

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
NEW DELHI DISTRICT
PATIALA HOUSE COURTS : NEW DELHI.**

Presided by : Shri Pitamber Dutt, Ld. Principal District Judge.

FSAT – 9/2024

- 1. Mazhar Khan – Nominee,**
M/s. Frigorifico Allana Pvt. Ltd. (Manufacturer),
Village Sarsan, District Raigarh,
Maharashtra-410203.
- 2. M/s. Frigorifico Allana Pvt. Ltd. (Manufacturer),**
Village Sarsan, District Raigarh,
Maharashtra-410203.
Through AR – Shri Devesh KumaAppellants

Vs.

- 1. State, Through Food Safety Officer,**
Department of Food Safety, Government of NCT of Delhi,
8th Floor, Mayur Bhawan, Connaught Place,
New Delhi-110001.
- 2. Shri Praveen Kumar Musaida,**
Food Safety Officer,
Department of Food Safety, Government of NCT of Delhi,
8th Floor, Mayur Bhawan, Connaught Place,
New Delhi-110001.Respondents

ORDER

1. By this Order, I shall decide the appeal filed by the Appellants against the impugned order dated 17.09.2024 passed by the Adjudicating Officer/Additional District Magistrate, thereby imposing a consolidated penalty of Rs.3 Lacs on the appellants under the Food Safety and Standards Act, 2006. The brief facts necessary rising from the appeal, as narrated by the Appellants, are as under : -

2. The appellants have averred that a complaint/application was filed by the FSO on 10.12.2020 stating therein that the FSO had visited the store of the appellants for inspection on 10.12.2020 at about 5:00 p.m. and met Shri Avneet Singh Kohli, Manager. The FSO inspected the store and after inspection he shown his intention of taking the samples of “**Flavoured Fat Emulsion – Proprietary Food**” for analysis. The FSO made efforts to purchase four sealed bottles 500 ml each of “Flavoured Fat Emulsion – Proprietary Food” for analysis and offered payment which was not accepted by the FBO as the sample commodity was not for retail sale and was for institutional use only.

3. The appellants have further averred that FSO prepared documents and got signatures of Shri Avneet Singh. One part of the sample of “Flavoured Fat Emulsion – Proprietary Food” was sent to Food Analyst, Government of NCT of Delhi for analysis. The Food Analyst gave his report dated 23.12.2020 observing that the sample is mis-branded because there is violation of regulation No.

2.2.2.2 (a) of the FSS (P&L) Regulation, 2011 & the Food Safety and Standards (Packaging and Labeling) Act, 2006. Further, there is violation of Regulation No. 2.3.12 of the FSS (Prohibition & Restriction on Sale) Regulation, 2011.

4. The appellants have further averred that after completion of investigation, FSO filed a complaint under The Food Safety and Standard Act, 2006. The appellants were served with the notice. Pursuant to which, they appeared and submitted their reply.

5. The Ld. Adjudicating Officer, thereafter heard both the parties and passed impugned order dated 17.09.2024 thereby imposing a consolidated penalty of Rs.3 Lacs upon the appellants. Feeling aggrieved from the said order, the present appeal has been filed.

6. Ld. Counsel for the appellants has contended that Ld. Additional District Magistrate has failed to appreciate that sample commodity was an intermediary product which was used to prepare a final product as per its recipe. The said product was never supplied or served in its form directly to ultimate consumer, therefore no offence has been committed by the appellants and the impugned order is liable to be set aside. In support of his plea, Ld. Counsel for Appellants has relied upon the judgment passed by the Hon'ble High Court in **W.P. (C) 2644/2014**, titled as **Danisco (India) Pvt. Ltd. Vs. Union of India & Another**, decided on 13.08.2014.

7. Ld. Counsel for respondents has contended that the sample lifted from the store of the Appellants was found to be mis-branded as ingredients were not printed on the label which was mandatory as per regulation No. 2.2.2.2 (a) of the FSS (P&L) Regulation, 2011 and the Food Safety and Standards (Packaging and Labeling) Act, 2006. He has further contended that the Adjudicating Officer has passed the order after considering all the aspects and there is no infirmity in the said order. He has prayed that the appeal be dismissed.

8. I have heard Ld. Counsel for the parties and perused the appeal, impugned order dated 17.09.2024 as well as record. Perusal of the above shows that the store of the appellants, namely, **M/s. Jubilant Foodworks Ltd. (Domino's Pizza), Shop No. 1 & 2, Block A-1, DDA Market, Paschim Vihar, New Delhi-110063**, was inspected by FSO on **10.12.2020** at about 5:00 p.m. and four samples of “**Flavoured Fat Emulsion – Proprietary Food**” were taken from Shri Avneet Singh Kohli, Food Business Operator and offered payment, which was not accepted by the Food Business Operator because “**Flavoured Fat Emulsion – Proprietary Food**” was not for direct sale to the consumers/customers and it was for institutional use only.

