

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.1712 OF 2015**

M/s Pernod Ricard India P.Ltd. ... Petitioners

v/s

Union of India and others ... Respondents

Mr Iqbal Chagla, Sr. Counsel with Mr Rajesh Batra, Mr Riyaz Chagla  
i/b Mr R.V. Talsikar for Petitioners.

Mr Pracha Mohammed with Mr T.W. Pathan i/b Ms Yogita Singh for  
Respondent State.

**CORAM: V.M. KANADE &  
B.P. COLABAWALLA JJ.**

**Reserved on : 14<sup>th</sup> July, 2015**

**Pronounced on : 28<sup>th</sup> July, 2015**

**JUDGMENT [ Per B.P.Colabawalla J. ] :-**

1. Rule. By consent of parties, rule made returnable  
forthwith and heard finally.

2. The Petitioner Company is in the business of

manufacturing, selling and importing various types of alcoholic beverages including established international brands such as “*Jacob's Creek*”. It is a Private Limited Company and is an ultimate subsidiary of Pernod Ricard S.A. of France, the world's co-leader in wines and spirits.

3. The Petitioner, by way of the present Petition, seeks an issuance of an appropriate writ for release of its wine products by the brand name of *Jacob's Creek*, and more particularly described in Exh. 'E' to the Petition. These wine products are currently withheld by the Port Authorities - Respondent No.3 (Commissioner of Customs, Nhava Sheva Port, Mumbai) on the ground that Respondent No.2 (Food Safety and Standards Authority of India) (**FSSAI**) has refused to issue a No Objection Certificate (**NOC**) with respect to these wine products that are imported by the Petitioner. The ground on which the NOC has been refused is that the sample contains “Acidity Regulator: *Tartaric Acid (INS334)*” and “Antioxidant: *ISO Ascorbic Acid (INS315)*” which are not permitted as per Appendix A, Table No.3, Row No.14 of the *Food Safety and Standards (Food Products*

*Standards and Food Additives) Regulations, 2011* (hereinafter referred to as the “*FSSR, 2011*”). It is the case of the Petitioner that *Tartaric Acid* as well as *Ascorbic Acid* are ingredients that are permitted under the FSSR, 2011 and it is in these circumstances that the Petitioner has prayed that a writ of mandamus be issued directing Respondent No.2 to issue the NOC with respect to the imported consignments of wine as detailed in Exh. ‘E’ to the Petition and further directing Respondent No.3 to release the said consignments. In addition thereto, the Petitioner has also prayed that Respondent No.2 be directed not to refuse the NOC with respect to import of all future consignments of wines on the ground that the same contain *Tartaric Acid*.

4. The brief facts germane to decide the controversy before us, is that the Petitioner holds a valid licence issued by Respondent No.2. It has been importing *Jacob's Creek* brand of wines for more than a decade and the formulation of the said wines has not changed ever since its first import. Up until October 2014, the Petitioner was given the NOC for import of this wine.

5. In the months of October to December 2014, the Petitioner imported in all 38 consignments of *Jacob's Creek* brand of wines valued at approximately Rs.2.5 crores. The NOC for these consignments was refused by Respondent No.2 on the ground that the wines imported contain non-permitted ingredient *Tartaric Acid* (INS334). On this basis the rejection letters were issued by the Authorised Officer of Respondent No.2. This Writ Petition is confined to the import of *Jacob's Creek* varieties of wines for which the NOC has been refused on the ground that it contains *Tartaric Acid*, which, according to the authorities under the *Food Safety and Standards Act, 2006 (the said Act)* is not a permitted ingredient.

6. In this background, Mr Chagla, learned senior counsel appearing on behalf of the Petitioner, submitted that Respondent No.2 has totally misinterpreted the Regulations to contend that *Tartaric Acid* is not an ingredient permitted under the said Act or the FSSR, 2011 framed thereunder. In this regard, he invited our attention to section 3(1)(k) of the said Act which defines the words '*Food*

*Additive*'. He submitted that '*food additive*' means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result in it, or its by-products becoming a component of, or otherwise affecting the characteristics of such food. He thereafter also invited our attention to section 19 which deals with the use of food additives or processing aids. Mr Chagla submitted that section 19 stipulates that no article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act and the FSSR, 2011 framed thereunder.

