

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.273 of 2023

Ismail Industries Ltd. v. Federation of Pakistan and Two Others

Plaintiff : Ismail Industries Ltd. through, M/s.
Yousuf Alam and Muhammad Ali
Danish, Advocates

Defendant Nos.1 and 2: Federation of Pakistan, through
Ms. Mehreen and Kazi Abdul Hameed
Siddiqui, Advocates and DAGs a/w
Nasir Ahmed Deputy Director
Department of Plant Protection

Defendant No.3: Collector of Customs, through
Mr. Ghulam Murtaza Korai, Advocate

Dates of Hearing : 19.07.2023, 20.07.2023, 24.07.2023,
25.07.2023, 26.07.2023, 27.07.2023,
01.08.2023

Date of Order : 30.10.2023

ORDER

Jawad Akbar Sarwana, J.: On 23.02.2023, Plaintiff, Ismail Industries Ltd., filed this Suit for declaration, direction and permanent injunction in respect of a consignment of 40 metric tons of groundnut kernels (peanuts) imported into Pakistan for human consumption (herein after referred to as “the consignment”) which were found/detected by the Department of Plant Protection (Plant Quarantine Division), Government of Pakistan (“DPP”), allegedly containing aflatoxin over and above the minimum levels of 20 ppb. The Plaintiff has prayed for certain reliefs in the main body of the Plaint, that are relevant for deciding the two interlocutory applications, namely CMA No. 3158/2023 and 6489/2023. Therefore, a selection of prayers from the Plaintiff’s prayer clause is reproduced hereinbelow which this Order will address later on.

- i. Declare that the Impugned Order bearing No.E415CC dated 06.12.2022 is illegal, unlawful and issued without due course of law.
- ii. Declare that Test Reports DESTO – FH&SA Lab, Karachi and HEJ Lab, Karachi are incorrect being not issued after following the required sampling and applicable controlling method.
- iii. Issue necessary direction to defendants to re-collect the sample of Groundnut Kernels as per standard procedure and send it to any other competent Lab, preferably to Qarshi Laboratories, Lahore or HEJ Lab, Karachi for observing the accurate and certain level of Aflatoxin.
- iv. To suspend the operation of the Impugned Order bearing No. E415CC dated 06.12.2022, issued by Defendant No.2 and restrain Defendant No.2 and 3 from the confiscation or destruction or deportation or re-export of the consignment to the country of origin, currently at SAPT Terminal Karachi East till the final disposal of the suit

2. As mentioned earlier, this Order will decide two CMAs filed by Plaintiff, which Defendants, have vehemently opposed:

- (i) Plaintiff's injunction application under Order 39, Rules 1 & 2 read with Sections 94 & 151 CPC ("CMA No.3158/2023"), filed on 23.02.2023, seeking orders from this Court to restrain the Defendants from taking any further and/or adverse / coercive action or passing any order against the Plaintiff upon the basis of confiscation / destruction / deportation or export Order

bearing No.E415CC dated 06.12.2022 (Annexure “G” available on page 63 of the suit file) till the disposal of the above suit; and,

- (ii) Plaintiff’s release of consignment application filed on 20.04.2023, under Pakistan Plant Quarantine Rules, 2019, read with Section 151 CPC (“CMA No.6489/2023”) seeking orders from this Court to direct Defendant No.2 (“DPP”) to issue release Order of the consignment of peanuts lying in Plaintiff’s Bonded Warehouse at the South Asia Terminal (S.A.P.T.) Karachi since 13.11.2022 till present based on the Lab Report of HEJ dated 14.03.2023 (Fourth Test Report) attached to the said Application.

3. A brief background of the case is that the Import Policy Order, 2022 (“IPO”) issued by the Federal Government of Pakistan (Defendant No.1), which is the basic law regulating imports into Pakistan, provides a list of banned items (Appendix “A” to IPO) and restricted items (Appendix “B” to IPO) subjecting imported items to certain conditions according to their respective Pakistan Customs Tariff Code (“PCT Code”). To this end the consignment consisting of Groundnut Kernal/Peanuts is a restricted item under Appendix “B” to IPO. In the present case, the relevant PCT Code for Groundnut Kernels (“Peanuts”) is 1202.4200, having description “Ground-nuts, not roasted, Shelled, whether or not broken”, which according to the IPO is importable in Pakistan and is subject to the following conditions as appearing at Sr. 273, Column (4) of the Table in Part-IV to Appendix-B as under:

