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W.P.Nos.23836 & 24237 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.10.2024
Pronounced on	22.11.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.23836 & 24237 of 2024

and

W.M.P.Nos.26088, 26089, 26481 to 26484 of 2024

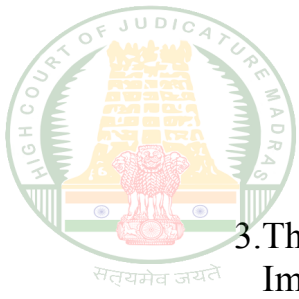
W.P.No.23836 of 2024:

M/s.Universal Impex,
G-39, APMC Market-1, Phase 2,
Vashi (Turbhe),
Navi Mumbai 400 705
Rep by its Proprietor,
Shri Sarfraj Jaliyawala

... Petitioner

Vs.

- 1.The Commissioner of Customs,
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 2.The Additional Commissioner of Customs (Group-1),
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.



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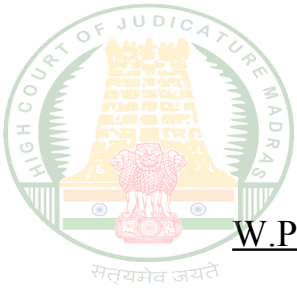
3.The Assistant Commissioner of Customs,
Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

4.The Assistant Commissioner of Customs (SIIB),
Chennai III,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in and connected with order in original No.108280 of 2024 dated 22.07.2024 emanating from F.No.CUS/APR/MISC/2020/2023-Gr.1, quash the same and direct release of the goods namely 'roasted areca nuts' imported by the petitioner under Bill of Entry Nos.7941675 dated 21.09.2023, 7940425 dated 21.09.2023, 8272800 dated 12.10.2023, 8160955 dated 05.10.2023, 8703860 dated 09.11.2023, 8704992 dated 09.11.2023 and 8834034 dated 18.11.2023 and also grant detention cum demurrage waiver certificate for the period under which the goods were detained in terms of Handling of Cargo in customs Area Regulation, 2009 and in terms of the Sea Cargo Manifest and Transhipment Regulations, 2018 as amended.



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W.P.No.24237 of 2024:

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M/s.Neena Enterprises,
Shop No.8, First Floor,
5-1-767/8/FF, Vithal Das Market,
Koti, Hyderabad,
Telangana 500 095
Rep by its Authorised Signatory,
Shri.Gagan Uppal

... Petitioner

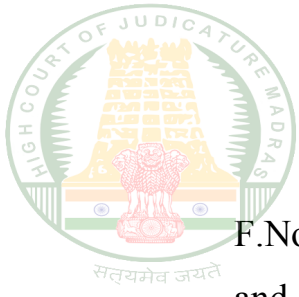
Vs.

- 1.The Commissioner of Customs,
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 2.The Additional Commissioner of Customs (Group-1),
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 3.The Assistant Commissioner of Customs,
Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to quash the Order in
Original No.108265 of 2024 dated 22.07.2024 in



W.P.Nos.23836 & 24237 of 2024

F.No.CUS/APR/MISC/624/2023 GR-1, attributable to the 2nd respondent and further direct the respondents herein to cause release of the goods in question and further direct the respondents to issue a detention certificate for waiver of demurrage and container detention charges.

For Petitioner in
W.P.No.23836/2024 : Mr.B.Kumar, Senior counsel
for Mr.B.Sathish Sundar

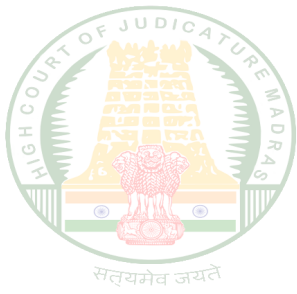
For Petitioner in
W.P.No.24237/2024 : Dr.S.Krishnanandh

For Respondents
in both petitions : Mr.K.Umesh Rao,
Senior Standing counsel

COMMON ORDER

The writ petition in W.P.No.23836 of 2024 is pertaining to the following bill of entries:

Bill of Entry	Date
7941675	21.09.2023
7940425	21.09.2023
8272800	12.10.2023
8160955	05.10.2023
8703860	09.11.2023
8704992	09.11.2023
8834034	18.11.2023



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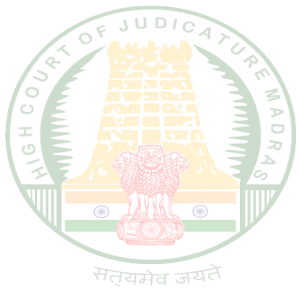
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2. The writ petition in W.P.No.24237 of 2024 is pertaining to the following bill of entries:

Bill of Entry	Date
8293892	13.10.2023
8527337	29.10.2023
8527417	29.10.2023
8635894	05.11.2023
8650419	06.11.2023

3. Mr.B.Kumar, learned Senior counsel and Dr.S.Krishnanandh, learned counsel appearing on behalf of the petitioners had made the following submissions:

3.1 In this case, the petitioners had imported the “roasted areca nuts” from Indonesia. Subsequent to the said importation, the samples of areca nuts were sent to the CRCL Laboratories, Chennai, for testing. In the report of CRCL Laboratories, Chennai, it has been stated that the moisture content of the imported areca nuts is 3.97%.



