IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.36343, 36400, 36399, 35309, 33213, 33420,
33422 and 35306 of 2023
and
W.M.P.Nos.36324, 36404, 36403, 35275, 32928, 33155,
33156 and 35273 of 2023

W.P.Nos.36343, 33420 and 33422 of 2023

M/s.Universal Impex,
G-39, A.P.M.C.Market-1, Phase-2,
Vashi (Turbhe), Navi Mumbai – 400 705.
Represented by its Proprietor
Sarfraj Jaliyawala ... Petitioner in all W.Ps.

Vs.

1.Commissioner of Customs (Imports),
Commissionerate-II, Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

2.Joint/Additional Commissioner of Customs (Group 1-B),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

3.Assistant Commissioner of Customs (Group 1-B),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

4.Assistant Commissioner,
Special Intelligence & Investigation Branch (SIIB),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondents in all W.Ps.

W.P.Nos.36400, 36399, 35309, 33213 and 35306 of 2023

M/s.Neena Enterprises,
Shop No.8, First Floor 5-1-767/8/FF,
Vithal Das Market, Koti,
Hyderabad, Telangana – 500 095. ... Petitioner in all W.Ps.

Vs.

The Commissioner of Customs (Import),
Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondent in all W.Ps.

Prayer in W.P.No.36343 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to assess and cause release of the consignment "Roasted Areca Nut" covered under 3 Bills of Entry No.8703860 dated 09.11.2023, No.8704992 dated 09.11.2023 and No.8834034 dated 18.11.2023, in terms of Section 17 of the Customs Act, 1962, pursuant to the Ruling of the Customs Authority for Advance Rulings, Mumbai in Ruling

No.CAAR/MUM/ARC/39,40,41/2023 dated 12.05.2023, which had been affirmed by this Court in CMA No.1750 of 2023 dated 01.08.2023.

Prayer in W.P.No.36400 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent herein to forthwith release the 135 MTs of Roasted Areca Nuts imported by the petitioner under the Bill of Entry No.8527417 dated 29.10.2023 on collection of the applicable taxes, as self-assessed by the petitioner in terms of Section 17 of the Customs Act, 1962.

Prayer in W.P.No.36399 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent herein to forthwith release the 81 MTs of Roasted Areca Nuts imported by the petitioner under the Bill of Entry No.8527337 dated 29.10.2023 on collection of the applicable taxes, as self-assessed by the petitioner in terms of Section 17 of the Customs Act, 1962.

Prayer in W.P.No.35309 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent herein to forthwith release the Roasted Areca Nuts imported by the petitioner under the Bill of Lading No.T12BLWKAT01650 dated 27.10.2023 and which goods have been submitted for clearance before the respondent vide Bill of Entry No.8635894 dated 05.11.2023 on payment of applicable total taxes.

<u>Prayer in W.P.No.33213 of 2023:</u> Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent herein to forthwith release the Roasted Areca Nuts imported by the petitioner under the Bill of Lading No.SSLBWKATCAA0004 dated 25.09.2023 and which goods have been submitted for clearance before the respondent vide Bill of Entry No.8293892 dated 13.10.2023 on payment of applicable total taxes.

<u>Prayer in W.P.No.33420 of 2023:</u> Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to assess and cause release of the consignment "Roasted Areca Nut" covered under Bills of Entry No.7940425 and 7941675 both dated 21.09.2023, in terms of Section 17 of the Customs Act, 1962, pursuant to the Ruling of the Customs Authority for Advance Rulings, Mumbai in Ruling No.CAAR/MUM/ARC/39,40,41/2023 dated 12.05.2023, which had been affirmed by this Court in CMA No.1750 of 2023 dated 01.08.2023.

<u>Prayer in W.P.No.33422 of 2023:</u> Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to assess and cause release of the consignment "Roasted Areca Nut" covered under 2 Bills of Entry No.8160955 dated 05.10.2023 and No.8272800 dated 12.10.2023, in terms of Section 17 of the Customs

Act, 1962, pursuant to the Ruling of the Customs Authority for Advance Rulings, Mumbai in Ruling No.CAAR/MUM/ARC/39,40,41/2023 dated 12.05.2023, which had been affirmed by this Court in CMA No.1750 of 2023 dated 01.08.2023.

<u>Prayer in W.P.No.35306 of 2023:</u> Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent herein to forthwith release the Roasted Areca Nuts imported by the petitioner under the Bill of Lading No.T12BLWKAT01651 dated 27.10.2023 and which goods have been submitted for clearance before the respondent vide Bill of Entry No.8650419 dated 06.11.2023 on payment of applicable total taxes.