7. Mr. Chagla thereafter invited our attention to the FSSR, 2011 which have been framed in exercise of the powers conferred under section 92(2)(e) read with section 16 of the said Act. More particularly, Mr Chagla drew our attention to Regulation 3.1.1 which deals with the use of food additives and stipulates that food products

may contain food additives as specified in the FSSR, 2011 and in Appendix 'A'. Mr Chagla laid much stress on the word “and” appearing in Regulation 3.1.1(1) and 3.1.1(4) to contend that it was not necessary that an ingredient ought to find place only in Appendix 'A' before it could be used as a food additive. According to Mr Chagla, even if the product found place in the FSSR, 2011 and did not find a specific mention in Appendix 'A', the same could be used as a food additive. He drew our attention to Regulation 3.1.1(4) which provides for the use of food additives in different foods and stipulates that the food products mentioned therein may contain food additives permitted in the FSSR, 2011 and in Table 3 of Appendix 'A'. At item (x) of Regulation 3.1.1(4), alcoholic wines is one of the food products which is permitted to contain food additives. He thereafter also drew our attention to Regulation 3.1.12 which deals with Sequestering and Buffering Agents (Acids, Bases and Salts) and contended that buffering agents are used to counter acidic and alkaline changes during storage or processing steps, thus improving the flavour and increasing the stability of foods. He submitted that it cannot be disputed that *Tartaric Acid* is in fact a buffering agent as can be seen

from the Table appended to Regulation 3.1.12. In the said Table, it is mentioned that *Tartaric Acid* can be used as an acidulant provided the maximum level of use is 600 parts per million (ppm). He also drew our attention to the Note below the Table which specifically states that *Tartaric Acid* shall not be added to any food meant for children below 12 months. In view of this, Mr Chagla submitted that any food which was not to be consumed by children below 12 months, could contain *Tartaric Acid* as a food additive. He submitted that in the present case, *Tartaric Acid* is added to wine as a buffering agent to counter acidic and alkaline changes during storage or processing steps, thus improving the flavour of the wine. Merely because *Tartaric Acid* did not find place at Row No. 14 in Table 3 of Appendix 'A', does not mean that it is a prohibited ingredient. He submitted that *Tartaric Acid* is in fact an organic compound and is found in the chemical composition of grapes in its natural form. It was therefore totally incorrect on the part of the authorities to contend that *Tartaric Acid* was an ingredient not permitted to be added as a food additive in wines, was the submission of Mr Chagla. In these circumstances he submitted that the NOC has been refused to the

Petitioner on a totally erroneous basis and the same needs to be corrected by this Court by issuing appropriate writs to Respondent Nos.2 and 3.

8. On the other hand, Mr Pracha, learned counsel appearing for Respondent No.2, submitted that Respondent No.2 has been established under the *Food Safety and Standards Act, 2006* with a mandate to lay down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import and to ensure availability of safe and wholesome food for human consumption. He submitted that Respondent No.2 has been set up under the provisions of Section 4 of the said Act as the Nodal Regulatory Body for all matters related to food. The objective of Respondent No.2 is to ensure safety and wholesomeness of food in accordance with the requirements of the Indian populace, and for the purposes of meeting the said objective, Respondent No.2 has been obligated with various mandatory duties and functions under different provisions of the Act. Mr Pracha submitted that the rejection letters issued by Respondent No.2 were accompanied by reports from Food



Analysts for various products. The samples of the subject products were tested by two notified laboratories in the months of November and December 2014 and the results not only show that those products contain *Tartaric Acid (INS 334)* (Acidity Regulator) but also *Ascorbic Acid (INS 315)* (Anti-Oxidant). He submitted that on account of the fact that the products of the Petitioner contained prohibited additives, rejection letters were issued to the Petitioner and the same are valid and within the ambit of the said Act as well as the FSSR, 2011 framed thereunder. He submitted that Appendix A, Table 3, Row No.14 lays down that only Sulphur Dioxide (350 ppm max) is a permissible additive in alcoholic wines. According to Mr Pracha, any other additive cannot be added as it does not find place in Appendix A, Table 3, Row No.14. The use of any other additive would be in contravention of the provisions of the Act and the Regulations framed thereunder, was the submission of Mr Pracha. It is in these circumstances that he sought to justify the rejection letters issued by Respondent No.2.

9. After perusing the papers and proceedings in the present

case and hearing the learned counsel at length, we find that the short question that needs to be answered in this Petition is whether *Tartaric Acid* and *Ascorbic Acid* are food additives that are permitted to be added to alcoholic wines under the FSSR, 2011. If the answer to this question is in the affirmative, then clearly the rejection letters issued by Respondent No.2 would have to be set aside. On the other hand, if on a reading of the FSSR, 2011 we find that *Tartaric Acid* and *Ascorbic Acid* are not permitted to be added as food additives, then clearly Respondent No.2 is justified in issuing the rejection letters.

