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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 33823 OF 2024 (T-CUS)

C/W

WRIT PETITION NO. 17776 OF 2025 (T-CUS)

WRIT PETITION NO. 24075 OF 2025 (T-CUS)

IN WP No. 33823/2024

BETWEEN:

M/S VAIBHAV INTERNATIONAL
REPRESENTED BY SOLE PROPRIETOR
JITENDRA KUMAR CHAJER
AGED ABOUT 42 YEARS
S/O BIMAL KUMAR
NO.402, PID NO. 28-95-8/126,
2ND FLOOR NO.8, KEMPEGOWDA ROAD,
BHOOMIKA THEATRE, GANDHI NAGAR,
BENGALURU – 560 009

…PETITIONER

(BY SRI. KIRAN S. JAVALI AND SRI. V. RAGHURAMAN, SENIOR COUNSELS FOR SRI. SHASHWATH S. PRAKASH, SRI. SAMIT PARVATIKAR, SRI. C.R. RAGHAVENDRA & SMT. SANJANA AHUJA, ADVOCATES)

AND:

THE COMMISSIONER OF CUSTOMS
CITY CUSTOMS COMMISSIONERATE
CR BUILDING, QUEENS ROAD,
BANGALORE – 560 001

…RESPONDENT

(BY SRI. ARAVIND KAMATH, ASG FOR
SRI. UNNIKRISHNAN M., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ACTION OF THE RESPONDENT IN SEIZING THE GOODS IMPORTED VIDE BILL OF ENTRY NO.5470956 DATED 06.09.2024 AT ANNEXURE-D DATED 06.12.2024 AND ETC.,

IN WP NO. 17776/2025

BETWEEN:

M/S VAIBHAV INTERNATIONAL
GST-29AHZPC6908M1ZG
AN UNREGISTERED PROPRIETARY FIRM
REPRESENTED BY PROPRIETOR,
JITENDRA KUMAR CHAJER,
AGED ABOUT 42 YEARS,
S/O BIMAL KUMAR,
NO.402, PID NO. 28-95-8/126,
2ND FLOOR, NO.8, KEMPEGOWDA ROAD,
BHOOMIKA THEATRE, GANDHI NAGAR,
BENGALURU – 560 009

...PETITIONER

BY SRI. KIRAN S. JAVALI AND
SRI V. RAGHURAM, SENIOR COUNSELS APPEARING FOR,
SRI. SHASHWATH S. PRAKASH, SRI SAMIT PARVATIKAR,
SRI. C.R. RAGHAVENDRA &
SMT. SANJANA AHUJA, ADVOCATES)

AND:

1. THE COMMISSIONER OF CUSTOMS
CITY CUSTOMS COMMISSIONERATE,
C R BUILDING, QUEENS ROAD,
BENGALURU – 560 001

2. ASSISTANT COMMISSIONER OF CUSTOMS
OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS,
INLAND CONTAINER DEPOT, WHITEFIELD,
BANGALORE – 560 066

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR
SRI. UNNIKRISHNAN M., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION AND SET ASIDE THE COMMUNICATION DATED 23.5.2025 (ANNEXURE-A) AND ETC.,

IN WP NO. 24075/2025

BETWEEN:

M/S VAIBHAV INTERNATIONAL
REPRESENTED BY PROPRIETOR
JITENDRA KUMAR CHAJER
AGED ABOUT 42 YEARS
S/O BIMAL KUMAR
NO. 402 PID NO. 28-95-8/126,
2ND FLOOR, NO.8, KEMPEGOWDA ROAD
BHOOMIKA THEATRE, GANDHIN NAGAR
BENGAURU – 560 009

...PETITIONER

(BY SRI. KIRAN S. JAVALI AND
SRI V. RAGHURAM, SENIOR COUNSELS APPEARING FOR,
SRI. SHASHWATH S. PRAKASH, SRI SAMIT PARVATIKAR,
SRI. C.R. RAGHAVENDRA &
SMT. SANJANA AHUJA, ADVOCATES)

AND:

THE COMMISSIONER OF CUSTOMS
CITY CUSTOMS COMMISSIONERATGE
C R BUILDING, QUEENS ROAD,
BANGLAORE – 560 001
(REP. BY SENIOR STANDING COUNSEL)

