3) Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

45. Plainly, that provision of law has not been enforced. Though inserted by Act No. 13 of 2018 vide Section 59 thereof, its date of enforcement has yet not been notified. Hence, that provision of law is yet lifeless. At present, the provisions of Section 110 (1) read

with Section 111(d) read with Section 2(33) of the Act read with Sections 9 and 17 of the Insecticides Act continue to allow the Customs authorities to proceed under the Act against the import of Ethephon by the petitioner as it did not have the requisite Registration Certificate under the Insecticides Act. To that extent the impugned proceedings are not lacking in inherent jurisdiction.

46. The reliance placed by learned counsel for the petitioner on **Kaka Overseas Ltd. Vs. Union of India**, 2021 (376) ELT 452 (Bom.); **M.M. Traders vs Commissioner of Customs**, 2023 (383) E.L.T. 439 (Del.); **M. Chandrashekar vs Deputy Commissioner of Customs, Cochin**, 2018 (364) E.L.T. 33 (Ker.); **Paper Products Ltd. Vs. Commissioner of Central Excise**, 1999 (112) E.L.T. 765 (S.C.); **Commissioner of Cus. (Exports), Chennai vs Synergies Castings Ltd.**, 2014 (313) E.L.T. 50 (Mad.); **Jaymatajee Enterprise (Seller) & Ors. Vs Commissioner of Customs (Preventive) & Ors.**, 2020 (10) ADJ 350; **Shivashish Dwivedi & Anr. Vs Food Safety and Standards Authority of India & Ors.**, W.P. (c) No. 13025/2018 decided on 30.01.2020; **Additional District Magistrate (Rev.) Delhi Admn. Vs Siri Ram**, (2000) 5 SCC 451 and; **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs Paritosh Bhupeshkumar Sheth & Ors.**, (1984) 4 SCC 27 is misplaced. The ratio inhering in those decisions does not support the petitioner's case.

47. In **Kaka Overseas Ltd. (supra)**, the primary issue involved was to the legality and propriety of the decision taken by the quasi-judicial authority, in face of the order of the Bombay High Court in case pending before that High Court. Such is not the case here. In **M.M. Traders (supra)**, the importer made a statement before the Delhi High Court to obtain an import permit from the Central Insecticide Board and the Registration Committee. Subject to such

import permit being issued, that High Court made a conditional order enabling the petitioner before it to thereafter approach the custom authority. Such stage has not arisen in the present case. In **M. Chandrashekhar (supra)**, the commodity involved was Ethylene Di-chloride, not Ethephon. Also, there existed a trade notice issued by the Commissioner of Customs, Mumbai permitting the import transaction to arise with respect to that commodity. In the present case, the customs authorities have never permitted the import of Ethephon. In **Paper Products Ltd. (supra)**, there existed Circulars issued by the higher administrative authority under the Excise Act. In absence of any Circular existing in the present case, that ratio is of no application. In **Synergies Castings Ltd. (supra)**, the Madras High Court dismissed the appeal filed by the revenue against the order of the Tribunal on the reasoning that there was no requirement to obtain Registration Certificate or Import Permit for the import as per Exim policy. That consideration does not arise here in view of the specific provisions of the Insecticide Act. In **Jaymatajee Enterprise (Seller) (supra)**, challenge was raised to the seizure of betel nuts. Those goods being not prohibited and there being no application of the Insecticide Act, we find that ratio to be wholly distinguishable.

48. In **Shivashish Dwivedi (supra)**, a public interest litigation was filed before the Delhi High Court seeking an injunction against the respondent State from restrain import of artificial fruit ripener. That challenge was declined to be entertained. For ready reference, that order reads as below:

“This public interest litigation has been preferred with the following as been preferred with the following prayers:-

"It is, therefore, most respectfully prayed that in view of the aforesaid facts and circumstances, this Hon'ble Court may be pleased to;

a) Issue a writ of Mandamus or Certiorari or any other appropriate writ or direction to quash/repeal the Direction dated 16.08.2018 and the guidance note No. 04 of 2018 released by the Respondent No. 1, as illegal and void ab initio;

b) Issue a writ of Mandamus or any other appropriate writ or direction to the Respondents to permanently restrain the import of artificial fruit ripening sachet in any form whatsoever throughout the territory of India;

c) Cost of the proceeding may also be directed against the Respondent and in favour of the Petitioners;"

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that several grievances have been ventilated by the petitioner about the use of Ethephone in powder form being used for ripening of the fruits. Learned counsel for the petitioner has also drawn out attention to the notification which is at page No.67 (Annexure -4) dated 16th August, 2018.

3. It appears that Food Safety and Standards Authority of India has permitted import of Ethephone in powder form, however, as per the petitioner, the effect of this is dangerous to public health.

4. It appears that to arrive at any conclusion about the effect of Ethephone in powder form, which is being used for artificial ripening of the fruits, depends upon the cogent and convincing evidence produced by the petitioner. Evidence of experts in the field is also required which will be subject to the cross-examination by the other side. In this eventuality, we see no reason to entertain this writ petition.

5. Nevertheless, we direct the respondents to treat this writ petition as a representation and look into the grievances ventilated by the petitioner. If need arises, they can also have further discussion with the experts to revisit the conclusions arrived at by the respondents for the usage of Ethephone in powder form which is allowed to be used for artificial ripening of the fruits. 6. With these observations, this writ petition is disposed of. pending applications also stand disposed of"

Rather than helping the petitioner, we find the said decision to be more aligned to the opinion expressed by us i.e. being matters involving fact disputes, they may not be entertained in writ jurisdiction.

49. In view of the basic distinction of facts and context seen to

exist, the other decisions relied upon by the learned counsel for the petitioner in **Additional District Magistrate (Rev.) Delhi Admn. Vs Siri Ram (supra) and Maharashtra State Board of Secondary and Higher Secondary Education (supra)** are clearly of no application.

50. Accordingly, while no relief is being granted as prayed for, the writ petition is **disposed of** with a direction, in case the petitioner files its reply to the show cause notice dated 21.12.2021 within a period of four weeks from today, the adjudicating authority may ensure expeditious conclusion of the adjudication proceedings, after due opportunity of hearing etc. to the petitioner, preferably within a period of three months therefrom.

Order Date :- 15.9.2023

Manoj/SA/Abhilash

(Rajendra Kumar-IV, J.)

(S. D. Singh, J.)