10. Before we deal with the relevant provisions of the *Food Safety and Standards Act, 2006*, it would be important to note that the said Act was enacted on 23<sup>rd</sup> August 2006 and various provisions thereof came into force on various dates during the years 2007 to 2010. *The Food Safety and Standards Rules, 2011* and the FSSR, 2011 were also framed. Before bringing the said Act into force, it was found that multiplicity of food laws, standard setting and enforcement agencies, pervaded different sectors of food which created confusion in the mind of consumers, traders, manufacturers

and investors. Detailed provisions under various laws regarding admissibility and levels of food additives, contaminants, food colours, preservatives etc. and other related requirements had varied standards under these laws. The standards were often rigid and non-responsive to scientific advancements and modernisation. Finding that multiplicity of laws and the enforcement thereof, were detrimental to the growth of the nascent food processing industry and not conducive to effective fixation of food standards and their enforcement, the Group of Ministers constituted by the Government of India held extensive deliberations and approved the proposed Integrated Food Law, with certain modifications. The Integrated Food Law was named as The Food Safety and Standards Bill, 2005. The main objective of the Bill was to bring a single statute regime relating to food and to provide for a systematic and scientific development of Food Processing Industries. The said Bill also contemplated the establishment of the *Food Safety and Standards Authority of India* (Respondent No.2), which would fix food standards and regulate / monitor the manufacturing, import, processing, distribution and sale of food so as to ensure safe and wholesome food for the people. This

Bill was then passed by both Houses of Parliament and received assent of the President on 23<sup>rd</sup> August, 2006 and came on the statute book as *The Food Safety and Standards Act, 2006*. This Act provided [section 97] that with effect from such date as the Central Government may appoint in this behalf, the following enactments and orders stood repealed.

1. *The Prevention of Food Adulteration Act, 1954 (37 of 1954)*
2. *The Fruit Products Order, 1955*
3. *The Meat Food Products Order, 1973*
4. *The Vegetable Oil Products (Control) Order, 1947*
5. *The Edible Oils Packaging (Regulation) Order, 1998*
6. *The Solvent Extracted Oil, De oiled Meal and Edible Flour (Control) Order, 1967*
7. *The Milk and Milk Products Order, 1992*
8. *Any other order issued under the Essential Commodities Act, 1955 (10 of 1955) relating to food.*

11. This is really the genesis of the said Act and can be found from the statement of objects and reasons for bringing the said Legislation into force. As mentioned earlier, different provisions of this Act came into force on different dates under separate notifications issued by the Central Government.

12. Having said this, we shall now deal with certain provisions of the said Act as well as the FSSR, 2011 framed thereunder. Section 3 is the definitions clause and inter alia reads as under :-

**3. Definitions.**—(1) *In this Act, unless the context otherwise requires,—*

*(k) “food additive” means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food but does not include “contaminants” or substances added to food for maintaining or improving nutritional qualities;*

13. As can be seen from the definition, the words “*food additive*” means any substance which becomes a component of, or otherwise affecting the characteristic of food in which it is added, and which is not normally consumed as a food by itself or used as a typical ingredient of the food. It is intentionally added to the food for a technological (including organoleptic) purpose in the manufacture,

processing, preparation, treatment, packaging, transport or holding of such food. However, the definition of “*food additive*” does not include “contaminants” or substances added to food for maintaining or improving its nutritional qualities.

14. Section 19 of the Act deals with the use of food additives or processing aids and reads thus:-

**19. Use of food additive or processing aid.**—*No article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of this Act and regulations made thereunder.*

*Explanation.*—*For the purposes of this section, “processing aid” means any substance or material, not including apparatus or utensils, and not consumed as a food ingredient by itself, used in the processing of raw materials, foods or its ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.*

15. Section 19 clearly prohibits any food from containing any food additives or processing aids unless it is in accordance with the provisions of the Act and the FSSR, 2011 framed thereunder. The Explanation is not relevant for the purposes of the present judgment.

16. Section 22 of the Act deals with genetically modified

foods, organic foods, functional foods, proprietary foods etc. and reads thus:-

**“22. Genetically modified foods, organic foods, functional foods, proprietary foods, etc.—**Save as otherwise provided under this Act and regulations made thereunder, no person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, irradiated food, organic food, foods for special dietary uses, functional foods, nutraceuticals, health supplements, proprietary foods and such other articles of food which the Central Government may notify in this behalf.

*Explanation.—For the purposes of this section,—*

- (1) “foods for special dietary uses or functional foods or nutraceuticals or health supplements” means:—
- (a) foods which are specially processed or formulated to satisfy particular dietary requirements which exist because of a particular physical or physiological condition or specific diseases and disorders and which are presented as such, wherein the composition of these foodstuffs must differ significantly from the composition of ordinary foods of comparable nature, if such ordinary foods exist, and may contain one or more of the following ingredients, namely:—
- (i) plants or botanicals or their parts in the form of powder, concentrate or extract in water, ethyl alcohol or hydro alcoholic extract, single or in combination;
- (ii) minerals or vitamins or proteins or metals or their compounds or amino acids (in amounts not exceeding the Recommended Daily Allowance for Indians) or enzymes (within permissible limits);
- (iii) substances from animal origin;
- (iv) a dietary substance for use by human beings to supplement the diet by increasing the total dietary intake.
- (b)(i) a product that is labelled as a “Food for special dietary uses or functional foods or nutraceuticals or health supplements or similar such foods” which is not represented for use as a conventional food and whereby such products may be formulated in the form of powders,