...RESPONDENT

(BY SRI. ARAVIND KAMATH, ASG FOR
SRI. UNNIKRISHNAN M., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE SHOW CAUSE NOTICE NO.674/2024-CUSTOMS-SIIB ISSUED THE RESPONDENT IN F.NO BY CUS/SIIB/MISC/663/2024-ICD-WHITEFIELD-BENGALURU DATED 17.12.2024 (ANNEXURE B) AS HAVING BECOME INFRUCTUOUS AND ETC.,

THESE PETITIONS ARE BEING HEARD AND RESERVED ON 10.12.2025 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

CAV ORDER

In W.P.No.33823/2024, petitioner seeks for the following reliefs:-

" (a) Issue a writ of certiorari or any other writ, order or direction and set aside the action of the Respondent in seizing the goods imported vide Bill of Entry No.5470956 dated: 06.09.2024 at ANNEXURE-D, dt: 06.12.2024.

(b) Issue a Writ of Mandamus or any other appropriate writ order or direction Respondent to issue certificate of waiver off demurrage, detention and ground rent charges.

(c) Pass such other order or direction as deemed fit and proper by this Hon'ble Court in the facts and circumstances of the case."

In W.P.No.17776/2025, petitioner seeks for the following reliefs:

" (a) Issue a Writ of certiorari or any other writ, order or direction and set aside the communication dated: 23.05.2025 (Annexure-"A");
(b) Issue a Writ of Mandamus or any other appropriate Writ or order direction directing the release of the

imported cargo in accordance with the Interim Orders of this Hon'ble Court dated: 29.04.2025 (Annexure-"D").

(c) Pass such other order or direction as deemed fit and proper by this Hon'ble Court in the facts and circumstances of the case."

In W.P.No.24075/2025, petitioner seeks for the following reliefs:-

" (a) Issue a Writ of certiorari or any other writ, order or direction set aside the SHOW CAUSE NOTICE NO. 674/2024-CUSTOMS-SIIB issued by the respondent in F.NO.CUS/SIIB/MISC/663/2024 ICD-Whitefield-Bengaluru dated: 17.12.2024 (Annexure-"B") as having become infructuous.

(b) Issue a Writ of Mandamus or any other appropriate writ order or direction, directing the Respondent to forebear from acting or hearing the SHOW CAUSE NOTICE NO. 674/2024+CUSTOMS-SIIB issued by the respondent in F.No.CUS-SIIB/MISC/663/2024-ICD-Whitefiled-Bengaluru dated: 17.12.2024 (Annexure-"B");

(c) Pass such other order or direction as deemed fit and proper by this Hon'ble Court in the facts and circumstances of the case."

2. The brief facts giving rise to the present petitions are as under:

Petitioner contends that on 06.08.2024, Petitioner imported 28 MTs of Roasted Areca nuts from CV Neelam Pinang Jaya, Indonesia vide Invoice bearing No.015-NPJ-AUG-2024 along with the packing list issued by the said Neelam Pinang Jaya and that on 06.09.2024Petitioner filed Bill of Entry (BOE) No.5470956 for clearance of 28 MTs Roasted Areca nuts from Indonesia valued at Rs. 35,65,800/- under Tariff Entry - 20081920. In pursuance of the same, on 11.09.2024, the Commissioner of Customs sent samples of subject roasted areca nuts covering one container for testing to the Central Revenues Control Laboratory(CRCL), New Delhi which is a subordinate office under the control of Central Board of Excise and Customs, Department of Revenue, Ministry of Finance. The CRCL issued a test report dated 06.09.2024 to the Commissioner of Customs for the aforesaid petitioner's BOE No.5470956 stating that the sample provided is roasted areca nuts. Subsequently, on 08.10.2024, samples of areca nuts were again sent by Commissioner of Customs for testing to M/s. ICAR-CPCRI, Kerala, which issued a report dated 11.11.2024 stating that it cannot be ascertained whether the sample provided have undergone roasting process and that the sample has similar characteristics to that of a raw dried areca nut/betel nuts.