Appendix B, Part-IV (Import of Plant and Plant Products)			
Sr. No.	PCT Code	Commodity Description	Import Requirements
(1)	(2)	(3)	(4)

273 ¹	1202.4200	--Ground-nuts (excluding roasted ground-nuts); shelled, whether or not broken	Importable subject to (i) Valid Import Permit issued by DPP (ii) Phytosanitary Certificate from National Plant Protection Organization (NPPO) of the country of origin and Phytosanitary Certificate for re-export (if the country of export is other than the country of origin) (iii) compliance with Food Safety requirements and (iv) <u>Plant Protection Release Order by DPP.</u>
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4. Defendant No. 2/Department of Plant Protection's ("DPP") role in this dispute comes into the field, primarily under the IPO highlighted briefly above and the Pakistan Plant Quarantine Act, 1976 ("the PPQ Act, 1976") and the Rules framed thereunder, i.e. Pakistan Plant Quarantine Rules, 2019 ("the PPQ Rules, 2019"). The PPQ Act, 1976 and the PPQ Rules, 2019, have been enacted (as embodied in the preamble) to give effect in Pakistan to the International Plant Protection Convention, 1951 ("the IPPC Convention"). The Convention itself is derived from the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization ("the SPS Agreement"), which, inter alia, outlines the harmonization of Sanitary (human and animal health) and Phytosanitary (plant health) measures amongst the member countries. Under the current framework of law in Pakistan, which Plaintiff dispute, DPP is the Sole Authority to determine the credibility of consignment as per the PPQ Act, 1976 and the PPQ Rules, 2019 under Chapter X, Rules 44, 45, 46, 54 and 96.

5. It is clarified that Pakistan has not ratified the IPPC Convention and only adheres to it itself as per the IPPC Convention and the SPS Agreement. As per Article 5.4.1 of the SPS Agreement itself, it is not binding. DPPs position is that they have adopted and drafted the PPQ Rules, 2019, in the backdrop of the IPPC Convention

¹ Wrongly numbered as 271 instead of 273 in the Import Policy Order, 2022 publication of "Tariq Najib Corporation" 2nd Edition.

and the SPS Agreement. No statutory right has accrued to Plaintiff based on the IPCC Convention and the SPS Agreement.²

6. Plaintiff's consignment has been imported under a valid import permit no.IP-KHI-3D3409/2022 issued by DPP for the period 27.07.2022 to 27.01.2023 (Annexure "B" available on pages 35-39 of Part-I of the suit file) and is accompanied by a phytosanitary certificate dated 19.09.2022 issued by the Republic of Mozambique, Ministry of Agriculture and Food Safety, National Directorate of Agriculture and Forestry, Mozambique (Annexure "C" available on page 41 of Part-I of the suit file) certifying as follows:

"This is to certify that the plant, plant products or other regulated articles described herein have been inspected and/or tested according to appropriate official procedures and are considered to be free from the quarantine pests specified by the importing contracting party and to conform with the current phytosanitary requirements of the importing contracting party, including those for regulated non-quarantine pests. They are deemed to be practically free from other pests."

7. Upon the arrival of the consignment, it was inspected by the DPP under Rule 45 of the PPQ Rules, allegedly as claimed by Plaintiff "without following the standard controlling methods of collecting samples from the random bags". Consequently, the test results observed that the level of aflatoxin in the consignment was 53.4 ppb and interpreted that the total aflatoxin in the sample provided does not comply with the USA/FDA standards wherein the safe limits of aflatoxin is 20 ppb.³

² It may not be out of place to mention here that during oral arguments, Plaintiff's counsel cited paragraphs 3 (a) & (c) of Annex A to SPS Agreement, which stipulates that for food safety, the relevant Standards to be followed by the Member Countries is Codex Alimentarius. Even though Codex Alimentarius is codified neither under PPQ Act nor PPQ Rules, this is not the case pleaded in the Plaintiff. Counsel also submitted in Court that it is totally illogical to apply plant protection laws on a food safety issue, especially when the existing framework of Pakistan law does not provide any remedy to correct the repairable wrong, if any, and PPD takes the strictest action, i.e. to destroy the whole consignment. Yet again, Plaintiff did not raise this challenge in its Plaintiff and cannot do so now at this late stage during oral arguments of the interlocutory applications. None of these points are averred in the pleadings.