*granules, tablets, capsules, liquids, jelly and other dosage forms but not parenterals, and are meant for oral administration;*

- (ii) such product does not include a drug as defined in clause (b) and ayurvedic, siddha and unani drugs as defined in clauses (a) and (h) of Section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940) and rules made thereunder;*
- (iii) does not claim to cure or mitigate any specific disease, disorder or condition (except for certain health benefit or such promotion claims) as may be permitted by the regulations made under this Act;*
- (iv) does not include a narcotic drug or a psychotropic substance as defined in the Schedule of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and rules made thereunder and substances listed in Schedules E and E1 of the Drugs and Cosmetics Rules, 1945;*
- (2) “genetically engineered or modified food” means food and food ingredients composed of or containing genetically modified or engineered organisms obtained through modern biotechnology, or food and food ingredients produced from but not containing genetically modified or engineered organisms obtained through modern biotechnology;*
- (3) “organic food” means food products that have been produced in accordance with specified organic production standards;*
- (4) “proprietary and novel food” means an article of food for which standards have not been specified but is not unsafe;*

*Provided that such food does not contain any of the foods and ingredients prohibited under this Act and the regulations made thereunder.”*

17. Section 22 was brought into force on 18-08-2010 (except in respect of matters relating to the genetically engineered or modified food as explained in clause (2) of the Explanation). It provides that no



person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, irradiated food, organic foods, foods for special dietary uses, functional foods, nutraceuticals, health supplements, proprietary foods and such other articles of food which the Central Government may notify in this behalf. Explanation (4) to the said section defines 'proprietary and novel food' to mean an article of food for which standards have not been specified, but are not unsafe. The proviso further stipulates that such food should not contain any of the foods and ingredients prohibited under the Act and the FSSR, 2011 framed thereunder.

18. Having set out the relevant provisions of the Act, we shall now deal with the relevant Regulations. Regulation 3.1.1 deals with the use of Food Additives in Food Products and reads as under:-

*“3.1.1(1) Use of Food Additives in Food Products:*

*The food products may contain food additives as specified in these regulations and in Appendix A.*

*(2) Use of food additives in traditional foods – The traditional foods namely, Snacks of Savouries (Fried Products), such as Chiwda, Bhujia, Dalmoth, Kadubale, Kharaboondi, Spiced and fried dals, banana chips and similar fried products sold by any name, Sweets, Carbohydrates based and Milk product based, such*

as Halwa, Mysore Pak, Boondi Ladoo, Jalebi, Khoya Burli, Peda, Gulab Jamun, Rosogolla and similar milk product based sweets sold by any name, Instant Mixes Powders only of Idli mix, dosa mix, puliyogare mix, pongal mix, gulab jamun mix, jalebi mix, vada mix, Rice and Pulses based Papads, Ready-to-Serve Beverages (tea/coffee based only) may contain food additives permitted in these regulations and in Table 2 of Appendix A.

(3) Use of additives in Bread, Biscuits – The food products such as Bread and Biscuits, may contain food additives permitted in these regulations and in Table 1 of Appendix A.

(4) Use of Food Additives in different foods – The following food products may contain food additives permitted in these regulations and in Table 3 of Appendix A namely:-

- (i) Dairy based drinks, flavoured and or fermented (e.g. chocolate milk), coeoa, eggnog-UHT Sterilised shelf life more than three months), Synthetic soft drink concentrate, mix/fruit based beverage mix, soups, bullions and taste makers, dessert jelly, custard powder, jelly crustal, flavour emulsions and flavour paste (for use in carbonated and non-carbonated beverages);
- (ii) Sausages and sausage meat containing raw meat, cereals and condiments;
- (iii) Fruit pulp or juice (not dried) for conversions into jam or crystalized glazed or cured fruit or other product;
- (iv) Corn Flour and such like starches;
- (v) Corn syrup;
- (vi) Canned Rosogulla (the cans shall be internally lacquered with sulphur dioxide resistant lacquer;
- (vii) Gelatine;
- (viii) Beer;
- (ix) Cider;
- (x) **Alcoholic Wines;**
- (xi) Non-alcoholic wines;
- (xii) Ready-to-Serve beverage;
- (xiii) Brewed ginger beer;
- (xiv) Coffee Extract;
- (xv) Danish tinned caviar;
- (xvi) Dried ginger;

- (xvii) *Flour confectionery;*
- (xviii) *Smoked fish (in wrappers);*
- (xix) *Dry mixes of Rosogollas;*
- (xx) *Preserved Chapatis;*
- (xxi) *Fat Spread;*
- (xxii) *Prunes;*
- (xxiii) *Baked food confections and baked foods;*
- (xxiv) *Flour for baked food;*
- (xxv) *Packed Paneer;*
- (xxvi) *Cakes and Pastries; and*
- (xxvii) *Prepackaged Coconut Water, Canned Rosogolla.”*

(emphasis supplied)

19. As can be seen from Regulation 3.1.1(1), food products may contain food additives as specified in the Regulations and in Appendix 'A'. Regulation 3.1.1(4) permits the use of food additives in different foods and stipulates that the products mentioned therein may contain food additives permitted in the FSSR, 2011 and in Table 3 of Appendix 'A'. Alcoholic wines are at item (x) of Regulation 3.1.1(4). It is therefore clear that Regulation 3.1.1(4) allows food additives to be added to alcoholic wines.