2.1 It is contended that 06.12.2024, a Seizure Memo was issued by the respondents under Section 110 of Customs Act, 1962 (for short, the "Customs Act") for seizing 28MTs of Areca Nuts of BOE 5470956 dated 06.09.2024 – based on 2nd test report from ICAR dated 11.11.2024 while ignoring the earlier CRCL Report dated 30.09.2024 and a Mahazar issued by the respondents for seizure of the roasted areca nuts container imported by the Petitioner vide BOE No. 5470956 dated 06.09.2024 on grounds of violation of foreign trade policy under Foreign Trade (Development and Regulation) Act, 1992 (for short, the "FTDR Act").

3. Aggrieved by the impugned action of the respondents in seizure and detention of roasted areca nuts vide Seizure Memo dated 06.12.2024 and for release of the said detained goods, petitioner preferred the instant W.P.No.33823/2024 on 10.12.2024 seeking the aforesaid reliefs.

4. During the pendency of the aforesaid W.P.No.33823/20204, the respondents issued the impugned Show

Cause Notice dated 17.12.2024 (SCN) to the Petitioner raising a re-determined demand of Rs.1,62,11,227/- against the roasted areca nuts imported vide BOE No. 5470956 dated 06.09.2024. In the impugned SCN, respondents rejected the classification of Roasted Areca nuts under tariff entry 2008 1920 as well as the valuation of imported goods based on MIP Rs.351 per kg. The SCN also stated that the petitioner had imported prohibited goods under Notification No.57/2015-20 dated 14.02.2023 which were liable for confiscation under Section 111(d), (m) and (o) of the Customs Act and raised a duty demand of Rs.1.78 crores under Section 28(4) together with interest under Section 28AA and penalty under Section 114A of the Customs Act.

5. The instant W.P.No.33823/2024 came up before the co-ordinate bench of this Court on 27.01.2025 which passed an order directing the respondents to forward the subject goods to the CRCL, New Delhi and obtain a report, pursuant to which, the CRCL submitted its 2nd Test report dated 31.01.2025 reiterating and re-affirming its earlier 1st report and stating that the moisture content was 5.9% and classified the goods as roasted areca nuts.

6. It is contended that on 02.04.2025 the DGFT issued Notification No.02/2025-26 making the import of areca nuts including roasted areca nuts free, if imported by 100% Export Oriented Units (EOU) and if the CIF value is above Rs. 351/- per kg.

7. Thereafter on 29.04.2025, this Court passed an interim order directing interim release of the subject goods in of the Petitioner by imposing certain conditions. Aggrieved by the said interim order dated 29.04.2025, the respondents preferred an appeal in W.A.770/2025 on 15.05.2025 before the Hon'ble Division Bench. On 23.05.2025, respondents issued the impugned communication to the petitioner for provisional release of the goods assessing the same provisionally under Ch 08028090 by applying the value and duty applicable as on that date and called upon the petitioner to pay the duty assessed provisionally and get the goods released. Aggrieved by the impugned Communication dated 23.05.2025, petitioner preferred the instant W.P.No.17776/2025 on 19.06.2025 seeking quashing of the impugned communication and for release of the subject goods in its favour.

8. On 30.06.2025, the Hon'ble Division Bench passed an order in W.A.No.770/20205 modifying the aforesaid interim order dated 29.04.2024 passed in W.P.No.33823/2024 and thereby holding that the Petitioner is entitled to provisional release of the goods subject to the payment of 25% bank guarantee of value of consignment imported by the petitioner. On 21.07.2025, the respondents issued a letter of re-assessment of the subject goods by classifying them under CTH 08028090 instead of CTH 20081920, subsequent to which, petitioner preferred the instant W.P.No.24075/2025 on 13.08.2025 seeking quashing of the impugned Show Cause Notice dated 17.12.2024 (SCN) and for other reliefs.

9. In the case of ***Indu Shekar vs. Union of India – W.P.No.5253/2025***, the Hon'ble Division Bench of the Bombay High Court passed an interim order dated 03.10.2025 staying the operation of the aforesaid Notification No.02/2025-26 dated 02.04.2025 issued by the respondents. On 15.10.2025, respondents issued a Notification 43/2025-26 classifying roasted areca nuts under ITC (HS) Code 20081991 and prohibiting its import if the CIF value is less than Rs. 351/- per Kg. Subsequently,

on 07.11.2025, the Division Bench of this Court passed an order in the aforesaid W.A.No.770/2025 clarifying its earlier order dated 30.06.2025, by stating that "value of the imported consignment" to mean value determined by authorities under section 110A of Customs Act for furnishing bank guarantee by the petitioner.

