

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

INS Consultancy

....Petitioner

V/s.

Union of India and Ors.

....Respondents

Mr. Brijesh Pathak for petitioner.

Mr. Advait Sethna a/w. Mr. Saket R. Ketkar and Ms. Niyanta Trivedi for
respondent nos.3 and 4.

Ms. Shirin Irani i/b. Mr. Veer Kankaria for respondent no.5.

Ms. Priya Pandey, Legal Consultant for FSSAI - respondent no.5 present.

**CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.**

DATED : 6th AUGUST 2024

PC. :

1 On 30th July 2024 the following order was passed :

*1. An affidavit-in-reply of one Sukant Chaudhary affirmed on
22nd July 2024 is being filed on behalf of Respondent No.5.
Paragraph Nos. 21 and 22 of the said affidavit-in-reply read
as under :-*

*“21. In response to this enquiry the lab vide email
dated 20, July 2024 has informed that :*

*“... .. The areca nut sample
in question is substandard, as it does not meet the
quality parameters.*

*The areca nut sample can be further processed to
comply with the norms specified by the FSSAI and
make it fit for human consumption”*

*A copy of email dated July 20, 2024 sent by CSIR-
CFTRI, Mysore(Lab) to FSSAI is annexed as Annexure –
M.*

22. Prayer of the Respondent :

*a. That the sample of alleged Roasted Areca Nuts(Split)
may be treated as sub-standard and non-conforming to*

the given parameters;

b. That samples of alleged Roasted Areca Nuts(Split) should not be allowed for clearance in present form;

c. That sorting, grading may be allowed with regulatory sampling, inspection, verification of sorted quantities and ensuring disposal by FSSAI; and

d. That sample of alleged Roasted Areca Nuts(Split) may be treated under standards goods only as roasting doesn't alter it into proprietary goods.”

2. Mr. Pathak is agreeable to this suggestion of Respondent No.5. Mr. Ketkar states that he has been given a copy of the affidavit-in-reply only in Court today and requests the matter be stood over by a week to enable him to take instructions.

3. Stand over to 5th August 2024.

2 Today an affidavit of one Shaikh Salman affirmed on 2nd August 2024 is being filed on behalf of respondent nos.3 and 4. In paragraph 5 of the said affidavit, it is stated as under :

5. Regarding the prayer (c) of the Affidavit dated July 22, 2024 filed by FSSAI, it is stated that FSSAI is clear on the aspect that the consignment of alleged Roasted Areca (Nuts) Split is not worthy of clearance in present state. It has to be sorted and graded before any clearance is allowed for edible quantity, that too under regulatory sampling by FSSAI and supervision of Customs so that no non-edible portion is diverted and the same is taken up for destruction at the cost of Petitioner after verifying the two quantities.

3 Respondent nos.3 and 4 are also agreeable for sorting and grading of the imported nuts before any clearance is allowed for edible quantity. We, therefore, pass the following order :

(a) FSSAI shall sort and grade the nuts at the site where the nuts are stored.

Ms. Pandey, who is present in Court on behalf of FSSAI, states that it is possible to do so.

(b) the representatives of Customs Authorities and petitioner shall remain present while sorting and grading. The representatives of petitioner and Customs Authorities shall not interfere while the grading process is being conducted by FSSAI.

Ms. Pandey states that this process will take about 15 days in view of the quantity of cargo involved and the process can be started even within a week of this order being uploaded.

Therefore, FSSAI shall, within a week of this order being uploaded, start the grading and shall give atleast one working day advance notice to petitioner and the Customs Authorities intimating to them the date and time when the grading will begin.

(c) Undertaking of Mr. Pathak on behalf of petitioner to pay any charges of FSSAI for grading and sorting within three days of receiving an invoice is accepted.

(d) The edible quantity segregated shall be permitted to be cleared by the Customs Authorities, subject to such terms and conditions that the Customs Authorities shall impose. The Customs Authorities may also go ahead with the adjudication process under Section 124 and Section 122 of the Customs Act, 1962. The Customs Authorities shall serve a show cause notice upon petitioner and give atleast 15 days time to reply to the show cause notice and may pass such order as they deem fit in accordance with law after giving a personal hearing to petitioner, notice whereof shall be communicated atleast five working days in advance.

(e) The nuts, which are kept aside as unfit for human consumption, shall be dealt with by FSSAI as per their rules and procedure and if there are any charges for such disposal, the same shall be paid by

petitioner. Mr. Pathak undertakes that these charges will also be paid within three days of receiving the invoice/communication from FSSAI. Undertaking accepted.

4 Petition disposed accordingly.

5 For completion of records, Registry to take on file the affidavits being filed by respondent nos.3, 4 and 5. The advocates for respondent nos.3, 4 and 5 are directed to have these affidavits properly paginated notwithstanding disposal of this petition and this shall be completed before the end of this week.

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)