IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5253 OF 2025

Shri. Indu Shekhar .. Petitioner

Versus

Union of India & Anr. .. Respondents

WITH

WRIT PETITION NO.6170 OF 2025

Tabani Javed .. Petitioner

Versus

Union of India & Ors. .. Respondents

Mr.D. B. Shroff, Senior Advocate a/w Brijesh Pathak, Dulraj Jain, Aditi Ravidas, Vaishnavi Murkute, Advocates for the Petitioner.

Mr.Jitendra B. Mishra a/w Ashutosh Mishra, Rupesh Dubey, Advocates for the Respondents.

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE : OCTOBER 3, 2025

P. C.

1. The above Writ Petitions have been filed seeking a declaration that Notification No.02/2025-26 dated 2nd April 2025 is *ultra vires* Article 14 and 19 of the Constitution of India.

2. To put it in a nutshell, this declaration is sought on the basis that the said Notification issued by the Director General of Foreign Trade (“**DGFT”**) seeks to modify and change the classification of Roasted Areca Nuts from Chapter Heading 20081920 to Chapter Heading 08028090. According to the Petitioner, the DGFT, though having power to either restrict or prohibit the import of certain goods, have no power to change the classification of the goods from one Chapter Heading to another Chapter Heading. In this regard, the Petitioner relies upon Section 11A of the Customs Tariff Act, 1975 which empowers the Central Government to amend the 1st Schedule of the said Tariff Act and the procedure to be followed for the said amendment. The Petitioner, in support of the aforesaid proposition, also brought to our attention that the aforesaid Notification is challenged also before the Hon’ble Madras High Court and the Hon’ble Madras High Court has granted a stay to the operation of the said Notification. Considering these facts and circumstances, the Petitioner before us prays for ad-interim relief in terms of prayer clause (b) of the Petition.

3. Mr.Mishra, the learned counsel appearing for Respondent Nos.1 and 2 (Union of India and the DGFT), sought time to file an affidavit-in-reply to the above Writ Petitions. He further submitted that in the facts of the present case, it would also be proper, if not necessary, to join the Customs Department as a party Respondent.

4. Acceding to the request of Mr.Mishra, we direct that the affidavit-in-reply on behalf of Respondent Nos.1 and/or 2 shall be filed by 4th November 2025 [in both the above Writ Petitions] and a copy of the same shall be served on the advocates for the Petitioner.

5. We also grant leave to the Petitioners [in both the above Writ Petitions] to join the Customs Department as Respondent No.3. This amendment shall also be carried out on or before 4th November 2025 and the amended copy of the Petition shall be served on Respondent Nos.1 and 2 as well as the newly added Respondent No.3 on or before the next date.

6. As far as ad-interim relief is concerned, we, at least *prima facie*, find considerable force in the arguments canvassed on behalf of the Petitioners. Section 11A of the Customs Tariff Act, 1975 empowers the Central Government to amend the 1st Schedule of the said Act and which reads thus:-

> ***"11A. Power of Central Government to amend First Schedule.-***
>
> *(1) Where the Central Government is satisfied that it is necessary so to do in the public interest, it may, by notification in the Official Gazette, amend the First Schedule:*
>
> *Provided that such amendment shall not alter or affect in any manner the rates specified in that Schedule in respect of goods at which duties of customs shall be leviable on the goods under the Customs Act, 1962 (52 of 1962).*
>
> *(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification."*

7. Perusal of the aforesaid Section, makes it clear that the Central Government, if it is satisfied that it is necessary so to do in public interest, may by notification in the Official Gazette amend the

First Schedule of the said Act. The proviso to sub-Section (1) stipulates that such amendment shall not alter or affect in any manner the rates specified in that Schedule in respect of goods at which duties of customs shall be leviable on the goods under the Customs Act, 1962. Section 11A further stipulates that every notification issued under sub-Section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

8. In contrast, the notification issued by the DGFT is by invoking the powers under Section 3 read with Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraphs 1.02 and 2.01 of the Foreign Trade Policy (FTP) 2015-20, as amended from time to time. Paragraph 1.02 of the FTP, 2023 stipulates that the Central Government, in exercise of powers conferred by Section 3 and Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of a notification, in public interest. Paragraph 2.01 is the policy regarding import/exports of goods and stipulates that exports and imports shall be “Free” except when regulated by way of “Prohibition”, “Restriction” or “Exclusive trading through State Trading Enterprises (STEs)” as laid down in the Indian

Trade Classification (Harmonized System) of exports and imports. Paragraph 2.07 talks about how the DGFT may, through a notification, impose prohibition or restriction on any goods. None of these paragraphs, at least *prima facie*, permit the DGFT to issue a notification changing the classification of the goods from Chapter 20 to Chapter 08, or for that matter, from any one chapter to another chapter. This power is with the Central Government only under Section 11A of the Customs Tariff Act, 1975.

9. In view of the foregoing discussion, at least *prima facie*, we find that the Petitioner has made out a strong *prima facie* case for grant of ad-interim relief. In these circumstances, in Writ Petition No.5253 of 2025, there will be ad-interim relief in terms of prayer clause (b) which reads thus:-

> *"(b) Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to stay the operation of impugned Notification No.02/2025-26 dated 02.04.2025, Exhibit E;"*

10. Similarly, in Writ Petition No.6170 of 2025, there will be ad-interim relief in terms of prayer clause (b) which reads thus:-

> *"(b) Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to stay the operation of impugned Notification No.02/2025-26 dated 02.04.2025, Exhibit B;"*

11. Ad-interim relief in both the Writ Petitions shall continue until further orders.

12. Since, we have stayed the operation of the impugned notifications issued by the DGFT, we direct that the Petitioners shall be entitled to provisionally release the Roasted Areca Nuts imported by the Petitioners, on furnishing a bond in the format required by the Customs Department. We make it clear that no other conditions shall be imposed for provisionally releasing the Roasted Areca Nuts imported by the Petitioners. The Bill of Entries under which Roasted Areca Nuts are imported, will remain provisional till the final disposal of these Writ Petitions.

13. We must make it clear that we have passed this order in the absence of the Customs Department because Roasted Areca Nuts are perishable in nature.

14. We now place the above matter on 13th November 2025 under the caption for “ad-interim reliefs”. We put the parties to notice that we may dispose of the above Writ Petitions at that stage itself, time permitting.

15. 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.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**