10. The respondents have filed their objections and have contested the petition by disputing and denying the claim of the petitioner and have sought for dismissal of the petitions.

11. Heard Sri.V.Raghuraman, learned Senior Counsel for the petitioner and Sri.Arvind Kamath, learned Additional Solicitor for the respondents and perused the material on record.

12. In addition to reiterating the various contentions urged in the petitions and referring to the material on record, learned Senior counsel submitted that the impugned SCN, Communication, provisional assessment, seizure of subject goods by the respondents etc., are illegal, arbitrary and contrary to facts and law and the same deserve to be quashed and respondents are to be directed to release the subject goods in favour of the petitioner. He would elaborate his submissions and submit that roasted areca

nuts (whole/cut/split) are specifically classifiable under CTH 20081920 and the attempt to classify it under CTH 08028090 would fall foul of the settled rule of construction that specific entry would prevail over general entry and as per the lab reports, moisture content of areca nuts are shown as below 10%, and hence, the subject goods are classifiable as “roasted areca nuts” under CTH 20081920.

12.1 Learned Senior counsel would submit that areca nuts classifiable under Chapter 8 are subject to Import Policy restriction wherein they are classified as ‘Prohibited goods’ in the Notification No. 57/2015-2020 dated 14.02.2023 which states that for CTH 08028010, 08028020, 08028030 and 08028090 – Import Policy is ‘Prohibited’, but however, import is ‘Free’ if CIF value is Rs. 351/- or above per Kg. In the subsequent Notification No. 02/2025-26 dated 02.04.2025 new conditions were imposed on CTH 08028090 as prohibited and import is free if CIF value is Rs. 351 and above per Kg and this code also covers all kinds of processed Areca Nut including Roasted Areca nut while CTH 20081920 is ‘Free’ but however Roasted Areca nuts are not covered here as they are specifically covered under CTH 08028090.

12.2 Learned Senior Counsel would invite my attention to the Notification No. 43/2025-26 dated 15.10.2025 in order to point out that where CTH 08028090 continues to be prohibited, CTH 20081991 provided that 'Roasted Areca nut' falling under code 20081991 having CIF value less than Rs.351/- per kg is 'Prohibited' which would effectively mean that the respondents had accepted classification of Roasted areca nuts under Chapter 20. It was submitted that the new Import Policy as per the DGFT Notifications came into force only from 02.04.2025 and 15.10.2025, subsequent to the petitioner importing the subject goods and submitting BOE on 06.09.2024 and the same cannot be made applicable as the BOE was deemed to have been presented in terms of Regulation 4(2) of Electronic Integrated Declaration and Paperless Processing Regulations, 2018 and the rate and value in force stands crystallized under Section 15(1) of Customs Act and that date was 06.09.2024 when BOE was presented by the petitioner and hence, the subsequent Import Policy issued under Notifications dated 02.04.2025 and 15.10.2025 cannot be made applicable to the subject goods.

12.3 It was submitted that there was no dispute regarding valuation of Roasted Areca Nuts imported under BOE dated 06.09.2024, since neither impugned Seizure Memo / Show Cause Note allege undervaluation in terms of Section 14 of Customs Act and therefore, the transaction value based on the invoice value declared in the BOE is the value of imported consignment for payment of customs duty and the DGFT restriction does not fix value under the Customs Act but only prohibits consignments below a particular value but does not fix the value which can be done only under Section 14 of the Customs Act as is evident from Section 3 of FTDRA, 1992, especially when none of the proceedings have questioned the invoice value adopted by the petitioner. He invited my attention to the judgment of the Apex Court in the case of ***Century Metal Recycling Pvt. Ltd vs UOI 2019 - (367) ELT 3 (SC***) to contend that the 'transaction value' or invoice value cannot be rejected unless procedure under Rule 12 has been scrupulously followed and that in terms of Rule 12 of Customs Valuation(Determination of valuation of imported goods) Rules, 2007, the proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods and if and when the doubt persists, the transaction value is to be determined sequentially in terms of Rules 4 to 9after providing an opportunity to the petitioner.