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3.2 As per the Advanced Ruling Authority, if the moisture content of the areca nuts is between the range of 10% and 15%, it would be considered as “raw areca nuts”, whereas, if the moisture content is below 10%, it would be considered as “roasted areca nut”. When such being the case, since the moisture content of the areca nuts imported by the petitioner is 3.97%, the same shall be classified as “roasted areca nuts” and in such case, the respondent is supposed to have released the goods imported by the petitioner. However, in spite of the representations made by the petitioner, the respondent had failed to take any steps to release the goods. Under these circumstances, with no other options, the petitioners were constrained to move the writ petitions, viz., W.P.Nos. 33420, 33422 and 36343 of 2023.

3.3 Pending the aforesaid petitions, the respondent had sent the samples of the imported areca nuts to the CRCL Laboratories, New Delhi, and received the report stating that the moisture content of one sample is 8.8% and other sample is 7%. Since there was a variation in moisture content in the reports of the CRCL, Chennai and CRCL, New Delhi, this Court directed to draw the fresh samples of imported areca

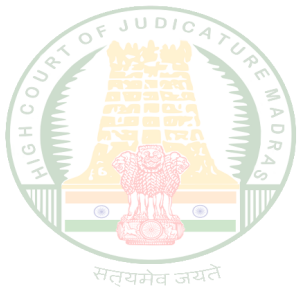


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nuts, in the presence of importers and Customs Authorities, for testing by Food Safety Authorities, Chennai. The said order was challenged vide W.A.Nos.1493, 1945 of 2024, etc., however, the same was confirmed by the Hon'ble Division Bench of this Court vide order dated 05.09.2024.

3.4 Thereafter, the Food safety Authorities took the samples and after testing, they issued a certificate stating that the moisture content in the areca nut is 3.64% in one batch and 3.48% in another batch. Therefore, based on the said report, this Court passed an order dated 23.04.2024, directing the respondents to release the consignment for the aforesaid bill of entries. Subsequently, an appeal was filed by the respondent against the order passed by this Court, by way of writ appeals in W.A.Nos.1537, 1540, 1545, 1547 of 2024, etc. Pending the appeals, the respondent was directed to pass an adjudication order. Accordingly, the adjudication order came to be passed by the respondents on 22.07.2024. Thereafter, vide order dated 24.07.2024, this Court disposed of the said writ appeals by granting liberty to the petitioners to assail the order dated 22.07.2024 by filing an appeal before the appropriate forum. Hence, these petitions have been filed.



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3.5 The learned Senior counsel appearing for the petitioners would submit that in this case, the respondents, in non-application of mind, had passed the order-in-original without considering the several vital documents produced by the petitioner. He would also contend that the Advance Ruling Authorities had already determined the moisture content of “roasted areca nut” and “raw areca nut”, i.e., if the moisture content is below 10%, the same shall be considered as “roasted areca nuts”, whereas, if the moisture content is between 10% and 15%, the same shall be classified as “raw areca nuts”. In this case, in all the 4 lab reports, it has been categorically stated that the moisture content of the imported areca nuts is below 10%, that too, in 3 lab reports, it has been stated that the moisture content is below 4%.

3.6 Further, he would contend that there is no precise definition has been provided either in the Customs Tariff or anywhere else to define the term “roasted areca nuts”. Hence, a set of procedures has been discussed in Advance Ruling and after an elaborate discussion, the Advance Ruling Authorities has arrived at a conclusion that based on the moisture content, the areca nut would be classified either as 'raw areca



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nut' or as 'roasted areca nut'. The said order passed by Advance Ruling Authorities was confirmed by the Hon'ble Division Bench of this Court vide order passed in CMA.Nos.600, 1206 and 1750 of 2023 filed by the petitioners and the same was not challenged before the Hon'ble Apex Court, whereby the order had attained its finality.

3.7 However, by over-ruling the decision of Advance Ruling Authorities and without considering all the above aspects and vital documents, the order-in-original came to be passed by the respondent in non-application of mind. When such being the case, though the alternate remedies are available, the petitioner can very well approach this Court on the grounds narrated above. In this regard, he had referred various judgments of the Hon'ble Apex Court with regard to the situations, under which, a Writ Court can interfere with the order-in-original passed by the respondent.

3.8 The impugned order was passed as if the petitioners had violated the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, and further, the respondent had referred the petitioner's goods as

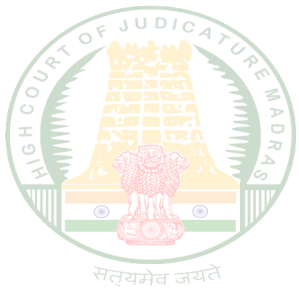


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prohibited goods under Section 114AA and confiscated the same under Section 111D and 111A of the Customs Act, 1962. Therefore, he would submit that the impugned order came to be passed, in non-application of mind, under the mis-conception as if the petitioners had imported the “raw areca nuts” and wrongly declared the same as “roasted areca nuts”.

