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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 7th May, 2025

+ **W.P.(C) 16560/2024 & CM APPL. 2639/2025**

M/S PERFECT TRADING CO.

.....Petitioner

Through: Mr. Pradeep Jain, Mr. Sambhav Jain &
Mr. Pranav Raj Singh, Advs.

versus

COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Anurag Ojha, SSC with Mr.
Subham Kumar and Mr. Dipak Raj,
Advs. for R-1.

Mr. Aditya Singla, SSC, CBIC, Ms.
Anja Suresh Nair & Mr. Siddarth
Saxena, Advs. for FSSAI.

Mr. Jatin Singh, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed under Article 226 of the Constitution of India seeking setting aside of the seizure memo dated 01st August, 2024 and consequent release of the consignment of Roasted Areca Nuts which have been imported by the Petitioner.
3. A consignment of Roasted Areca Nuts is the subject matter of the present petition. The Petitioner had obtained an advance ruling bearing no. CAAR/Del/Perfect/01/2024/639 dated 5th January, 2024 for the purpose of importing Roasted Areca Nuts under a particular classification being 'CTH 20081920'. The bill of entry was filed by the Petitioner on 21st June, 2024 bearing no. 4121826. In terms of the ruling which was given by the Advance



Ruling Authority, it was held as under:

“9. I find that the issue dealt with i.e. Classification of “Roasted betel nuts” in the judgement of the Honourable High Court of Madras is similar in nature to that of the impugned issue in this application and therefore is squarely applicable to this case. Further, reliance is also placed on ruling of Advance Ruling Authority Mumbai in Ruling No. CAAR/CUS/APPL/95/2023 dated 16.10.2023 in the case of M/s. Shree Ganesh Traders, Chennai, on the classification of “Roasted Areca Nut” that has been classified under CTH 20081920.

10. On the basis of aforesaid orders of Hon’ble Courts and also earlier CAAR Rulings in the matter, I am of the view that the Roasted areca/betel nuts fall under Custom Tariff Heading 2008, specifically under Sub-heading 20081920 covering “Other roasted nuts & seeds” of the First Schedule of the Customs Tariff Act, 1975.

11. I have also considered the request of the applicant for maintaining confidentiality by not dis-closing the ruling. In this regard, I am of the view that already a number of rulings have been issued, on the subject and the same are available in public domain. I feel that making the instant ruling confidential, would not serve any purpose. Thus, the request of the applicant for maintaining confidentiality, do not merit favourable consideration.”

4. Upon the Petitioner’s consignment arriving in India, the same was seized by the Custom Officials and as per the Petitioner, they were sent to the Food Safety and Standards Authority of India (herein referred to as “FSSAI”). *Panchnama* was drawn on 3rd July, 2024 and in view of the monsoon weather condition, the goods were permitted to be moved to the warehouse. Subsequently, a report was received from the FSSAI.

5. Thereafter, goods were again sent to the Central Revenue Control



Laboratory (*hereinafter* “CRCL”) for testing. According to the Petitioner, though satisfactory reports were received, samples were again drawn and retested repeatedly and finally, the goods were not released at all. Hence this petition has been filed seeking the setting aside of the seizure memo dated 01st August, 2024 and also for praying for unconditional release of the consignment.

6. Vide order dated 12th December, 2024, this Court had observed that there are conflicting reports in respect of the quality of the Areca Nuts. Under such circumstances, the Court had directed FSSAI to take samples and test the consignment once again. The relevant portion of the order is set out below:

“2. The present petition has been filed seeking a writ in the nature of mandamus for release of consignment of roasted Areca Nuts which have been imported by the Petitioner.

3. There are conflicting test reports on record with respect to the Areca Nuts traded by the Petitioner company. Some of the tests say that the Areca Nuts have moisture content and also are infested by mould/ insects and hence not fit for human consumption. However, the test reports filed by the Petitioner state the contrary and state that the tests show that the moisture content is well within the prescribed limits, thus refuting the claim of excessive moisture.

4. Considering the contradictions in the test reports, and in order to have an independent assessment of the goods, let The Food Safety and Standards Authority of India (FSSAI) depute a food inspector for inspection of the consignments and submit a report to this Court. The Customs Officials and the Petitioner’s Representatives may accompany the officials from FSSAI for the purpose of assessment of goods. The food inspector for conducting the inspection shall be nominated by the CEO concerned.”



7. However, there was some confusion in respect of the applicable sub-regulations of the Food Safety and Standard Regulations, 2011. The National Food Laboratory, Ghaziabad (*hereinafter* “NFL”) was then directed to test the samples in terms of sub-regulation 2.3.55. The relevant portion of the order dated 16th January, 2025 is set out below:

“2. *The present writ petition has been filed under Article 226 of the Constitution of India seeking release of consignment of roasted Areca Nuts which have been imported by the Petitioner. The goods were not released in view of conflicting test reports on record with respect to the Areca Nuts traded by the Petitioner company. Vide order dated 12th December, 2024, this Court after considering the contradictory test reports in respect of the “Areca Nuts” traded by the Petitioner company, had directed the Food Safety and Standards Authority of India (hereinafter, ‘FSSAI’) to depute a food inspector for inspection of the consignment imported by the Petitioner.*

3. *However, subsequently an application - CM APPL. 74687/2024 was moved by the Petitioner for modification of order dated 12th December, 2024 by stating that FSSAI is willing to inspect but not willing to take samples, in the absence of a specific order to that effect. In view of the averment the Court vide order dated 19th December, 2024 directed as under:*

“5. *In view of the averments made in the said application, it is clarified that as part of the inspection, the concerned Food Inspector(s) from FSSAI would be fully empowered during the inspection to also take samples for re-testing.*

6. *The test report of the said samples along with the inspection report shall be filed before this Court by the next date of hearing”*



4. Today, an affidavit has been placed before the Court by the FSSAI informing the Court that the samples were retrieved and sent to the National Food Laboratory, Ghaziabad and the testing was to be carried out. The said affidavit is taken on record.