³ Plaintiff Counsel argued that the DPP enforcing USA/FDA standards was arbitrary, capricious and beyond its jurisdiction as the same was also not notified. Counsel invited the Court to the U.S. Department of Health and Human Services, *FDA Compliance Policy Guide Sec.570.375 Aflatoxin in Peanuts and Peanut Products: Guidance for FDA Staff*

8. For a basic understanding of “aflatoxin”, and relying upon my learned brother’s unreported Order dated 11.05.2022 passed in Suit No.474 of 2022, All Pakistan Solvent Extractors Association and Others v. Federation of Pakistan and Others, the Food Safety Digest of the World Health Organization (2018) explains that:

“Aflatoxins are poisonous substances produced by certain kinds of fungi (moulds) that are found naturally all over the world; they can contaminate food crops and pose a serious health threat to humans and livestock. Aflatoxins also pose a significant economic burden, causing an estimated 25% or more of the world’s food crops to be destroyed annually.”

...

“Two closely related species of fungi are mainly responsible for producing the aflatoxins of public health significance: *Aspergillus flavus* and *A. parasiticus*. Under favourable conditions typically found in tropical and subtropical regions, including high temperatures and high humidity, these moulds, normally found on dead and decaying vegetation, can invade food crops. Drought stress, insect damage and poor storage can also contribute to higher occurrence of the moulds including in more temperate regions. Several types of aflatoxin (14 or more) occur in nature, but four – aflatoxins B1, B2, G1 and G2 are particularly dangerous to humans and animals as they have been found in all major food crops; but most human exposure comes from contaminated nuts, grains and their derived products.”

To risk a summary in layman's terms, it appears that aflatoxin is a family of toxins produced by certain fungi found on agricultural crops, such as peanuts. The main fungi that produce aflatoxins are *Aspergillus flavus* and *Aspergillus parasiticus*. People may be exposed to aflatoxins by eating contaminated plant products (such as, peanuts), and a higher level of aflatoxin poses a threat to human

(June 2021), which provides that peanuts and peanut products containing total aflatoxin greater than 20 ppb except for raw peanuts that will be further processed to remove moldy and otherwise defective nuts to be considered adulterated. Aflatoxin in raw peanuts are directed to facilities and procedure that will remove mouldy or otherwise defective nuts. He submitted that as per the Code of Practice for the Prevention and Reduction of Aflatoxin contamination in Peanuts (CAC/RCP 55-2004), specifications for the purchase of peanuts intended for further processing should include a maximum level for aflatoxin in appropriate methods of analysis and a proper sampling plan (Article 48), which includes Sorting (Articles 52-55), Blanching (Article 56) and Packaging and Storage of End Product (Articles 57-58). Plaintiff Counsel submission, once again, went beyond pleadings. He neither challenged nor impugned anywhere in the Plaint that DPP was bound by a sampling plan involving aflatoxin testing involving Sorting, Blanching, Roasting, etc. He could not traverse beyond his pleadings.

health. Finally, exposure to aflatoxins is also associated with an increased risk of liver cancer.

9. From the date of the arrival of the consignment in Karachi on 13.11.2022 till the date of filing of this suit on 23.02.2023 and till the final hearing of CMA Nos.3158/2023 and 6489/2023 on 01.08.2023, the consignment presently lying in the Plaintiff's customs bonded warehouse at the SAPT Terminal Karachi East has been tested several times by various Labs across Pakistan for levels of aflatoxin resulting in varying results.

10. Throughout the plaint, Plaintiff has alleged that the reason for the eschewed and incorrect laboratory test results are errors and shortcomings in collecting and gathering samples from the consignment on the part of Defendants. The relevant paragraphs of the Plaint are quoted as hereunder:

- "Based on inappropriate and improper sampling'." (Para 1 of the Plaint)
- ". . .Defendant No.2 [DPP] without following the standard controlling methods of collecting samples from the random bags sent the sample to. . . ." (Para 8 of the Plaint)
- "Accordingly, the Defendant No.3 on 03.01.2023 sent another sample . . .[h]owever, this time again the proper controlling method for collecting sample from the consignment was not followed." (Para 10 of the Plaint)
- "That due to improper collection of samples. . .plaintiff once again requested for taking sample of product as per standard practice of taking sample, however, Defendant No.3 did not accede to the request of the Plaintiff. . . ." (Para 11 of the Plaint)

- “That Plaintiff observed that defendants have not collected the sample of Groundnut Kernels as per standard practice for collecting sample and as a result thereof aflatoxin value in consignment sustained uncertain variations, hence plaintiff, obtained sample of the product it self by complying with the standard procedure for taking sample and. . .[t]he observations and apprehensions of the Plaintiff became authenticated with the test report of Qarshi Lab whereby Aflatoxin value was resulted as “1.6ppb” which creates serious questions as to the sample collection method. . . .” (Para 13 of the Plaintiff)