4. On the other hand, Mr.Umesh Rao, learned Senior Standing counsel appearing for the respondents had raised strong objections for the importation of areca nuts by the petitioner and made the following submissions:

4.1 In this case, the petitioners have mis-declared their goods as “roasted areca nuts” instead of “raw areca nuts” and hence, the goods imported by the petitioners are liable for confiscation. He would also submit that the areca nuts imported by the petitioners are only “raw areca nuts”, for which, the import value consideration is a sum of Rs.351/- per kg, which is minimum import price imposed on the Tariff Line under 0802 80. Hence, the petitioners are supposed to pay 100% of the duty value.



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4.2 Initially, the CRCL Laboratories, Chennai, has given its report with regard to the moisture content of the areca nuts, however, due to the doubts raised, once again the samples of the areca nuts were sent to the New Delhi. In the report given by CRCL Laboratories, New Delhi, it has been stated that the samples may be considered as 'moderately heat treated' and not as 'roasted'. Hence, he would contend that the goods imported by the petitioners are not “roasted areca nuts” but it shall be considered as “moderately heat treated areca nuts”.

4.3 Even the FSSAI Lab Authorities have been examined, whereby, they have made it clear that they had not at all referred anywhere else that the imported areca nuts, which were sent for testing as per the order of this Court, as “roasted areca nuts” and they have only mentioned about the moisture content and smell of those areca nuts.

4.4 Further, he would submit that subsequent to the passing of the order-in-original by the respondents, this Court has categorically refused to entertain the plea of the petitioner in the writ appeal filed by them and directed the petitioner to only file an appeal before an appropriate forum

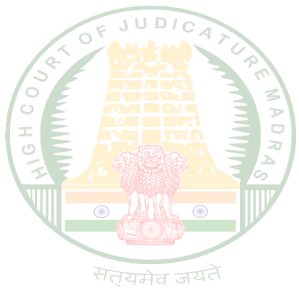


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in the manner known to law. However, in spite of filing an appeal before the concerned Appellate Authority, the petitioners have wrongly approached this Court, which is contrary to the order passed by the Hon'ble Division Bench of this Court.

4.5 He would also submit that the petitioners have also filed an appeal on the aspect of releasing the goods, upon payment of fine in lieu of confiscation under Section 124 of the Customs Act. However, he would contend that in this case, the confiscation is absolute and since the goods imported by the petitioners are prohibited goods, the same cannot be released upon payment of fine in lieu of confiscation.

4.6 Further, he would submit that since the issues involved in these writ petitions is with regard to the classification of areca nuts, i.e., factual issues, the same can only be adjudicated by the Authorities concerned and not by the Constitutional Court and the law is very well settled in this aspect. Therefore, for the reasons stated above, he requested this Court to dismiss these petitions and relegate the petitioners to prefer an appeal.

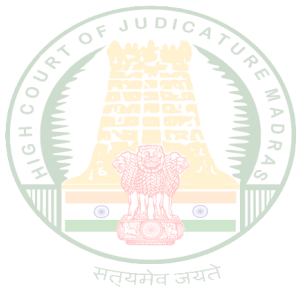


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5. In reply, the learned Senior counsel appearing for the petitioner would submit that both the “raw areca nuts” and the “roasted areca nuts” can be imported and only the payment of duty will vary, i.e., the cost of raw areca nut would be 100% of the value by taking minimum import price as a sum of Rs.351 per kg, whereas, the roasted areca nut would be around 30%. Hence, he would contend that it is neither an absolute confiscation nor the goods are prohibited and accordingly, the release of goods, upon payment of fine in lieu of confiscation, is permissible.

6. Dr.B.Ramaswamy, learned *amicus curie* appointed by this Court, had filed his report stating that in the present case, the goods imported had fulfilled the parameters fixed by the Advance Ruling Authorities for “roasted areca nuts”. However, the respondents have made a strong objection for the said report filed by the learned *amicus curie* and would submit that the learned *amicus curie* is only supposed to put forth the facts and circumstances of the case and it is for the Court to arrive at a conclusion with regard to the nature of imported areca nuts.



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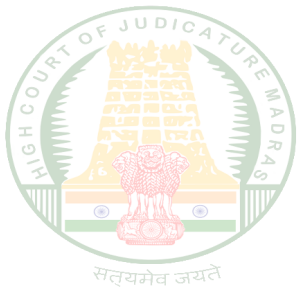
7. In reply, the learned *amicus curie* would submit that in this case, he has only ascertain the facts and put forth the same before this Court in the form of a report. Further, he would submit that it is up to this Court to arrive at any decision and also he will not stand in the way of taking any decision by this Court, either in favour of petitioners or in favour of respondents.

8. I have given conscious consideration to the submissions made by the learned Senior counsel appearing on behalf of the petitioner, the learned Senior Standing counsel appearing on behalf of the respondents and the learned *amicus curie* appointed by this Court and also perused the entire materials available on record.

