IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17403 OF 2025

Adon Agro Commodities Limited .. Petitioner

Versus

Union of India & Ors. .. Respondents

Mr. Prakash Shah, Senior Advocate a/w Brijesh Pathak, Dulraj Jain, Anjali Joshi, Dulraj Jain Advocates for the Petitioner.

Mr.Satyaprakash Sharma a/w Abhishek Mishra, Advocates for Respondent Nos.1 and 2.

Mr. Jitendra Mishra a/w Sangeeta Yadav, Rupesh Dubey, Advocates for Respondent No.3.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : JANUARY 16, 2026

P. C.

1. This Writ Petition is listed for reporting compliance of our order dated 23rd December 2025 wherein we had accepted the statement of the learned advocate for Respondent No.2, on instructions, as an undertaking to this Court, that the goods of the Petitioner, namely Inshell Walnuts covered under six Bills of Entry Nos.6012666, 6012701, 6012703, 6012704, 6012799 and 6012800 all dated 30.11.2025 shall be provisionally released within 2 weeks from 23.12.2025 on such terms and conditions as may be fixed by Respondent No.2.

2. The Principal Commissioner of Customs, NS-1, JNCH, Nhava Sheva, in compliance of our order dated 23.12.2025, has passed an order dated 06.01.2026, provisionally releasing the goods of the Petitioner viz. Inshell Walnut under Section 110A of the Customs Act, 1962, subject to the Petitioner:-

(i) Obtaining NOC from FSSAI under the Food Safety and Standards (Import) Regulation, 2017 and NOC from PQ under Plant Quarantine (Regulation of Import into India) Order 2003, along with other mandatory compliance;

(ii) Executing a Bond of an amount equal to the assessable value of seized goods mentioned in Annexure "A"; and

(iii) Furnishing of Security deposit/Bank Guarantee of Rs.4,44,45,033/- to cover the estimated differential duty along with the requisite redemption fine under Section 125(1) and penalty under Section 112(a)/114A of the Customs Act, 1962, for the goods covered/seized under the seizure memorandum dated 22.12.2025, as per paragraph 2.2 of CBIC Circular No.35/2017-Customs dated 16.08.2017.

3. Copy of the order dated 06.01.2026 is tendered to the Court, and which is taken on record and marked “**X**” for identification.

4. The Petitioner submits that the condition of Security Deposit/Bank Guarantee for the 100% estimated differential duty along with the requisite redemption fine under Section 125(1), and penalty under Section 112(a)/114A of the Customs Act, 1962 is onerous in nature, unjust and improper. This is because after the goods in question were seized, identical goods, from the same supplier, and at the same declared value, were imported by the Petitioner under Bill of Entry No.6581287 dated 28th December 2025. This Bill of Entry was provisionally assessed under Section 18 of the Customs Act, 1962 and the goods thereunder were released on the Petitioner executing a bond equal to the value of the goods and on the Petitioner furnishing a Bank Guarantee of an amount equal to 50% of estimated differential duty. In these circumstances, there is no justification in insisting for a Bank Guarantee of an amount equal to 100% of the estimated differential duty as well as estimated redemption fine and penalty, was the submission.

5. The Petitioner further submits that in the absence of any Show Cause Notice issued to them, it is improper and unjust to ask the Petitioner to furnish a Bank Guarantee even to secure the anticipated fine and anticipated penalties.

6. Relying upon the judgment of this Court in the case of ***BMS Enterprises V/S Union of India [2025 (2) TMI 886]*** and the judgment of the Delhi High Court in ***M and V Marketing and Sales Private Limited V/S Intelligence Officer, DRI Hqrs, New Delhi & Ors. [2025 (8) TMI 662]*** the Petitioner submits that the condition imposed by the Principal Commissioner of Customs for provisional release of the goods subject to the Petitioner furnishing Bank Guarantee of Rs.4,44,45,033/- to cover the estimated differential duty along with requisite redemption fine under Section 125(1) and penalty under Section 112(a)/114A of the Customs Act, 1962 deserves to be modified and the goods be directed to be provisionally released on the Petitioner furnishing a Bank Guarantee to secure 50% of the estimated differential duty. The Petitioner is ready to comply with the other conditions of provisional release imposed by the Principal Commissioner of Customs.