- “. . .there are certain controlling methods for sampling and laboratory analysis of plant product, i.e. Groundnut Kernels and concerned authorities are mandatorily and obligatorty bound to adopt the same controlling method for measuring accurate level of aflatoxin in any plant product. . . .” (Para 14 of the Plaintiff)

- Para 14 proceeds to list the controlling methods given in the CODEX Alimentarius, International Food Standards published by Food and Agriculture Organization of the United Nations (FAO) and the WHO, such as:

CODEX METHOD (pages 13-15 of the Plaintiff)

VICAM TECHNOLOGY METHOD (pages 15-17 of the Plaintiff)

- “. . .as per above discussed controlling methods every fourth (4th) bag needs to be selected to draw 100 samples of 0.2 kg each and the total bags to be sampled is 100 bags per 400 bags. . . .” (Para 15 of the Plaintiff)

- “[O]n the other hand, authorized officer(s) of the defendants did not comply with such controlling methods and as a result thereof analysis report of Groundnut Kernals having different values/level of aflatoxin. . . Hence laboratory analysis of the grounded kernels of the plaintiff’s consignment is required to be done again by collecting the sample as per standard controlling methods.” (Para 16 of the Plaint).
- “The plaintiff has reason to believe that defendants and their authorized officers did not comply with rules of CODEX, VICAM and PQQ Rules, 2019 while collecting sample, sending it to the laboratory and thereafter insuance of confiscation order dated 06.12.2022.” (Para 17 of the Plaint)
- Prayer Clauses (ii) and (iii) concern the alleged test reports “Declare that Test Reports . . . are incorrect being not issued after following the required sampling and applicable controlling method” and “Issue necessary direction to defendants to re-collect the sample of Groundnut Kernals as per standard procedure and send it to any other competent Lab. . . .” (page 23 of the Plaint)

In view of the above excerpts from paragraphs in the Plaint, the entire case of Plaintiff, as pleaded in writing, is that the Lab Reports issued before the filing of the titled suit were erroneous and tainted due to the non-compliance of certain specified control methods for collecting samples, such as rules of CODEX, VICAM and PQQ Rules, 2019, which the authorized officer(s) of the defendants, adopted and employed while drawing and collecting such samples that led to the results of several Lab Reports having a high degree of values/level of aflatoxin above the acceptable levels of aflatoxin. Plaintiff’s Counsel argued that Lab Reports provided by the exporter were based on well-established standard practices and protocols for

collecting samples. Hence, the results submitted by the exporter accurately reflect the aflatoxin levels to be well within the allowable limits for aflatoxin for Groundnut Kernals. Plaintiff Counsel submitted that when Plaintiff drew the sample privately following the specified protocol and practice and submitted such sample from the same consignment to a Private Lab in Lahore, namely Qarshi International Labs, the results obtained evidenced that the level of aflatoxin drawn from the same consignment was nominal and close to less than 1%. He contended that the Plaintiff's batch of Groundnut Kernals had arrived in Pakistan on a vessel which was also carrying another consignment from the same source for another consignee in Pakistan, and the test results carried out by HEJ Labs on the said consignment showed that the aflatoxin level was well within limits. He argued that it was not possible for such variation and that there was an apparent conspiracy against the Plaintiff, Ismail Industries Ltd.

11. Without prejudice to the contentions of the parties regarding the sampling and testing methodology of the consignment adopted by the parties, which is the subject matter of the suit and will be key to the Plaintiff proving his case against the defendants during trial, the following position emerges in respect of the several lab tests conducted on the consignment:

(a) First Lab Test Report: Impugned Lab Test Report of DESTO – FH&SA Lab Karachi dated 01.12.2022 shows aflatoxin levels at 53.5 ppb (Annexure "F" on page 61 of Part-I of the suit file).