9. In the case on hand, the writ petitioners have imported areca nuts from Indonesia on various dates by virtue of respective bills of entries, which reads as follows:

W.P.No.23836 of 2024:

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Bill of Entry	Date
7941675	21.09.2023
7940425	21.09.2023
8272800	12.10.2023
8160955	05.10.2023
8703860	09.11.2023
8704992	09.11.2023
8834034	18.11.2023

W.P.No.24237 of 2024:

Bill of Entry	Date
8293892	13.10.2023
8527337	29.10.2023
8527417	29.10.2023
8635894	05.11.2023
8650419	06.11.2023

10. The issues that have to be decided in this case are as follows:

i) Whether the areca nuts imported by the petitioners are “roasted areca nuts” or “raw areca nuts”?

ii) Whether this Court is a Competent Court to decide about the nature of imported areca nuts, when the alternate remedy of appeal is available for the petitioner?

11. This Court would like to deal with the above 2 issues together



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and answer the same accordingly.

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12. In this case, the petitioners have imported areca nuts by virtue of the respective bill of entries stating that the goods imported are “roasted areca nuts”. Upon perusal of tariffs, it is clear that the “raw areca nuts” falls under the Chapter 8 of Tariff 0802 80, whereas, the roasted areca nuts falls under the Chapter 20 of Tariff 2008 1920. There is no dispute between the parties with regard to the difference in Tariff and respective tariff entries for “raw areca nuts” and the “roasted areca nuts”.

13. The Advance Ruling Authorities have already determined the moisture content of roasted areca nuts, which falls under Chapter 20 of the Customs Act, as below 10%, whereas for raw areca nuts, which falls under the Chapter 8 of the Customs Act, it was determined as between 10% to 15%. The said aspect was also confirmed vide the order passed by the Hon'ble Division Bench of this Court in writ appeals.

14. Now, let me examine as to what is the meaning of “roasted



areca nuts”?

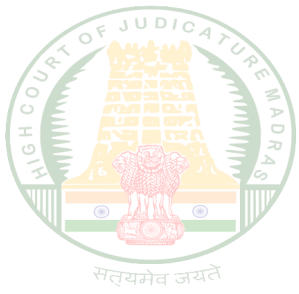
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15. Admittedly, there is no precise definition for the term “roasted areca nuts”. Even in the order-in-original, the respondents had recorded its findings as there was no definition for the term”roasted” to define as to what is “roasted areca nuts”, either in the Customs Act or Tariff. At this juncture, it would be apposite to extract Point No.5 of the impugned order in W.P.No.23836 of 2024, which reads as follows:

5. CONSULTATIONS WITH DOMAIN EXPERT AGENCIES ON PARAMETERS & TESTING PROCEDURES:

5.1. Upon visual inspection of the imported goods, it was found that areca nuts of differing colors and textures were imported, making it difficult to assess whether they are roasted or not, or the degree of roasting if any.

Definition of roasting: It would be relevant to define what is roasting in the first place. Roasting is a slow-cooking process, using indirect, diffused heat to cook its ingredients. It is a dry-heat cooking method where hot air surrounds the goods and cooks it evenly on all sides at a temperature of at least 300 °F (or 150 °C).



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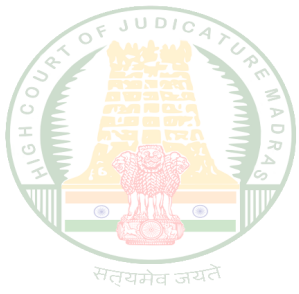


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The heat can also be derived from an open flame, an oven, or another heat source. Roasting is typically used to enhance flavour in a dish through caramelization and browning on the surface of food. This method can also be used to cook vegetables and fish. In the past, roasting was typically done with an open flame, but is now commonly done in the oven. In doing so, roasting takes advantage of the natural sugar present in ingredients to create a more concentrated taste. Roasting also retains more nutrients than other cooking methods.

5.2. It is pertinent to note that, the applicant in his application to the Customs Authority for Advance Rulings "CAAR"), had submitted that the following processes are involved in the Preparation of Roasted Areca Nut: The raw/fresh areca nut undergoes various process of preparation for roasting, which are detailed below:

Firstly, the raw areca nut is de husked and its outer shell is removed Thereafter, the de-husked nut is scattered to check for any visible impurities and the same is cleaned, pursuant to which the raw dehusked areca nut/betel nut is left to dry. Secondly, the cleared and dried de husked areca nuts are fed into the seed roasting oven/machine and heated in the temperature of above 100 Degree Celsius. The roasting is done using firewood/



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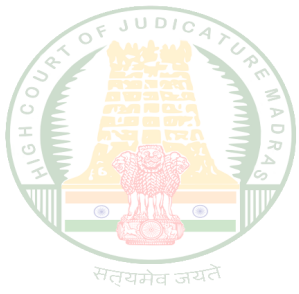
palm kernel-based ovens/machines and the temperature of the flames is around 400 to 600 degrees Celsius. As a result, the betel nuts would be roasted well beyond 100 degrees Celsius, usually in the range of 130-150 degrees Celsius.