20. Having said this, we have to now ascertain whether *Tartaric Acid* is a permitted ingredient either under the FSSR, 2011 or Appendix 'A' thereof. For this purpose, it would be necessary to set

out Regulation 3.1.12 which deals with Sequestering and Buffering Agents (Acids, Bases and Salts). Regulation 3.1.12 reads as under:-

**“3.1.12 – Sequestering and Buffering Agents (Acids, Bases and Salts)”**

- (i) “Sequestering agents” means substances which prevent adverse effect of metals catalysing the oxidative break-down of foods forming chelates; thus inhibiting decolourisation, off taste and rancidity;
- (ii) “Buffering Agents” means materials used to counter acidic and alkaline changes during storage or processing steps, thus improving the flavour and increasing the stability of foods;
- (1) Restrictions on the use of sequestering and buffering agents.

Unless otherwise provided in these regulations the sequestering and buffering agents specified in column (1) of the Table below, may be used in the groups of food specified in the corresponding entry in column (2) of the said Table, in concentration not exceeding the proportions specified in the corresponding entry in column (3) of the said Table :

**TABLE**

<b>Sr. No.</b>	<b>Name of sequestering and buffering agents</b>	<b>Groups of food</b>	<b>Maximum level of use (parts per Million) (ppm) (mg./kg.)</b>
(1)	(2)	(3)	(4)
1.	Acetic Acid	(i) Acidulant, buffering and neutralizing agents in beverages soft drinks	Limited by G.M.P.
2.	Adipic Acid	Salt substitute and dietary food	250
3.	Calcium Gluconate	In confections	2500
4.	Calcium Carbonate	As a neutralizer in number of foods	10000
5.	Calcium oxide	As a neutralizer in specified dairy product	2500

6.	<i>Citric acid malic acid</i>	<i>Carbonated beverage and as an acidulant in miscellaneous foods</i>	<i>Limited by G.M.P.</i>
7.	<i>DL Lactic Acid (food grade)</i>	<i>As acidulant in miscellaneous foods</i>	<i>Limited by G.M.P.</i>
8.	<i>L(+) Lactic Acid (food grade)</i>	<i>As acidulant in miscellaneous foods</i>	<i>Limited by G.M.P.</i>
9.	<i>Phosphoric acid</i>	<i>Beverages, soft drinks</i>	<i>600</i>
10.	<i>Polyphosphate containing less than 6 Phosphate moieties</i>	(a) <i>Processed cheese, bread</i> (b) <i>Milk Preparations</i> (c) <i>Cake Mixes</i> (d) <i>Protein foods</i>	<i>40000</i> <i>4,000</i> <i>10,000</i> <i>4,000</i>
<b>11.</b>	<b><u>L(+) Tartaric acid</u></b>	<b><u>Acidulants</u></b>	<b><u>600</u></b>
12.	<i>Calcium Disodium, Ethylene, Diamine tetra acetate</i>	(i) <i>Emulsions containing refined vegetable oils, eggs, vinegar, salt, sugar and spices;</i> (ii) <i>Salad dressing;</i> (iii) <i>Sandwich spread or fat Spread</i>	<i>50</i>
13.	<i>Fumaric acid</i>	<i>As acidulant in Miscellaneous foods</i>	<i>3000 ppm</i>

*NOTE :- DL Lactic acid and L(+) Tartaric acid shall not be added to any food meant for children below 12 months (The lactic acid shall also conform to the specification laid down by the Indian Standards Institution).*

(emphasis supplied)

21. Pausing here, it must be noted that in Regulation 3.1.12(1), the column numbers should read column (2) instead of column (1), column (3) instead of column (2) and column (4) instead of column (3). The confusion arises on account of the column containing the serial numbers being numbered as (1) and the FSSR, 2011 not having accounted for that while referring to the column numbers.

22. Regulation 3.1.12(ii) deals with 'buffering agents' and stipulates that they are materials used to counter acidic and alkaline changes during storage or processing steps, thus improving the flavour and increasing the stability of foods. In the Table appended to Regulation 3.1.12, *Tartaric Acid* finds a specific mention and can be added as an acidulant provided the maximum level of use is 600 ppm. The Note below the said Table clearly states that *Tartaric Acid* shall not be added to any food meant for children below 12 months. It is therefore reasonable to presume that if the intention was to prohibit the use of *Tartaric Acid* for any other persons or in respect of any particular food, it would have then so provided clearly.