<u>W.P.Nos.36343, 33420 and 33422 of 2023</u>

For Petitioner : Mr.B.Sathish Sundar
Dr.S.Krishnanandh

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel

<u>W.P.Nos.36400, 36399 of 2023</u>

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.V.Sundareswaran
Senior Standing Counsel

W.P.Nos.35309, 33213 and 35306 of 2023

For Petitioner : Mr.Vijay Narayan
Senior Counsel
for M/s.Vaibhav R.Venkatesh

For Respondent : Mr.V.Sundareswaran
Senior Standing Counsel

COMMON ORDER

These eight Writ Petitions were filed by two importers, namely, M/s.Universal Impex and M/s.Neena Enterprises.

2. The said importers had imported goods by labelling the same as roasted areca nuts. Since the goods were not released to the respective petitioner in spite of several requests in that regard, these Writ Petitions were filed. Each Writ Petition is for a mandamus directing the respondents to release the goods under the respective bills of entry subject to payment of applicable taxes.

3. When these Writ Petitions were listed for hearing on 06.02.2024, learned senior counsel and learned counsel for the respective petitioner

relied upon reports of the Central Revenue Control Laboratory, Chennai (CRCL Chennai) and the Food Safety and Standards Authority of India (FSSAI) to contend that the goods qualify as roasted areca nuts, whereas the respondents relied on reports of the Central Revenue Control Laboratory, Delhi (CRCL Delhi) and the Arecanut Research and Development Foundation (ARDF) to contend that the goods are dried areca nuts and not roasted areca nuts.

4. In those circumstances, I directed the FSSAI to undertake testing of samples from each consignment to ascertain whether the samples satisfy all relevant parameters of roasted arecanuts and to determine whether such arecanuts are fit for human consumption. The FSSAI undertook testing through one of its accredited laboratories and placed the reports before this Court.

5. Oral arguments on behalf of the petitioners were made by Mr.Vijay Narayan, learned senior counsel, Mr.B.Sathish Sundar, learned counsel, Dr.S.Krishnanandh, learned counsel, and Mr.N.Viswanathan,

learned counsel. On behalf of the respondents, Mr.V.Sundareswaran, learned senior standing counsel, made submissions.

6. The submissions and contentions of learned senior counsel and learned counsel for the petitioners may be summarized as under:-

(i) The question of classification was decided by the Customs Authority for Advance Rulings (CAAR) in proceedings initiated by the respective petitioner.

(ii) The CAAR concluded that roasted areca nuts fall within Customs Tariff Heading (CTH) 2008 19 20.

(iii) The Division Bench of this Court affirmed the ruling of the CAAR and refused to interfere with the same when the ruling of the CAAR was carried in appeal in C.M.A.Nos.600, 1206 and 1750 of 2023.

(iv) Therefore, the question of classification was resolved conclusively and, consequently, does not fall for consideration in these petitions.

(v) As a consequence of the question of classification being decided, the only question that survives for consideration is whether the consignments imported under the respective bills of entry qualify as roasted areca nuts.

(vi) It was concluded in the earlier report of the CRCL Chennai and both the earlier and recent report of the FSSAI that each consignment contains roasted areca nuts, which are fit for human consumption.

(vii) Therefore, these goods are liable to be released to the respective petitioner subject to payment of applicable taxes, if not already paid.

7. The submissions and contentions of Mr.V.Sundareswaran, learned senior standing counsel, in response may be summarised as under:-

(i) The relief claimed in the writ petitions is for a mandamus to direct release of goods, and such relief cannot be claimed in proceedings under Article 226 of the Constitution of India.

(ii) After the Writ Petitions were filed, the goods under most of the bills of entry were seized by the respondents.

(iii) In absence of an application for provisional release under Section 110A of the Customs Act, 1962 (the Customs Act), the relief claimed in these Writ Petitions cannot be entertained.

(iv) By these writ petitions, the petitioners are inviting a decision on a classification dispute. Under Section 130 of the Customs Act, even an appeal does not lie in respect of the rate of duty or the value of goods. Consequently, these Writ Petitions should not be entertained.