Thirdly, the areca nuts are removed from the roasting oven and allowed to cool at normal room temperature, with the assistance of the cooling fans.

Fourthly, when the areca nuts have cooled and attained normal room temperature, they are again fed back into the oven at enormous heat, so as to evenly roast the areca nut.

This process is performed repeatedly, until the water content of the fresh areca nuts is reduced to 10 to 15 per cent.

It needs to be noted here that the process of scattering mentioned is nothing but that of sun drying of the nuts. [here there is a clear admission that the nuts are already dried.] Mention of the flame temperature is not relevant, that is the heat with which the fire decomposes the solid firewood or palm kernels into a gaseous state by burning and that flame temperature is not relevant to the temperature of the nuts which are only heated to a temperature of 100 degrees for a short time and are not burnt to a crisp therefore they cannot be said



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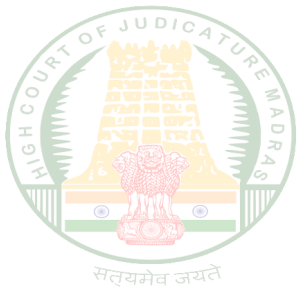


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to be roasted in the proper sense, they are only heat treated for a short while.

5.3. The most telling and accurate comment which proves that the goods are being heated in the oven in this process only for the sake of removing the inherent moisture is readily apparent and evident from the process which is graphically described above, but which only results in removal of the moisture to the extent of 10-15%, which is far higher than the FSSAI norms for even normal arecanut which has to be dried to an extent of a minimum of 7% to be even considered as fit for human consumption].

5.4. However, from most of the publications and even from the FSSAI regulations, it can be ascertained that the moisture content in raw arecanuts itself will be lower than 10% and as per 2.3.55 standard of FSSAI Food Regulations 2011, the Maximum moisture content allowed is 7% for Areca nuts. In view of this, the applicants claim of roasting the de-husked nuts multiple times at high temperatures to bring down the moisture content of areca nuts to 10-15% seems frivolous and unacceptable. In view of this, Consultation with multiple agencies viz. National Institute of Food Technology, Entrepreneurship and Management Thanjavur (NIFTEM-T), Arecanut Research & Development

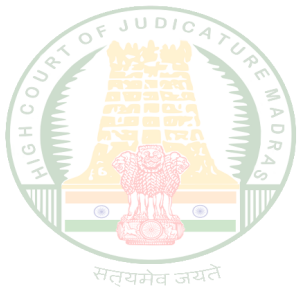


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Foundation (R) Mangalore, M.S. Swaminathan Agricultural College and Research Institute Thanjavur, Kelad. Shivappa Nayaka University of Agricultural & Horticultural Sciences Shivamogga, ICAR-Central Plantation Crops Research Institute Kasargod etc. having expertise in agricultural science were made by way of letter communications (RUD-4), asking them to provide information on the procedures adopted and parameters (Moisture content/carbohydrate/Polyphenols etc.) looked into for testing the areca nuts in identifying whether they have gone through the procedure of roasting. Further, representative samples were drawn and forwarded herewith in Tamper Proof Sampling Covers to test and classify the nuts based on the processing they have gone through (either roasted or raw areca nuts etc.). Test report of Arecanut Research & Development Foundation (R) -Mangalore was received in which it was stated that there is no particular variety known as roasted areca nut and the nuts sent for testing were of Indonesian variety, emitting a smoky smell, containing visible mould infestation and it interalia stated that, the areca nuts were not in accordance with the quality standards set out. Letters to CRCL labs (Chennai & Delhi) were sent seeking details on the roasting procedures. As no concrete reply from the



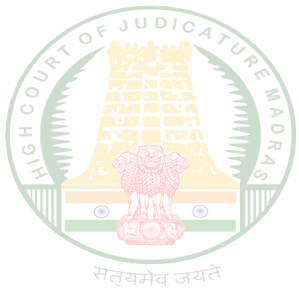
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above-mentioned agencies or any scientific publications on the tests or parameters adopted in identification of roasted nuts was adduced, recourse in this respect is taken from the order of Customs Authority for Advance Rulings ("CAAR") itself. Portion of the CAAR order "CAAR/MUM/ARC/39,40,41/2023 dated 12.05.2023" is reproduced below for ease of reference:

"4.17 I have perused a test report issued by ABC Techno Labs India Pvt. Ltd., Chennai dated 31.3.2023 on the samples of roasted areca nut whole & split in which the test result indicates the moisture content, a test parameter, of the samples in the range of 3.34% to 3.84%. Moisture content in raw areca nut is found to be generally in the range of 10-15%. As per applicant this test report indicates that the products were subjected to the roasting process. This aspect of product testing is a part of Customs Compliance Verification (CCV) process on importation of goods. Jurisdictional Customs Commissionerate carry out process of testing of imported goods with the help of concerned government partner agencies (GPAs) to cross-examine accuracy of declaration of goods in the import documents namely a Bill of entry and its supporting documents before an out of charge (OOC) is granted. Hence the utility of sample test report at this stage is limited to only support



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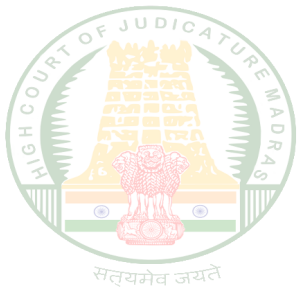


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applicant's contention that the goods were subjected to the process of roasting and not merely to a moderate heat treatment."