23. On going through the FSSR, 2011, it is clear that *Tartaric Acid* can be added to food as an acidulant in the quantity set out in the Table mentioned therein. Merely because the same does not find place in Appendix 'A', Table 3, Row 14 (which deals with alcoholic wines) does not mean that it is a prohibited ingredient. This is clear from Regulation 3.1.1(1) and 3.1.1(4) which clearly states that alcoholic wines is one of the food products which may contain food additives

either specified in FSSR, 2011 and Appendix 'A' thereof. It is not in dispute before us that *Tartaric Acid* would be a food additive as defined in the said Act. We therefore find that the provisions of Regulation No.3 relied upon by Mr Chagla supports the Petitioner's case that *Tartaric Acid* is a permissible ingredient in alcoholic wines. The use of the word "and" in Regulation 3.1.1(1) and 3.1.1(4) does not indicate that the food additive must be stated to be permissible in food products both in the Regulations and in Appendix 'A'. It is sufficient if it is permitted either in the Regulations or in Appendix 'A'. This, according to us, would be a correct reading of the Regulations and Mr Pracha, learned counsel appearing on behalf of Respondent No.2, was unable to indicate any reason to the contrary or point out any provision that would lead to a contrary interpretation. On a holistic reading of the said Regulations including Appendix 'A', Table 3, we are clearly of the view that *Tartaric Acid* is one of the ingredients that is clearly permitted to be added to alcoholic wines provided it is in the quantity not greater than 600 ppm as set out in the Table appended Regulation 3.1.12.

24. It would be important to note that it is not the case of Respondent No.2 that levels of *Tartaric Acid* in the alcoholic wines imported by the Petitioner are greater than 600 ppm. It is the specific case of Respondent No.2 that since *Tartaric Acid* is not an ingredient finding place in Appendix 'A', Table 3, Row 14 (alcoholic wines), the same is a prohibited product and therefore, cannot be permitted to be used as a food additive in alcoholic wines. For the reasons stated earlier, we are unable to accept this submission because the Regulations themselves contemplate food additives being added to alcoholic wines [Regulation 3.1.1(4)] and *Tartaric Acid* is specifically listed as a buffering agent which could be used in food products provided the levels do not exceed 600 ppm [Regulation 3.1.12 r/w the Table appended thereto].

25. We are further fortified in our interpretation by the fact that the Indian Bureau of Standards has come out with TABLE WINES SPECIFICATIONS (SECOND REVISION) which categorically states at paragraph 7.5 as under:-

“7.5 *Colour and Additives*



*Table wines may contain permitted food additives (except colour) as defined by PFA/CODEX/JECFA. The limits shall be in accordance with EU guidelines.”*

26. These Table Wines Specifications clearly state that table wines may contain permitted food additives (except colour) as defined by PFA/CODEX/JECFA and the limits shall be in accordance with EU guidelines. Paragraph 7.8 of the very same Specifications state that table wines shall also comply with the requirements given in Table 1. Table 1 of these Specifications deal with the requirements for Table Wines and in fact permit *Tartaric Acid* being used in table wines. Table 1 of these Specifications reads thus:-

*Table 1 Requirements for Table Wines  
(Clause 7.8)*

Sr.No.	Characteristics	Requirements			Method of Test Ref. to CI No. Annex
		Dry White/Red	Sweet White/Red	Sparkling Wine	
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>i)</i>					
<i>ii)</i>					
<i>iii)</i>	<b><u>Total acids (as Tartaric Acid) g/l Max</u></b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>5.2 of IS 7585</b>
<i>iv)</i>					
<i>v)</i>					

(emphasis supplied)

27. Though these specifications were prior to coming into force of the *Food Safety and Standards Act, 2006*, it certainly throws light on the fact that *Tartaric Acid* was one of the ingredients permitted in table wines by the Indian Bureau of Standards.

28. Apart from this, there is yet other intrinsic evidence before us to take the view that we have taken earlier in this judgment. Some time in the year 2012, draft Regulations have been framed known as *the Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2012*. We must state here that these Regulations have not yet been placed before Parliament and hence do not have the force of law. However, these draft Regulations, and which have been prepared by Respondent No.2 under section 16(2) of the said Act, itself contemplate *Tartaric Acid* being permitted in wines as set out at item No.3 of Table 2 of the said draft Regulations. We, therefore, are clearly of the view that *Tartaric Acid* is permitted as a food additive to alcoholic wines and the contention of Respondent No.2 that it is a prohibited product is not borne out either

under the provisions of the said Act or the FSSR, 2011 framed thereunder.