(v) Since the classification and release of goods, including provisional release, fall within the exclusive jurisdiction of the customs authorities, this Court should not perform the functions of such authority or direct that such authority should exercise discretion in a particular manner. On this issue, learned senior standing counsel relied on the judgments of the Hon'ble Supreme Court in *Navin Chemicals Mfg. & Trading Co. Ltd. v. Collector of Customs, 1993 (68) E.L.T.3(S.C.)* and *Steel Authority of India Ltd. v. Commissioner, Central Excise and Customs, (2022) 22 GSTR-OL 95*.

(vi) The FSSAI report cannot be relied upon with regard to classification since such authority is only concerned with food safety.

(vii) Regulation 2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 does not deal with roasted areca nut. Therefore, such report may only be relied upon to determine whether the goods are fit for human consumption and not for any other purpose.

(vii) The consignments were labelled as areca nuts and not as roasted areca nuts by the consignors, and the classification by the consignors, and not by the consignees, is determinative.

8. Upon considering the above contentions, the first issue that arises for consideration is whether the respective petitioner is inviting a determination with regard to classification by this Court. Since strong reliance was placed on the decision of the CAAR, I propose to examine such decision first. In the said decision, which was issued on 12.05.2023, the CAAR, in relevant part, held as under:-

"4.19 I find that in view of specific CTH 2008 19 20:

Other roasted nuts & seeds in chapter 20 of the first schedule to the Customs Tariff, HSN Explanatory note to CTH 2008, various Supreme Court rulings upholding guiding value of the HSN Explanatory notes for deciding classification under Customs Tariff Act, 1975 and previously mentioned two Supreme Court judgments classifying roasted nuts which include almonds, betel nut and other nuts under chapter 20 by taking recourse to HSN explanatory note to Tariff Heading 2008 I hold that roasted betel nuts are correctly classifiable under the tariff item 2008 19 20 of chapter 20 of the first schedule of the Customs Tariff Act, 1975.

5. On the basis of foregoing, I rule that the Roasted betel nuts fall under Tariff Heading 2008, specifically under Tariff Entry 2008 19 20: 'Other roasted nuts & seeds' of chapter 20 of the first schedule of the Customs Act, 1975."

This ruling was made in cases filed by each petitioner before this Court. Needless to say, the customs authorities were also parties thereto. Consequently, unless overruled, the ruling is binding on the petitioners concerned and the respondents as per Section 28J of the Customs Act.

9. The ruling of the CAAR was carried in appeal in C.M.A.Nos.600, 1206 and 1750 of 2023. The said appeals were disposed of by judgment dated 01.08.2023. In relevant part, it was held as under in the said judgment:-

> "16. To sum up:
>
> (a) Roasting is a process treated to be distinct from the process of boiling and drying, in fixing the classification in respect of betel/areca nut under CTH.
>
> (b) Roasted betel/areca nut having been specifically classified under CTH 2008 19 20, the attempt to classify under CTH 08 02 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry.
>
> (c) HSN explanatory notes is normally a safe guide in determining classification under CTH. Roasted areca/betel nut having been mentioned in CTH 2008 19 20 under HSN, the impugned Ruling is in consonance with HSN classification.

(d) When there is a specific entry covering a product/commodity, the test of common parlance is irrelevant in determining classification.

17. For all above reasons, we are not inclined to interfere with the findings of the Advance Rulings Authority, which stands affirmed."

10. As on date, the above judgment of the Division Bench of this Court holds the field. As a corollary, the position today is that roasted areca nuts are liable to be classified under CTH 2008 19 20 and not under CTH 08 02 80. Therefore, for purposes of deciding these cases, it is unnecessary to examine the question of classification, which stands resolved. Nonetheless, it is necessary to consider whether the relevant consignments forming the subject matter of these writ petitions contain roasted areca nuts.

11. As discussed earlier, in view of conflicting reports, by order dated 06.02.2024, I directed the FSSAI to undertake testing through one of

its accredited laboratories. In that connection, the following directions were issued:

> "(i) The respective petitioner is permitted to undertake cleaning of the goods while they remain in the custody of the respondents.
>
> (ii) Samples for testing purposes from each consignment imported under each bill of entry shall be selected jointly by the respective petitioner, on the one hand, and the customs authorities, on the other, within a period of one week from the date of receipt of a copy of this order.
>
> (iii) The authorized representative of the FSSAI is directed to collect such samples in the presence of the representatives of the respective petitioner and the respondents.
>
> (iv) Such samples shall be transported in a sealed container to the FSSAI Office, Chennai. Upon receipt thereof, the FSSAI shall send such samples for testing to one of the laboratories accredited to it.