(b) Second Lab Test Report: Test Report of HEJ Lab, Karachi dated 18.01.2023 shows aflatoxin level at 26.5ppb (Annexure "H/2" on page 69 of Part I of the suit file) **BUT** as recorded in Court's Order dated 13.06.2023, HEJ Lab is not a government notified lab and was de-notified on

17.11.2022.⁴ Therefore, the Second Test Report conducted by a non-government notified lab is not relied upon by this Court vide Court's Order dated 13.06.2023. The Plaintiff filed no review or appeal against this Court's Order dated 13.06.2023, which has attained finality. Additionally, this test was carried out at the request of Plaintiff by Customs Authorities without obtaining prior consent from the Plant Protection Department. As per Division Bench Judgment dated 23.06.2021 in Kiran Food Products v. Federation of Pakistan & Others, C.P. No.D-3468/2021 and in its two other connected petitions, at paragraph 11, the certification and infestation of such consignments as in the instant case is to be **excluded from any interference by the Customs Authorities at the import stage. Only the Plant Protection Department is authorised to certify and investigate such consignments.** Therefore, Defendant No.3 (the Customs Authorities) is involved in testing and sampling the consignment beyond their jurisdiction.

(c) Third Lab Test Report: Test Report of Qarshi Research International (Pvt.) Ltd., Lahore. Lab Report dated 16.02.2023 shows aflatoxin level at 1.6ppb (Annexure "J/1" available on page 95 of the suit file). Once again, this test of samples sent from Karachi to Lahore by the Plaintiff and carried out by Qarshi International in Lahore was without the approval and consent of DPP. Based on the reasons mentioned in paragraph (b) above and the Division Bench Judgment of this Court in the Kiran Food Products case (supra), this test report cannot be relied upon by the Court.

⁴ Plaintiff Counsel has pleaded that while notification may be taken away by PPD; but accreditation awarded by the Pakistan National Accreditation Council remains in place and HEJ is not disqualified to carry out testing. Plaintiff Counsel's submission did not inspire confidence of my brother Judge vide his Order dated 13.06.2023 and neither does it appear acceptable to me from a public health perspective, which must have a public health and safety bias as opposed to commerciality.

(d) Fourth Lab Test Report: On 07.03.2023, Court ordered re-testing with samples to be drawn by HEJ Lab, Karachi. However, while HEJ Test results dated 14.03.2023 show levels of aflatoxin at 15.6 ppb (Annexure "P/1" on page 79 of Part II of the suit file) **BUT** as recorded in Court's Order dated 13.06.2023, it transpires that the HEJ Lab was not a government notified lab and had been de-notified since 17.11.2022. The Plaintiff filed no review or appeal against this Court's Order dated 13.06.2023, which has attained finality. Therefore, this Court does not rely on the Fourth Test Report vide its Order dated 13.06.2023. The Plaintiff filed no review or appeal to the Court discarding the Fourth Lab Test Report.

(e) Fifth Lab Test Report: On 13.06.2023, this Court ordered that samples be re-drawn and, this time, sent to the Pakistan Council of Scientific Industrial Research (PCSIR), Lahore. The PCSIR, Lahore Test Report dated 06.07.2023 shows a total aflatoxin level of 23.46 ppb with remarks that it is unfit for human condition (The office has flagged the report currently as the last and final page in the suit file. Office is directed to remove the said report from its current place and place the said flagged report as the last page of Part II of the suit file as of 30.10.2023).

12. In view of the above chain of test results, prima facie, the results of the impugned test report of DESTO-FH&SA Lab, Karachi, dated 01.12.2022 as ordered by the Department of Plant Protection stands corroborated by the latest/last test results of the consignment vide the Fifth Test Report of PCSIR dated 06.07.2023 as ordered by the Court (the First and Fifth Reports, respectively) wherein the aflatoxin levels of the consignment exceed the prescribed minimum level of aflatoxin of 20ppb. Further, the lab reports state that the consignment is not fit for human consumption. Meanwhile, with

regard to the Second and Fourth Test Reports issued by HEJ Lab, Karachi, the same are to be discarded for the reason that when the tests on the consignment were conducted HEJ Lab was not a government-notified lab and had been de-notified since 17.11.2022 till present. Finally, the Third Test Report has been procured by Plaintiff itself, and is not in line with the Division Bench Judgment in the *Kiran Food Products* case (supra).

13. Given the above position, the Court confronted Plaintiff on how a prima facie case for release of consignment injunctive relief could be made out when the lab reports conducted pursuant to the Order of this Court evidenced that the consignment contained aflatoxin levels well above the minimum level of 20 ppb. Further the test ordered by the Court was to be administered following proper protocols and sampling. Plaintiff filed no objections against the Fifth lab test ordered by the Court. The Plaintiff was satisfied with the method of collection and sampling adopted for the testing of the consignment as ordered by the Court and hence filed no review or appeal against this Court's Order dated 13.06.2023, which has now attained finality. The results of this court-ordered Fifth and final Lab Test Result reveal that the level of aflatoxin was above 20 ppb, and Plaintiff did not raise any grievance concerning its sampling or testing as in the case of the First Lab Test. The Court queried Plaintiff's Counsel how Plaintiff could claim release of consignment without leading evidence first to show that there was indeed sampling error on the part of defendants in the first sampling, which culminated in the First Lab Test Report and hence the results of the said First Lab Test results were incorrect. The Plaintiff's contentions require recording evidence, and releasing the consignment at this stage before trial would grant the entire suit before the Plaintiff even proves the case. The Court also queried that hypothetically, if the consignment was released to the Plaintiff at this interim stage and the Plaintiff at the conclusion of the trial was unable to prove its case that there was any sampling error on the part of defendants in gathering