5.5. As per the instruction provided in the CAAR order mentioned above, the representative samples collected were sent to CRCL labs for testing the samples for total moisture content and carbohydrate content for identifying the nature of areca nuts."

16. In the above paragraphs, the respondent had stated that even though they have requested the CRCL Lab, Chennai and CRCL Lab, Delhi, they had not received any response with regard to the roasting procedures. Hence, they have recorded that there was no concrete reply from both the CRCL Labs and also from other agencies, viz., National Institute of Food Technology, Entrepreneurship and Management Thanjavur (NIFTEM-T), Arecanut Research & Development Foundation (R) Mangalore, M.S. Swaminathan Agricultural College and Research Institute Thanjavur, Kelad. Shivappa Nayaka University of Agricultural & Horticultural Sciences Shivamogga, ICAR-Central Plantation Crops Research Institute Kasargod etc.

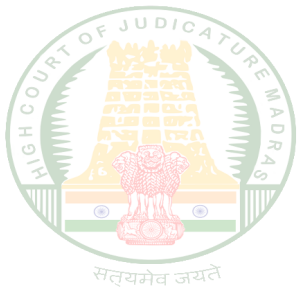


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17. According to the respondents, they are all having expertise in agricultural science. Therefore, they have been called for report with regard to the information of procedures adapted for testing the roasted areca nuts. However, they have not provided any detailed report with regard to the roasting procedure.

18. Further, in the impugned order, the respondent had extracted the paragraph No.4.17 of the order passed by the Advance Ruling Authorities, which reads as follows:

"4.17 I have perused a test report issued by ABC Techno Labs India Pvt. Ltd., Chennai dated 31.3.2023 on the samples of roasted areca nut whole & split in which the test result indicates the moisture content, a test parameter, of the samples in the range of 3.34% to 3.84%. Moisture content in raw areca nut is found to be generally in the range of 10-15%. As per applicant this test report indicates that the products were subjected to the roasting process. This aspect of product testing is a part of Customs Compliance Verification (CCV) process on importation of goods. Jurisdictional Customs Commissionerate carry out process of testing of imported goods with the help of concerned government



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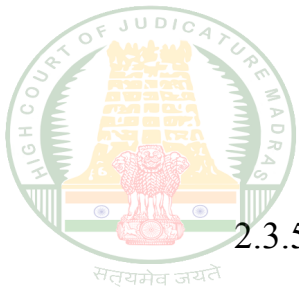


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partner agencies (GPAs) to cross- examine accuracy of declaration of goods in the import documents namely a Bill of entry and it's supporting documents before an out of charge (00C) is granted. Hence the utility of sample test report at this stage is limited to only support applicant's contention that the goods were subjected to the process of roasting and not merely to a moderate heat treatment."

19. The above paragraph makes it clear that even though no concrete reply was provided with regard to the roasting procedure of areca nuts from any agencies, the Advance Ruling Authorities have determined the parameters for “raw areca nuts” as well as the “roasted areca nuts”. They had found that generally the moisture content of the “raw areca nuts” would be between the range of 10% and 15%, whereas the moisture content of “roasted areca nuts” would be below 10%.

20. The respondent-department had refused to accept the order passed by the Advance Ruling Authority and had submitted that as per



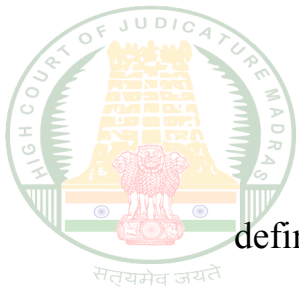
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2.3.55 Standard of Food Safety and Standards (food products standards and food additives) Regulations, 2011, the maximum moisture content is 7% in the areca nuts and some times, the moisture content in the raw areca nuts itself will be lower than 10%. Therefore, they had refused to accept the decision of the Advance Ruling Authorities.

21. However, this Court is of the view that while arriving at the conclusion in respect of the nature of imported areca nuts, it is important for the respondents to analyse the self life of the raw areca nuts as well as the roasted areca nuts. However, the respondent has not carried out any exercise in this aspect. If the moisture content is considered with the self life of the raw areca nuts, probably, the Authorities would have arrived at different conclusion. However, no such exercise was carried out by the Authorities concerned.

22. Further, as discussed above, there is no precise definition for the term “roasted areca nuts”. Hence, in the absence of such precise



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definition, they are bound to follow the decision of the Hon'ble Division Bench, whereby the order passed by the Advance Ruling Authorities was confirmed. However, while arriving at the conclusion to determine the nature of imported goods, the respondents had passed the impugned order-in-original, whereby they had completely deviated the law laid down by the Hon'ble Division Bench.