29. On the same reasoning that we have held that *Tartaric Acid* is a food additive which is permitted to be added to alcoholic wines, we also find that *Ascorbic Acid* is also a permitted food additive which can be added to alcoholic wines. Regulation 3.1.5 of the FSSR, 2011 deals with anti-oxidants. Under the said Regulation, anti-oxidant means a substance which when added to food retards or prevents oxidative deterioration of food and does not include sugar, cereal, oils, flours, herbs and spices. Regulation 3.1.5(2) puts a restriction on the use of anti-oxidants and inter alia stipulates that no anti-oxidant other than *Lacithin*, *Ascorbic Acid* and *Tocopherol* shall be added to any food unless otherwise provided in Chapter 2 and Appendix A of FSSR, 2011. This would clearly indicate that the FSSR, 2011 carves out an exception as far as *Ascorbic Acid* is concerned. In other words, *Ascorbic Acid* can be used as an anti-oxidant as set out in Regulation 3.1.5(2). This being the case and for the reasons that we have held that *Tartaric Acid* is a permitted food

additive in alcoholic wines, we are of the view that even *Ascorbic Acid* is a food additive that is permitted to be added to alcoholic wines.

30. In the view that we have taken, we are squarely supported by a decision of another Division Bench of this Court (*Coram: S.J. Vazifdar and R.Y. Ganoo JJ*) in the case of ***Parle Biscuits Pvt. Ltd. v/s Food Safety and Standards Authority of India and others.***<sup>1</sup> An identical issue, though relating to Lactic Acid, came up for consideration before the Division Bench in the ***Parle Biscuit's case.*** The main question that was to be decided before the Division Bench is set out in paragraph 9 of the judgment and reads thus:-

*“9. As we noted earlier, the main question in this petition is whether the use of the lactic acid in the petitioner's products viz. sugar boiled confectionery is permitted under the said Act, Rules and Regulations. The petitioner does not deny the fact that its products contain lactic acid. The petitioner contends that lactic acid is a permissible ingredient in its sugar boiled confectionery products. It is not the respondents case that the quantity is in excess of the prescribed limit. The respondents contend that it is not a permissible ingredient.”*

(emphasis supplied)

31. On seeing paragraph 9, it is clear that the same argument

<sup>1</sup> 2013 (2) Mh.L.J. 409 : 2013 (3) Bom.C.R.314

that is made before us was also made before the Division Bench in ***Parle Biscuit's case***. It was the contention of the Respondents therein that Lactic Acid was not a permissible ingredient as it did not find place in Table 13 of Appendix 'A'. The Division Bench, after closely analyzing the different provisions of the said Act and the FSSR, 2011 (including the provisions considered by us), came to the conclusion that Lactic Acid was a permissible ingredient in sugar boiled confectionery. The finding of the Division Bench was that the use of the word “and” in Regulation 3.1.1(1) did not indicate that a food additive must be stated to be permissible in food products, both in the Regulations and in Appendix 'A'. The findings of the Division Bench relevant for our purpose are at paragraphs 11 and 12 which read as under :-

*“11. The provisions of Regulation 3 relied upon by Mr. Tulzapurkar supports the petitioner's case that lactic acid is a permissible ingredient in sugar boiled confectionery. Firstly, it must be noted that Regulation 3.1.1(1) permits the use of food additives in food products as specified in the “regulations and in Appendix A”. The use of the word “and” in this regulation does not indicate that the food additive must be stated to be permissible in food products both in the regulations and in Appendix A. It is sufficient if it is permitted in either the regulations or in Appendix A. Mr. Shinde was unable to indicate any reason to the contrary. Mr. Tulzapurkar's submission is fortified by the proviso to Regulation 2.7.1 emphasized by us for it expressly states that the products “may contain food additives permitted in these*

*Regulations including Appendix A. “ This makes it clear that the permissible food additives are those permitted in the regulation as well as in Appendix A. The use of the word “including Appendix A” makes this clear.*

12. Lactic acid is admittedly not referred to in Appendix A, Table 13. The question is whether it is a permissible ingredient under any of the regulations. Regulation 3.1.12 provides that unless otherwise provided in the regulations, the sequestering and buffering agents specified in column No. 1 of the table set out therein may be used in the groups of foods in the corresponding entries in column No. 2 of the table. Serial No. 8 refers to lactic acid. The corresponding entry in column No. 3 is as acidulants in miscellaneous foods. In view of what we have held earlier, had sugar boiled confectionery been specifically referred to in column 3, it would have been the end of the matter for, in that event, it would be clear that lactic acid is a permissible sequestering and buffering agent in sugar boiled confectionery. The dispute arises, on account of the use of the words “miscellaneous foods” in column 3 relating to Sr. No. 8 viz. lactic acid. In the context in which it is used, we are of the opinion, that it refers to any items of food.”