5. According to the FSSAI, the testing was carried out under Regulation No. 2.12 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011. However, the FSSAI is of the opinion that the parameters as prescribed in sub-regulation 2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 must be followed as the said sub-regulation governs the regulation for Areca nuts or Betelnuts or Supari.

6. The FSSAI shall place on record the letter or the communication given to the NFL, Ghaziabad as to the standards under which the testing was to be conducted.

7. In any event, let the NFL shall now test the samples in terms of sub-regulation 2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 and place the report by the next date of hearing. No further adjournment shall be granted.

8. If the test report by NFL, Ghaziabad is not filed by the next date of the hearing, the matter would proceed further.

9. A competent official from the FSSAI shall remain present in Court on the next date of hearing.

10. In addition, let the Respondent seek instructions in respect of CM No.2639/2025 wherein the Petitioner is seeking unconditional release of the goods to the Petitioner for the purpose of use of the goods for industrial purposes and not for human consumption. The Purchase orders for industrial use of Areca Nuts are also placed along with the said application as Annexure-D.”



8. As can be seen from the above order, the Petitioner had agreed and prayed for unconditional release of the goods with the clear representation that the same would be used for industrial purpose and not for human consumption. However, the Department continued to oppose this prayer and a response was then sought by the Court in this regard.

9. Ld. Counsel for the Petitioner submits that when the goods had arrived, the same were fit for human consumption and were found to be Roasted Areca Nuts as per the FSSAI. Due to the delay in the storage of the Areca Nuts with the warehouse, etc. the product may have deteriorated. However, the CRCL report did not say that the same is not fit for human consumption. The only observation of the CRCL is that there may be some damaged quantity in the consignment. Hence, the petitioner prays for provisional release of the goods even for non-human consumption.

10. On the other hand, Mr. Anurag Ojha, Id. Senior Standing Counsel appearing for the Department submits that there is no method of supervising whether the goods would be used for human consumption or not. In fact, the delay in clearing the consignment is itself sufficient to not release the consignment of goods. He submits that since there can be no supervision, the goods do not deserve to be released.

11. The Court has heard the matter. The initial reports given by either the CRCL or the FSSAI do not say that the goods are not fit for human consumption. In fact, in terms of the report dated 1st October, 2024, the sample is found to be 'Roasted Areca Nuts' by the primary laboratory.

12. Thereafter, the CRCL's report dated 17th October, 2024 states that the sample is not fit for human consumption. Again, on 25th October, 2024, the parameters were held to not match with Roasted Areca Nut. These reports are



in contrast with the report submitted in June/July, 2024 where the CRCL itself had stated that the issue would be of moisture content and the damaged nuts exceeds the limit prescribed by FSSAI. Finally, the report of NFL dated 16th January, 2025 states as under:

“C. Conclusion :

The sample of Roasted Areca Nuts Whole beating code No. IMPORT_NR_20122024_001 does not conform to the standards laid down under Regulation No. 2.3.55 of Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, as the sample shows Moisture. Damaged nuts and Damaged by mould & insects above the maximum prescribed limit Sample also shows the presence of fungus hyphae & musty odour. The sample is thus substandard under section 3 (1) (zx) and unsafe under section 3 (1) (zz) (x) (xi) of FSS Act. 2006.”

13. Overall, the reports are not consistent with each other. When the initial import was made, clearly, the FSSAI was of the opinion that the goods are Roasted Areca Nuts. It appears that there has been a deterioration of the product while the consignment has remained with the Customs or with the warehouse. The final report of the NFL which is the most recent report records clearly that there is some damage in the nuts caused by mould and insects and there could also be a musty odour.

14. Overall, this Court is of the opinion that the Roasted Areca Nuts have deteriorated during the entire process of repeated testing.

15. Under such circumstances, no useful purpose would be served by continuing to leave the consignment with the Customs Department as the Petitioner is willing to give an undertaking that the same would not be used for human consumption.



16. Accordingly, the consignment is provisionally released subject to payment of a sum of Rs.5 lakhs as security with the Customs Department. The Customs Department, after provisionally releasing the goods, shall issue a Show cause notice to the Petitioner in accordance with law and adjudicate the matter.

17. Mr. Gagan Uppal, the son of the proprietor – Mr. Naresh Kumar Uppal is present in Court and undertakes to the Court that the goods would not be used for human consumption. Any violation of this shall be construed as contempt of the order of this Court and if the Customs Department or any other Department finds out that the goods are being used for human consumption, stringent action would be liable to taken. The Petitioner shall ensure that the said consignment of nuts is used for industrial purposes as has been represented to the Court.

18. The Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 7, 2025
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