23. The respondents had also referred the report issued by CRCL Laboratories, New Delhi, whereby it was mentioned that the moisture content of the areca nuts is 7% and 8.8%. On the other hand, according to the petitioners, there was heavy rain due to cyclone and the areca nuts were kept in a warehouse, where the water has intruded, due to which, in the report given by CRCL, Delhi, the moisture content of the areca nuts was shown on the higher side i.e., as 7% and 8.8%, Even though moisture content was shown on the higher side, the same does not exceeds the parameters fixed by the Advance Ruling Authorities for “roasted areca nuts”. Further, in the other 3 reports given by CRCL Laboratories, Chennai, FSSAI and M/s.PT Carsurin Medan, the accredited Laboratory in Indonesia, the moisture content of the areca nuts

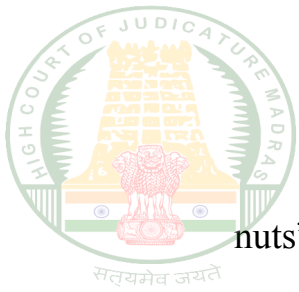


are shown as below 4%.

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24. Further, though the respondents had considered and recorded the findings of the Advanced Ruling Authorities, they had failed to provide any reason for non-consideration of parameters fixed by the Advance Ruling Authorities, based on which, one could arrive at a conclusion that the imported areca nuts are roasted or not. In spite of the fact that 3 Laboratories had given reports stating that the moisture content of the areca nuts is below 4%, the respondent had ignored the said reports and rejected the same blindfoldedly.

25. That apart, the parameters fixed by the Advance Ruling Authorities was also confirmed and upheld by the Hon'ble Division Bench of this Court and the same was not at all challenged before the Hon'ble Apex Court. In such case, it is clear that the order passed by the Advance Ruling Authorities had attained its finality and hence, the law is well settled in the aspect of fixing the parameters for roasted areca nuts. However, without considering the said parameters, the respondents had arrived at a conclusion that the imported areca nuts are not “roasted areca



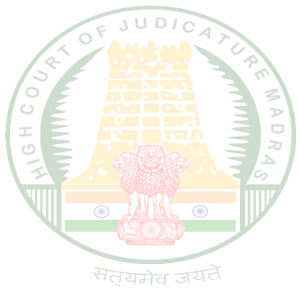
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nuts”. When such being the case, certainly, this Court can interfere with the order-in-original passed by the respondent. Therefore, this Court is of the view that though the alternate remedy is available, the petitioner can very well approach this Court.

26. Further, the necessity for this Court to interfere in the impugned order-in-original are as follows:

i) The order of Advance Ruling Authorities, whereby they had fixed the parameters with regard to the moisture content of the “roasted areca nut”, has not been considered by the respondents while passing the impugned order;

ii) In the CMA Nos.600, 1206 and 1750 of 2023, the Hon'ble Division Bench had upheld the aforesaid parameters fixed by the Advance Ruling Authorities vide its order dated 01.08.2023 and the same was not at all challenged by the respondents, in which case, the said order had ultimately attained its finality. However, in non-application of mind, the respondent had passed the impugned order without considering the lab reports and other vital documents filed by the petitioners.

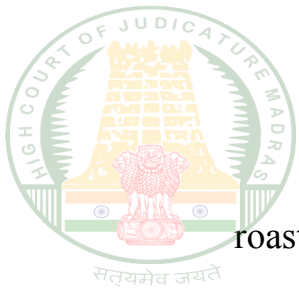


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27. In the above situations, this Court can very well interfere with the order-in-original and the law is very well settled in this aspect. Accordingly, the 2nd issue is hereby answered.

28. That apart, as contended by the petitioners, both the areca nuts (raw areca nuts and roasted areca nuts) are not prohibited goods and the same can be imported. For the importation of raw areca nuts, the minimum price fixed is a sum of Rs.351/- per kg, whereas, no such minimum price was fixed for the roasted areca nuts. Under these circumstances, as per the parameters fixed by the Advance Ruling Authorities, if the moisture content is between 10% and 15%, the same would be considered as “raw areca nut” and anything below the said category would be considered as “roasted areca nut”. Except the said parameters, no other determinations are available to classify the nature of areca nuts. In this case, most of the laboratories had given their reports stating that the moisture content of the areca nuts is below 4%.

29. Even in the order-in-original, the respondents have recorded that in spite of the request made by the respondents, no concrete reply was provided by the aforementioned laboratories with regard to the



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roasting procedure of areca nuts. Under these circumstances, the Advance Ruling Authorities had fixed the parameters to determine as to whether the areca nuts are roasted or not and as stated above, no other definition is available to determine as to whether the areca nuts are roasted or not except the said parameters fixed by the Advance Ruling Authorities. However, without following the said parameters, the respondents had applied their own procedures while passing the impugned order, which is not permissible either in the Advance Ruling or in the Customs Tariff or under Customs Act.

30. Further, the respondents had over-exercised their jurisdiction and completely ignored the law laid down by this Court in CMA Nos.600, 1206 and 1750 of 2023 with regard to the parameters, based on which, one could arrive at a conclusion and get answers for the definition of “roaster areca nuts”.