(emphasis supplied)

32. On going through this judgment, we find that the identical argument that was made before us, was also made before the Division Bench in the *Parle Biscuit's case*. That argument was negated by the Division Bench. Not only are we in respectful agreement with the ratio of the said judgment but we are bound by the same. We, therefore, are unable to agree with the contention of Mr Pracha that because *Tartaric Acid* and *Ascorbic Acid* do not find mention in Appendix 'A', Table 3, Row No.14, the same are not permitted

ingredients in alcoholic wines, under the provisions of the *Food Safety and Standards Act, 2006* and the FSSR, 2011 framed thereunder.

33. We must mention here that the judgment in *Parle Biscuit's case* was carried in appeal to the Supreme Court by way of a Special Leave Petition. This SLP (Civil) No.1427/2013 was withdrawn by *the State of Maharashtra through Commissioner*, on 28<sup>th</sup> January, 2013. The said order inter alia records that after making submissions, the learned counsel for the Petitioner (*the State of Maharashtra through Commissioner*) made a request that his client may be permitted to withdraw the Special Leave Petition with liberty to approach the High Court for review of the order under challenge. This permission was granted but it was clarified that this order ought not to be construed as a mandate to the High Court to entertain the Review Petition. The order of the Supreme Court reads thus:-

*“This petition is directed against order dated 19.12.2012 of the Division Bench of the Bombay High Court vide which the writ petition filed by respondent No.1 questioning the action taken by the functionaries of the State for seizure of its food products and raw material under the Food Safety and Standards Act, 2006 read with the Food Safety and Standards Regulations, 2011 was de-*

*clared illegal and a direction was given for return of the stocks latest by 1.2.2013.*

*After making submissions for a while, learned senior counsel for the petitioner made a request that his client may be permitted to withdraw the special leave petition with liberty to approach the High Court for review of the order under challenge.*

*The request of the learned senior counsel is accepted and the special leave petition is dismissed as withdrawn with liberty in terms of the prayer made. However, it is made clear that this order shall not be construed as a mandate to the High Court to entertain the review petition and if any such petition is filed, the High Court shall decide the same on its own merits.”*

34. Faced with the judgment of this Court in ***Parle Biscuit's case***, Mr Pracha tried to distinguish the same on the ground that the product in question before the Division Bench in ***Parle Biscuit's case*** was sugar boiled confectionery which was a standardized product whereas in the present case, the alcoholic wines of the Petitioners were a proprietary food as contemplated under section 22 and therefore, product approval was required under the provisions of the Act. We are afraid we cannot accept this argument for the simple reason that this is not even a ground on which the rejection reports have been issued, one of which is at page 52 of the paper-book. The rejection report is addressed to the Respondent No.3 in which it is stated as under:-



*“This office is not in position to issue NOC of the product(s) mentioned above as the result(s) of the inspection / analysis shows that the sample(s) confirm to the specification under the FSS Act 2006 and rules and regulations made thereunder.*

*This is for your information and necessary action please.*

*Remark: The sample does not conform as the sample contains “Acidity Regulator, Tartaric Acid (INS334) which is not permitted as per Appendix A, Table No.3, Row No.14 of FSSR 2011.”*

35. As can be seen from the rejection report, the No Objection Certificate has been refused only on the ground that the sample contained Acidity Regulator: *Tartaric Acid (INS334)* which was not permitted as per Appendix 'A', Table 3, Row No.14 of the Regulations. This is the only ground on which the NOC has not been issued. We are therefore unable to take cognizance of the argument of Mr Pracha that the alcoholic wines imported by the Petitioner are proprietary foods and therefore require product approval.

36. Before parting, we must state that this is a fit case in which costs ought to have been imposed on Respondent No.2 and in favour of the Petitioner. However, considering that Respondent No.2 is a statutory authority constituted under the provisions of *The Food*

*Safety and Standards Act, 2006* to ensure that safe and wholesome food is supplied to the consumers, we refrain from doing so. Respondent No.2, being a statutory authority, cannot act in an arbitrary fashion disregarding the law under which it was constituted. We appreciate the functions and duties that Respondent No.2 undertakes to ensure the safety of food that is consumed by the public. Respondent No.2, being the watchdog for the consumer as well as a regulator of the food industry, ought not to take an adversarial approach. In this matter, we find that despite *Tartaric Acid* and *Ascorbic Acid* being clearly included in the Regulations, and the fact that the Petitioner's alcoholic wines have been imported in this country for over a decade without any complaint or untoward incident, Respondent No.2 ought to have looked at the Regulations framed by them, a little more carefully before refusing to give the NOC to the Petitioner. The only reason we say this is because in today's global reality India's borders have opened to international business. It is therefore important that the statutory authorities act in a manner that is fair, transparent and with a proper application of mind, so that it encourages foreign investment which ultimately leads to the

economic growth of the country.

37. For all the reasons mentioned earlier in this judgment, rule is made absolute and the Writ Petition is granted in terms of prayer clauses (a) and (b). However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

**(B. P. COLABAWALLA, J.)**

**(V. M. KANADE J.)**