9. The FSO had sent one part of the sample for analysis to the Food Analyst, Government of NCT of Delhi on 11.12.2020 upon which Food Analyst gave his report dated 23.12.2020, giving

opinion that sample is mis-branded because there is violation of regulation No. 2.2.2.2 (a) of the FSS (P&L) Regulation, 2011 and the Food Safety and Standards (Packaging and Labeling) Act, 2006. Further, there is violation of Regulation No. 2.3.12 of the FSS (Prohibition & Restriction on Sale) Regulation, 2011 and on the basis of said opinion, the present prosecution complaint was initiated against the appellants.

10. The sample taken by FSO from the store of the appellants was claimed to be mis-branded being in violation of regulation No. 2.2.2.2 (a) of the FSS (P&L) Regulation, 2011 and the Food Safety and Standards (Packaging and Labeling) Act, 2006, which reads as under : -

2.2.2: Labelling of Pre-Packaged Foods -

In addition to the General Labelling requirements specified in 2.2.1 above every package of food shall carry the following information on the label, namely -

1. xxxxxxxx
2. List of ingredients : Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner : -
 - (a) The list of ingredients shall contain an appropriate title, such as the term “**Ingredients**”;

11. The allegation against the appellants is that their product though contained the details of the component but the word ‘**ingredients**’ was not typed/printed on the label of the sample which was taken by the FSO.

12. The seized sample was produced before the Court at the time of arguments and the word '**ingredients**' was not found to be printed there on the label.

13. The said label was specifically having the noting "**NOT FOR RETAIL SALE AND FOR INSTITUTIONAL USE ONLY**". Thus, the sample which was taken by the FSO from the store of the appellants was not for direct sale to the consumer. It was not for retail sale and was meant for institutional use only.

14. Regulation No. 2.2.2.2 (a) of the FSS (P&L), Regulation 2011 of the Food Safety and Standards (Packaging and Labeling) Act, 2006 relates to labelling of packaged food, which are applicable qua the food articles meant for direct sale to the consumers/customers and meant for institutional use only.

15. The plea regarding applicability of the above regulation came up for consideration before the Hon'ble High Court of Delhi in W.P. (C) 2644/2014, titled as **Danisco (India) Pvt. Ltd. (Supra)**, wherein the Hon'ble High Court after examining the relevant Regulation No. 2.2.2.2 (a) of the FSS (P&L) observed -

"As long as the packaged food contains food item, which are ready for personal consumption, the same would fall within the definition of pre-packaged or pre-packed food and the items which are not meant for direct consumption by the individuals would be completely outside the definition of pre-packaged or pre-packed food".

16. From the above observations made by Hon'ble High Court in W.P. (C) 2644/2014, titled as **Danisco (India) Pvt. Ltd. (Supra)**, it is amply clear that packaged food, which is meant for direct consumption by the consumers/customers then such packaged food would fall within the definition of pre-packed food or pre-packaged food, as defined in Regulation No. 2.2.2.2 (a) of the FSS (P&L). However, if the product is not for direct sale to the consumers/customers then same shall be outside the ambit of pre-packaged or pre-packed food.

17. In the instant case, the sample taken by the FSO from the store of the Appellants was not for direct sale to the consumers/customers as mentioned on the sample itself and that is why the concerned official of the store did not charge anything for the sample taken by FSO, as the same was not for sale to the direct consumers/customers and was for institutional use only.

18. The Adjudicating Officer should have considered this aspect but he failed to examine the same and held that the sample was in violation of Regulation No. 2.2.2.2 (a) of the FSS (P&L).

19. The said observation of the Adjudicating Officer is in contravention of the law laid down by Hon'ble High Court in W.P. (C) 2644/2014, titled as **Danisco (India) Pvt. Ltd. (Supra)**, and therefore is not sustainable.

20. In view of the above facts and circumstances, the

appeal filed by the appellants is allowed. The impugned order dated 17.09.2024 is set-aside.

21. The record of the Adjudicating Officer/ADM be sent back along with a copy of this order. Appeal file be consigned to Record Room after necessary compliance.

Pronounced in the Open Court **(Pitamber Dutt)**
On 6th August, 2026. Principal District & Sessions Judge
New Delhi District
Patiala House Courts/ND/06.08.2026.