and collecting of sample for the lab results, then how would Plaintiff compensate Defendants, and what would be the cost to public health for releasing such consignment.

14. Plaintiff's Counsel did not respond directly to the Court's query and, instead, took an entirely different stance. Counsel argued that as per Rule (lxxii) of the PPQ Rules, 2019 read with Article VI, para 2 of the Convention⁵, the DPP can take phytosanitary measures (confiscation or destruction or re-export) **only** if they detect (i) quarantine pest (not present in Pakistan) or (ii) regulated non-quarantine pest. In order to find out which pest(s) are quarantine or regulated non-quarantine, the same may be checked in the list given in Schedule 1 to the PPQ Rules, 2019. Counsel contended that in the present case, admittedly, the pest (fungi) causing Aflatoxin, known as *Aspergillus Flavus* and *Aspergillus Parasiticus* are not listed in the Schedule 1 to the PPQ Rules, 2019. Hence, neither they are quarantine pests nor regulated non-quarantine pest. Therefore, no Phytosanitary action can be taken under Rule 46 of the Rules, 2019. He relied on the Order passed by the Court in the case of All Pakistan Solvent Extraction Association in Suit No. 474/2022 mentioned earlier. I have read my learned brother's Order, which is distinguishable and of no help to the Plaintiff's cause. First, in that case, the consignment was soybean and not peanuts. Second, the test report favored the Plaintiff, i.e. the aflatoxin was not detected beyond the permissible limits of 20 ppb. In the present case, the Court ordered Lab Report, which has gone unrebutted, has confirmed that aflatoxin is present in Plaintiff's consignment with level of aflatoxin being well above the permissible limit of 20 ppb.

15. It is also pertinent to mention that Plaintiff's stance, as stated in paragraph 14 above, was beyond the pleadings. The oral submissions recorded in paragraph 14 were nowhere to be found in the pleadings. The Counsel's arguments were alien to the Plaintiff as

⁵ Page 47 of the Statement dated 14.07.2023

they were not pleaded with any precision or accuracy or, for that matter, even cross-referenced by documents attached to the Plaint. Plaintiff has not denied in the Plaint that aflatoxin was not found in the consignment. He has not set up his case that no codified aflatoxin was found in the consignment, i.e. that there are neither quarantine pests nor regulated non-quarantine pest in the consignment. As discussed earlier, Plaintiff claims that the defendants have committed and are committing errors in collecting, drawing and gathering samples. Plaintiff has relied on sampling plans annexed to the Plaint as Annexure "K" (CODEX) and Annexure "K/1" (VICAM). Plaintiff cannot seek interlocutory relief beyond his pleadings. As such, this Court is not inclined to sympathize with Plaintiff's current predicament of importing consignment having above permissible limits of aflatoxin as per the Court-ordered Lab Report.

16. In view of the hereinabove facts, circumstances and discussion and that the consignment in question has more than 20 ppb of aflatoxin as determined by the lab report ordered by this Court (confirming Defendant No.2's First Lab Test Report), Plaintiff is unable to make out a prima facie case for suspension of Defendant No.2's Order No.E415CC dated 06.12.2022. The Court is reluctant to grant any indulgence to Plaintiff and CMA 3158/2023 is dismissed. By the same token, CMA No.6489/2023 seeking the release of the consignment based on the Fourth Lab Test Report conducted by HEJ Labs, which was not a government-notified lab as accepted by this Court in its interim Order dated 13.06.2023 and for other reasons discussed in this Order is also dismissed.

17. It is clarified that the observations made herein pertain to Defendant No.2's impugned decision of 06.12.2022, are confined to provide a background to decide CMA Nos.3158/2023 and 6489/2023, and are without prejudice to parties' claims and defence, in the main suit and/or any future litigation between the parties.

Order accordingly.

Dated: 30.10.2023

J U D G E

Announced on 31.10.2023