

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4370 OF 2025

Shri Vyom Dipesh Raichanna,]
Age- 24 years, Occ: Business,]
Proprietor of Trinity Agro Products]
having its office at F-10, A.P.M.C.]
Market-I Phase-II, Sector-19,]
Vashi, Navi Mumbai] ...Petitioner

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Date: 2025.06.24
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Versus

1. **Union of India**]
(Through the Secretary,]
Ministry of Law and Justice,]
Department of Legal Affairs,]
Branch Secretariat, Aaykar Bhavan,]
Annexe, 2nd Floor, New Marine Lines,]
Mumbai – 400020]
2. **The Pr. Chief Commissioner of**]
Customs, JNCH, Nhava Sheva,]
District-Raigad, Maharashtra-400707]
3. **The Pr. Commissioner of Customs**,]
Gr.-I IA, NS-I, JNCH, Nhava Sheva,]
District-Raogad, Maharashtra-400707]
4. **The Pr. Additional Director General**]

- (ADG),]
Directorate of Revenue Intelligence,]
Mumbai Zonal Unit,]
13, Sir Vithaldas Thackersey Marg,]
New Marine Lines, Mumbai – 400 020]
5. **The Senior Intelligence Officer,**]
Directorate Revenue of Intelligence,]
MSU, NS-II 208-209, 2nd Floor,]
'D' Wing, Navi Mumbai SEZ]
Commercial Complex, Sector-11,]
Near JNPT Township, Dronagiri,]
Raigad, Maharashtra- 400 707]
6. **The Intelligence Officer,**]
Directorate Revenue of Intelligence,]
MZU, NS-II, 208/209, 2nd Floor,]
'D' Wing, Navi Mumbai SEZ]
Commercial Complex, Sector-11]
Near JNPT Township, Dronagiri,]
Raigad, Maharashtra- 400 707.]...Respondents

Dr Sujay Kantawala, *with Ms Aishwarya Kantawala, Mr Jeffry Caleb, & Ms Ayushi Jha, for the Petitioner.*

Mr Ram Ochani, *with Ms Kavita Shukla, for the Respondent Nos. 2 & 3.*

Ms Ruju Thakkar, *with Ms Sangeeta Yadav, for the Respondent Nos 4, 5 and 6.*

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**

DATED: 23 June 2025

ORAL JUDGMENT *(Per M S Sonak, J)*

1. Heard learned Counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. Leave is granted to amend the Petition and challenge the seizure memo dated April 3, 2025, which was issued during the pendency of this Petition. Amendment to be carried out forthwith. Reverification is dispensed.
4. This Petition challenges the seizure memo dated 7 March 2025 and 3 April 2025 and the consequent seizure of the Petitioner's goods under Bills of Entry detailed in Exhibit 'M' (page 213) of this Petition.
5. Ms Ruju Thakkar, the learned Counsel for Respondent Nos. 4, 5, and 6, submitted that the investigations are nearing completion, and a show-cause notice is proposed to be issued to the petitioner by 15 July 2025. She submitted that, although the report from the Mumbai Lab, for the goods imported in the previous years, prima facie favoured the Petitioner, the reports from the Kerala Lab, which is the specialised lab dealing with Cashew Nuts or Cashew Kernels, suggest that the imported goods are not roasted Cashew Kernels. She submitted that, according to the lab results, the imported goods are plain Cashew Kernels (Raw Kernels) of the grade Baby Bits. Accordingly, she submitted that the

Advance Ruling Authority's decision, on which the Petitioner relies, may not apply to these goods. Mr Ochani also makes the same submissions.

6. Since a show cause notice is proposed to be issued by 15 July 2025 at the latest, we do not propose to examine the rival contentions now raised in this Petition. All contentions regarding the imported goods and the applicability of the Advance Ruling Authority's decision are therefore kept open to be decided while disposing of the show cause notice. All contentions of all parties in this regard are explicitly kept open.