(v) The said laboratory shall test the samples on all relevant parameters to determine whether the samples are roasted areca nuts.

(vi) Such testing shall also be undertaken for purposes of determining whether the areca nuts are fit for human consumption.

(vii) The report of the laboratory shall be communicated to this Court by the FSSAI on or before 05.03.2024."

12. Pursuant to the above directions, the reports of the accredited laboratory, M/s.CVR Labs (P) Limited, and the report of the FSSAI were placed on record. By way of illustration, Report No.24020173.01 is extracted below:

"Report No.: 24020173.01

Opinion:

I am of the opinion, the sample is **Roasted Arecanut (Code number and Serial Number HNOC2402001)** conforms as per COA & standards laid down regulation no.2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and 2.1.1, 2.2.1, 2.3.1 & 2.5.1 of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011.

Place : Chennai

Date : 27-02-2024."

All the reports are substantially similar to the above report.

13. As is evident from the above, through its accredited laboratory, the FSSAI carried out tests of samples drawn from each consignment in the presence of representatives of both the respective petitioner and the respondents, and confirmed that the sample is of roasted areca nuts and that such sample conforms to standards specified in Regulation 2.3.55 of the the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and Regulations 2.1.1, 2.2.1, 2.3.1 and 2.5.1 of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011.

14. It should be noticed that the FSSAI was directed to test samples on all relevant parameters to determine whether the samples are roasted areca nuts, and to determine whether such areca nuts are fit for human consumption. Both the questions were answered in the affirmative by the FSSAI.

15. The contention of Mr.V.Sundareswaran that the decision as to whether the goods should be released, provisionally or otherwise, falls within the exclusive jurisdiction of the respondents should be examined against this background.

16. In each writ petition, the respective petitioner has placed copies of communications and representations seeking release of the goods. Such requests and representations were made even before the goods were subject to seizure. As on date, those representations have not been responded to by the respondents. While the adjudication officer is empowered to provisionally release goods, on application, subject to the

execution of a bond and the provision of security, if deemed appropriate, the existence of such power does not operate as an embargo against the exercise of jurisdiction by this Court in appropriate cases.

17. As discussed earlier, the factual issue as to whether the goods are areca nuts and whether they are fit for human consumption was also decided in favour of the respective petitioner by the FSSAI. By taking that aspect and the fact that the classification issue was decided previously by the CAAR and such ruling was affirmed by the Division Bench of this Court, I am of the view that the facts and circumstances warrant exercise of jurisdiction by this Court.

18. For reasons set out above, these Writ Petitions are disposed of with the following directions:

(1) The respondents are directed to release the consignments falling under Bills of Entry Nos.7940425, 7941675, 8160955, 8272800, 8703860, 8704992 and 8834034 to M/s.Universal Impex subject to the terms and conditions set out below.

(2) The respondents are directed to release the goods under Bills of Entry Nos.8527337, 8650419, 8635894, 8527417, 8293892 to M/s.Neena Enterprises subject to the terms and conditions set out below.

(3) The respondents are directed to consider and dispose of expeditiously a request for waiver of demurrage, if made by the respective petitioner.

(4) M/s.Universal Impex and M/s.Neena Enterprises shall pay all applicable taxes and duties in respect of each consignment.

(5) The above mentioned parties shall also execute a personal bond for the differential duty as between that leviable if the goods were classified under CTH 08 02 80 instead of CTH 2008 19 20 to the satisfaction of the respondents.

(6) All other requisite certificates, such as the phytosanitary certificate, shall be submitted by the respective petitioner.

(7) The goods shall be provisionally released within 48 hours from the fulfillment of all the above conditions.

(8) This order will not stand in the way of the respondents undertaking assessment in accordance with the Customs Act.

(9) No costs. Connected Writ Miscellaneous Petitions are closed.

23.04.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

1.Commissioner of Customs (Imports),
Commissionerate-II, Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

2.Joint/Additional Commissioner of Customs (Group 1-B),
Customs House,
No.60, Rajaji Salai,
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3.Assistant Commissioner of Customs (Group 1-B),
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4.Assistant Commissioner,
Special Intelligence & Investigation Branch (SIIB),
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

5.The Commissioner of Customs (Import),
Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai – 600 001.

SENTHILKUMAR RAMAMOORTHY, J.

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W.P.Nos.36343, 36400, 36399, 35309, 33213,
33420, 33422 and 35306 of 2023

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