

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1656 OF 2024**

INS Consultancy

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr.Brijesh Pathak, Advocate for the Petitioner.

Mr.Advait Sethna a/w Saket Ketkar, N Trivedi, Sandeep Raman, Poushali Roychoudhary, Advocates for Respondent Nos. 3 and 4.

Ms.Shirin Irani i/b Veer Kankaria, Advocates for Respondent No.5.

**CORAM :B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN,JJ.**

DATE :APRIL 30, 2024

P. C.

1. This Court on 17th April 2024 passed the following order:-

"P.C.

1. We wonder whether the report being relied upon by Smt. Shweta Suman, Deputy Commissioner of Customs, Special Investigation and Intelligence Branch (Import) in her affidavit dated 16 April, 2024, which is tendered across the bar by Mr. Sethna, learned counsel for respondent nos. 3 and 4 can be considered. This for the reason that an affidavit dated 15 April, 2024 is placed on

record by Mr. Sukant Chaudhary, Deputy Director, Food Safety and Standards Authority of India (FSSAI) inter alia stating that the roasted areca nuts (split) imported by the petitioner and subject matter of the present proceedings confirm to the requirements and parameters of the Food Safety and Standard Act, 2006 (for short “FSS Act”) and Rules framed thereunder and as also stated in the report dated 6 April, 2024 by Geo-Chem Laboratories Pvt. Ltd. conforms to provisions of FSS Act, Rules and Regulations, 2011 and that Food Safety and Standards Authority has no objection for the clearance of the goods in question.

- 2. After such affidavit dated 15 April, 2024 of the FSSAI was placed on record, today the affidavit of Smt. Shweta Suman is being filed referring to a report dated 20 February, 2024 of one NABL accredited Food testing Laboratory, which is a report prepared almost two months back by a laboratory notified by the Food Safety and Standards Authority, which has taken a contrary view from what has been taken by the FSSAI inter alia stating that the Areca nuts are not fully roasted and more particularly, in the final remarks as set out at page 21 of the reply affidavit. We may also observe that it is quite surprising that for last two months there was not a whisper of such report and the officer had not made any attempt to either place the said report on record or furnish the same to the petitioner and for the first time it is set out in the affidavit tendered to us today such report is being relied.*
- 3. In these circumstances, it prima facie appears to us that once the highest authority, i.e. Food Safety and Standards Authority has no objection, whether such no objection issued by such authority can be discarded.*

4. *Mr. Pathak, learned counsel for the petitioner intends to take instructions on the affidavit of Smt. Shweta Suman, Deputy Commissioner of Customs, Special Investigation and Intelligence Branch (Import).*

5. *We shall hear the parties on this petition on the adjourned date of hearing. List the petition on 23 April, 2024 (H.O.B.)."*

2. As seen from the said order, there was an affidavit filed by the Deputy Director, Food Safety and Standards Authority of India (FSSAI) *inter alia* stating that the roasted areca nuts (split) imported by the Petitioner and which forms the subject matter of the present proceedings, conform to the requirements and parameters of the Food Safety and Standard Act, 2006 (for short "**FSS Act**") read with Rules framed thereunder. This affidavit was filed on the basis of the Report dated 6th April 2024 given by Geo-Chem Laboratories Pvt Ltd which also states that the said nuts conform to the provisions of the FSS Act, Rules and Regulations of 2011. Accordingly, in the said affidavit, the FSSAI has stated that they have no objection for the clearance of the goods in question. The Court also noted that the Deputy Commissioner of Customs had filed an affidavit dated 15th April 2024 in which it referred to a Report of the National Accreditation Board for Testing and Calibration Laboratories (NABL) dated 20th February 2024 which is also

an accredited Food Testing Laboratory. This Report was prepared almost 2 months back by the said laboratory which has taken a contrary view from the one taken by FSSAI in its affidavit as well as in the Report dated 6th April 2024 given by Geo-Chem Laboratories Pvt Ltd.

3. Looking at these Reports, this Court on 17th April 2024 *prima facie* came to the view that once the highest authority, i.e. the Food Safety and Standards Authority of India, has no objection, whether such no objection can be discarded by the Customs Department.

4. Be that as it may, today when the matter is called out, the Petitioner before us as well as the Customs Authorities have agreed that a sample of the roasted areca nuts (split) can be sent for testing to a third accredited laboratory of the FSSAI directly who can then give its report on (a) whether the said nuts are fit for human consumption; and (b) whether they are roasted nuts or otherwise.

5. The Customs Department and the Petitioner have stated before us that they shall both accept the said report and the Writ Petition can be disposed of on the basis of the said report. The Customs have stated that if the report is in favour of the Petitioner they will

proceed to release the consignment of the areca nuts of the Petitioner on them executing a Provisional Duty Bond. We accept these statements.

6. Considering the aforesaid consensus we pass the following directions:-

- (a) FSSAI shall depute one of its officers to draw a sample from the consignment of the areca nuts of the Petitioner, in compliance with the protocols stipulated for such sampling.
- (b) Once the sample is collected, the same shall be forwarded to an accredited Food Testing Laboratory of the choice of the FSSAI other than NABL or Geo-Chem Laboratories Pvt Ltd.
- (c) The said Laboratory shall then examine the sample and give its finding on whether the areca nuts are fit for human consumption and whether the sample is roasted nuts or otherwise.
- (d) This Report shall be filed in this Court on or before 10th June 2024 and a copy of the same shall also be furnished to the advocates of the Customs Department as well as to the advocates of the Petitioner.

7. Once this Report is filed, and depending on its findings, further orders shall be passed in the above Writ Petition. We have noted that both the parties, namely, the Customs Department as well as the Petitioner, have agreed before us that the Writ Petition shall be disposed of on the basis of the Report that is to be filed pursuant to the directions given in this order.

8. We now place the above Writ Petition on 18th June 2024.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]