7. On the other hand, the learned counsel for Respondent No.2 submitted that in terms of the CBIC Circular No.35/2017-Customs dated 16.08.2017, the Principal Commissioner of Customs rightly imposed the condition of furnishing a Bank Guarantee of Rs.4,44,45,033/- to cover the estimated differential duty along with the requisite redemption fine under Section 125(1) and penalty under Section 112(a)/114A of the Customs Act, 1962, for provisional release of seized goods under Section 110A of the Customs Act.

8. The learned counsel for Respondent No.2 further submits that in so far as subsequent import of identical goods is concerned, the same was assessed provisionally under the Faceless Assessment system (from Kolkata) in consonance with Circular No.38/2016-Cus dated 22.08.2016 (as amended) read with Circular No.33/2016-Cus dated 22.07.2016. In terms of the said Circular No.33/2016-Cus dated 22.07.2016, the Petitioner being a Tier 1 Authorized Economic Provider (AEO) has been given benefit of furnishing 50% Bank Guarantee under S1.No.2(b) [as against 100% in case of other importers under S1.No.6(b)(1)] of the table below paragraph 3 of the said Circular No.38/2016-Cus dated 22.08.2016 (as amended). Circular No.33/2016-Cus provides certain benefits to the entities under three tier AEO under Section 1.5.1

thereof. Item (v) of Section 1.5.1 specifies that in case an AEO Tier 1 entity is required to furnish a Bank Guarantee, the quantum thereof would be 50% of what is required to be furnished by the importer/exporter which is not an AEO certificate holder. However, it has been categorically specified therein that such benefit will not be extended to cases where a Bank Guarantee is required to be furnished in pursuance of the order of the Competent Authority for provisional release of seized goods. Therefore, benefits which are extended to the Petitioner in the case of provisional assessment under Section 18 of the Customs Act, 1962 cannot be extended to a case where a Bank Guarantee is required to be furnished in pursuance to the order for provisional release under Section 110A of the Customs Act.

9. Having heard the learned senior counsel appearing for the Petitioner and the learned counsel for the Respondents, we are of the considered view that considering the peculiar facts of the present case, the conditions imposed by the Principal Commissioner of Customs to furnish a Bank Guarantee equal to 100% of the estimated differential duty and anticipated fine and penalties, would amount to inconsistency and therefore is required to be modified. This is because it is an admitted fact that the Respondents themselves have provisionally assessed the subsequent imports and allowed clearance of the goods for home consumption on the Petitioner's providing a bond for the value of the goods and a Bank Guarantee of 50% of the estimated differential duty.

10. We, accordingly, modify the condition of furnishing of the Bank Guarantee of Rs.4,44,45,033/-, and direct that the Petitioner's goods seized vide Seizure Memo dated 22.12.2025, be released provisionally subject to the Petitioner furnishing a Bank Guarantee for 50% of the estimated differential duty. The rest of the conditions imposed by the Principal Commissioner of Customs shall remain unchanged and shall be complied with by the Petitioner.

11. The Provisional Duty Bond as well as the Bank Guarantee shall be furnished by the Petitioner to Respondent No.2 within a period of 1 week from today. On the aforesaid Bond and Bank Guarantee being furnished, the Customs Department shall provisionally release the said goods of the Petitioner covered by the six Bills of Entry [referred to paragraph 1 of this order] within a period of 1 week thereafter.

12. Our aforesaid directions are in line with the order passed by this Court in case of *BMS Enterprises (supra)* and the judgment of the Delhi High Court in *M and V Marketing and Sales Private Limited (supra)*.

13. It is clarified that Waiver Certificate issued by Respondent No.2 will be applicable till release of the goods.

14. All the contentions of the parties with regard to valuation are kept open, to be considered at the time of adjudication of the show cause notice.

15. We now place the above matter on board for reporting compliance on 09.02.2026.

16. 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**