7. However, we take cognizance of Mr Kantawala's submission that the imported goods were seized in March / April 2025. He submitted that these goods are perishable in nature and any further delay will be in the interest of neither of the parties. He submitted that even if the Respondents' version is accepted, the duty payable would be in the range of about Rs. 5.75/- Crores at the highest. He submitted that the Petitioner is required to pay an additional demurrage of about Rs. 50 Lakhs for no fault of the Petitioner company. He submitted that, taking into account all these factors, the Petitioner, without prejudice, is offering the bank guarantee in the amount of Rs. 1 Crore and the bond to secure the balance. He submitted that the interest of justice would be served if the goods were directed to be provisionally released subject to these conditions of a bank guarantee and bond.

8. The learned Counsel for the Respondents opposed the above suggestion. Ms Thakkar submitted that the imported goods are "prohibited goods" because, in terms of the

notification dated 21 February 2023, broken Cashew Kernels can be imported only if the CIF value is above Rs. 680 per Kilogram. Without prejudice, she submits that, usually, even for a provisional release, a bank guarantee or a cash deposit of the entire duty should be provided.

9. There is a serious dispute regards the description of the goods. The Petitioner seeks the benefit of the decision of the Advance Ruling Authority for the previous years. Mr Kantawala submits that there is no difference between the goods imported in the earlier years and the present goods, which are the subject matter of this Petition. Again, He also points out the report of the Mumbai Lab, which admittedly favours the Petitioner's version. Therefore, at this stage, it is too premature to accept the Respondents' contention about the goods being "prohibited goods".

10. Ms Thakkar points out that the Bombay report does not pertain to the goods seized under the impugned seizure memos. She points out that the Bombay Lab report concerns the goods previously imported. Mr Kantawala, on instructions, submits that there is no difference between the goods previously imported and the goods which are the subject matter of the present impugned seizure memo. All these matters can be examined when disposing of the show cause notice.

11. Additionally, we also note that the prohibition applies only if the CIF value is below Rs. 680 per Kilogram. This is not a case of importing contraband. In any event, all these issues can be decided while disposing of the show cause notice.

These are contentious issues, and pending a decision on these issues, there is no point in allowing the goods to perish.

12. The offer for the bank guarantee of Rs. 1/- Crore cannot be accepted. The interest of justice would be served if the Petitioner furnishes a bank guarantee of Rs. 2.5 Crores and a bond of Rs. 3.25 Crores as a condition for provisional release. This will secure the interest of the Respondents and, at the same time, will prevent the perishing of the goods. Considering the material placed on record by the Petitioner, it would not be proper to let the goods perish. As noted earlier, the Petitioner is armed with the decision of the Advance Ruling Authority and a report from the Mumbai Lab. The other material on which the Respondents rely will certainly require consideration, which can be examined while disposing of the show cause notice.

13. Regarding detention demurrage, we leave it to the Petitioner to represent to the Respondents for waiver, etc. If such representation is made, the same should be disposed of following the law. Again, all contentions in this regard are also left open.

14. Accordingly, we dispose of this Petition by making the following order: -

ORDER

- (a) The statement made by the Respondents that a show cause notice would be issued latest by 15 July 2025 is accepted.

- (b) Mr Kantawala's statement that a response would be filed within 15 days of the receipt of the show cause notice is also accepted.
- (c) The show cause notice must be disposed of within 6 weeks of the receipt of the Petitioner's response.
- (d) All contentions of all parties in this regard are left open.
- (e) The Respondents are directed to release the goods which are the subject matter of impugned seizure memos dated 7 March 2025 and 3 April 2025 within seven days of the Petitioner furnishing a bank guarantee from HDFC bank in an amount of Rs. 2.5/- Crores and a bond in an amount of Rs. 3.25/- Crores.
- (f) The Rule is disposed of in the above terms without any order for costs.
- (g) All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)