31. At this juncture, it is pertinent to mention that the author of this order is also hails from the agricultural family and the betel nuts are cultivated, in and around his farm lands, where he had occasions to



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examine the difference between the “raw areca nuts” and the “roasted areca nuts”. As per the answers received from the Farmers, who are cultivating the betel nuts (areca nuts) and doing the process of roasting the same, it appears that if the areca nuts are not dried (fruits before peeling) or roasted (after peeling), the same will get affected with fungus. Further, it was informed by the farmers that once the raw areca nuts (before its ripening stage) are peeled out and kept for more than a week, the same will get spoiled and will not become viable to sell it commercially. Hence, in the case of “raw areca nuts”, it is clear that the same cannot be imported unless and otherwise it is “boiled” or “roasted”. In this case, the Lab reports had made it clear that the said Labs have witnessed the burning smell while testing the imported areca nuts, which ultimately proves that the said imported areca nuts are “roasted”.

32. In this case, though the goods were imported an year ago, still it had not lost its originality and it is in good condition, which ultimately shows that the imported goods are “roasted areca nuts”.

33. For all these reasons, this Court is of the considered view that as per the parameters determined by the Advance Ruling Authorities and



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taking into consideration of other aspects as discussed above, the areca nuts, imported by the petitioners, will squarely fall within the parameters of “roasted areca nuts”. However, the respondent had failed to consider the aspects, which were discussed above, and passed the order-in-original without even considering the order passed by this Court in CMA Nos.600, 1206 and 1750 of 2023, whereby the order of the Advance Ruling Authorities was confirmed. Therefore, the impugned order passed by the respondent is liable to be set aside. Accordingly, the impugned order passed by the respondents dated 22.07.2024 is set aside.

34. Since this Court has arrived at the above decisions after considering the facts and circumstances of the case, the judgments referred by both the learned Senior counsel have not been considered by this Court.

35. Further, this Court is of the view that since these goods were imported an year ago, the further delay in releasing the goods will damage the products, which leads to economical waste of money, men

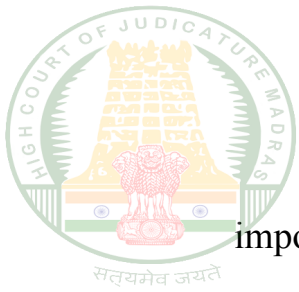


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and the efforts put by the farmers to cultivate these products. Therefore, this Court is not inclined to sit and watch such waste of money, men, labour and hard work of farmers.

36. In view of the above, this Court directs the respondents to release the areca nuts, imported by the petitioner, within a period of 2 working days from the date of receipt of copy of this order. Further, since the fault is purely on the part of the respondents, they shall release the goods without any demurrage charges. In this regard, the respondents are directed to issue a detailed certificate for waiver of demurrage and container charges.

37. Additionally, this Court feels that it would be appropriate to point out that the Government has taken all the initiatives to protect the interest of the farmers, including the fixation of minimum support price for importing the “raw areca nuts” at the rate of Rs.351/- per kg along with standard rate of duty at 100% and basic rate of duty at 80%. However, now the importers had imported the goods in the form of “roasted areca nuts”, which would falls under Chapter 20, where they can



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import the “roasted areca nuts” at the rate of 30% of duty and no minimum support price has been fixed for the “roasted areca nuts”.

Therefore, taking advantage of Tariff entries in Chapter 20, the “roasted areca nuts” have been imported and if the minimum support price is also fixed for the “roasted areca nut” as of the “raw areca nuts”, the entire issue will get resolved and in future, no such issues will be raised in the case of importing the areca nuts. Of course it is not to say anything about the minimum support price of the “roasted areca nuts” but it is purely the wisdom of legislation.

38. In the result, these writ petitions are allowed. No costs.

Consequently, the connected miscellaneous petitions are also closed.

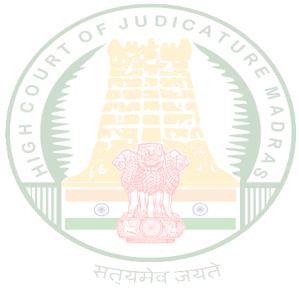
22.11.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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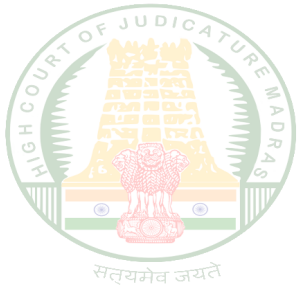


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- 1.The Commissioner of Customs,
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 2.The Additional Commissioner of Customs (Group-1),
Chennai Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 3.The Assistant Commissioner of Customs,
Import, Chennai II,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
- 4.The Assistant Commissioner of Customs (SIIB),
Chennai III,
Commissionerate, Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

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KRISHNAN RAMASAMY.J.,

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W.P.Nos.23836 & 24237 of 2024
and W.M.P.Nos.26088, 26089, 26481 to 26484 of 2024

22.11.2024