

# Customs & Trade in Israel

## A Legal Newsletter

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### **"Fast Peanuts" - The Haifa District Court Accepted A Peanut Importer's Claim Against The Ministry of Agriculture**

Adv. Gill Nadel, Adv. Dave Zeitoun, Adv. Mor Goshen

The Haifa District Court recently accepted the claim of Sobhy Nachly And Sons Ltd., represented by Adv. Gill Nadel and Adv. Mor Goshen, against the Agriculture Ministry. The court ruled that a peanut shipment imported by Sobhy Nachly from India, which was delayed at the port by the Agriculture Ministry for close to two months, will be released within a reasonable period of time, subject to the decontamination or lab examination of the peanuts. The court also ruled that the State will cover the legal expenses of Sobhy Nachly.

The claim was filed by Sobhy Nachly following the Agriculture Ministry's refusal to release the peanut shipment, in spite of official statements received from the Indian Agriculture Ministry stating that the peanuts were examined and found to be pest free, and even decontaminated in accordance with required procedure prior to export.

The Agriculture Ministry claimed that the initial certificate provided by the Indian Agriculture Ministry for the peanuts was lacking. Sobhy Nachly turned again to the Indian authorities, requesting that they declare the peanuts are free of pests. The Indian authorities agreed to send an amended statement that the peanuts are free of all pests. At this stage, the Agriculture Ministry demanded that the Indian authorities' statement explicitly state that the peanuts are free of three specific pests.

Sobhy Nachly informed the Agriculture Ministry that the Indian authorities refused to amend their statement a third time, and suggested that it conduct lab examinations or decontaminate the peanuts at its own expense prior to their release from the port, subject to the approval of the Ministry's supervisors. It should be noted that the Plant Protection Regulations state that even in more severe cases, in which pests were actually found in the shipment, an alternate release route including decontamination or examination at an official lab is a possibility. Even so, the Agriculture Ministry was adamant in its refusal to release the peanuts, pointing to a procedural argument according to which the amended statement of the Indian authorities does not meet the precise wording required.

The District Court permitted the release of the goods, subject to their decontamination or official lab examination, stating that the Agriculture Ministry's refrain from exercising its legal authority to allow the decontamination or official lab examination of the goods is disproportionate and unreasonable. The Ministry must undertake proportionate actions which will on the one hand allow the examination of the goods and prevent entry of infected goods, and on the other hand prevent restrictions on

international trade. In the case in question, this constitutes refraining from disqualifying the goods imported by Sobhy Nachly, especially since there is no real concern that the goods are infested with pests.

To quote from the court's ruling: "**as the legislator empowered the supervisor with the authority to examine and/or decontaminate infested shipments, the defendant's (=the the Agriculture Ministry) refrain from exercising that authority for the shipment in question, for which a health certificate was presented attesting to the absence of any pests, is disproportionate and does not stand the test of reasonability**". The court continued, addressing the position of the Agriculture Ministry which refrained from presenting any evidence as to why the peanut shipment cannot be examined or decontaminated: "**the defendant... did not present in its defense statement a factual and evidentiary basis, including professional opinions displaying that it considered the professional aspects in and of themselves, including the risk inherent in the examination or decontamination of the goods. It appears that its decision was given arbitrarily, without considering proportionate solutions according to the circumstances of the case, which could have prevented the harsh result of refusing to release the goods to the plaintiff**".

[TA 6676-03-19, **Sobhy Nachly And Sons Ltd. V. The State of Israel - The Ministry of Agriculture & Rural Development**]

**The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.**

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