12.4 It was submitted that there is no dispute regarding valuation of Roasted Areca Nuts imported under BOE dated 06.09.2024, since neither impugned Seizure Memo / Show Cause Note allege undervaluation in terms of Section 14 of Customs Act and therefore, the transaction value based on the invoice value declared in the BOE is the value of imported consignment for payment of customs duty.

12.5 It was further submitted that for the purpose of clearance of imported goods, every importer is required to file, in terms of the Section 46 of the Customs Act, a Bill of Entry for home consumption or warehousing, as the case may be, in the form prescribed under the relevant regulations electronically under Regulation 4 of Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 and since Section 17 provides that an importer entering any imported goods under Section 46 shall self assess the duty, the importer shall declare the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc. in respect of the imported goods while presenting Bill of Entry.

12.6 It was submitted that while Section 17(2) – provides for verification of declaration in BOE by the proper officer, Section 17(4) provides that on verification, examination or testing of goods under self assessment, the proper officer may re-assess duty on such goods under Section 17(5) and in case of re-assessment under Section 17(4) being contrary to self assessment, the property officer shall pass speaking order within 15 days from the date of re-assessment of bill of entry. In this context, he would place reliance upon the judgment of the Apex Court in the case of ***Commissioner v. Canon India Pvt. Ltd. — 2024 (390) E.L.T. 545 (S.C.)*** to contend that that the proceedings under Section 28 are subsequent to the completion of the process set out in Section 17 and the procedure envisaged under Section 28 is in the nature of a *quasi-judicial* proceeding with the issuance of the show cause notice by the proper officer followed by adjudication of such notices by the field customs officers and therefore, the nature of review under Section 28 is significantly different from the nature of assessment and re-assessment under Section 17 and the ambit of Section 28 has also been restricted to the review of assessments and re-assessments done under Section 17 for ascertaining if there has been a short-levy, non-levy, part-payment, non-payment or erroneous refund. It was therefore submitted that these provisions have not been complied with by the respondents who have not followed the prescribed procedure and the impugned proceedings, SCN, etc., deserve to be quashed.

12.7 Learned Senior Counsel also submitted that the impugned Communication dated 23.05.2025 which states that goods imported under BOE dated 06.09.2024 has been provisionally assessed by classifying goods under Chapter 8 by applying value and duty to the said chapter heading as on that date is illegal and arbitrary, inasmuch as the impugned Communication dated 23.05.2025 which purports to do the 'provisional assessment' neither refers to Section 18 of Customs Act nor is the provisional assessment done in accordance with the procedure laid down in Customs (Finalisation of Provisional Assessment) Regulations, 2025 or its predecessor regulations and the same deserves to be quashed on this ground also. In support of his submissions, learned Senior counsel placed reliance upon the following judgments:

i) Commissioner v. Shahnaz Commodities International Pvt. Ltd. — 2023(386) E.L.T. 214 (Mad.)

ii) Commissioner Vs. Universal Impex & Neena Impex in W.A.Nos.3647 and 3648 of 2024

iii) Rawder Petroleum Pvt. Ltd. Vs UOI (2025) 32 Centax 169 (All.)

iv) Optimist Impex LLP Vs UOI R/Spl Civil Application No. 1254/2025 dated 19.03.2025

v) Union of India v. G.S. Chatha Rice Mills — 2020 (374) E.L.T. 289 (S.C.) –

vi) Union of India v. Cosmo Films Ltd. — 2023 (72) G.S.T.L. 417 (SC)

vii) Commissioner v. Bureau Veritas — 2005 (181) E.L.T. 3 (S.C.)

viii) Commissioner v. Prodelin India Pvt. Ltd. — 2006 (202) E.L.T. 13 (S.C.)

ix) Union of India v. Mahindra and Mahindra Ltd. — 1995 (76) E.L.T. 481 (S.C.)

x) ITC Ltd. v. Commissioner — 2019 (368) E.L.T. 216 (S.C.)

xi) Commissioner v. Canon India Pvt. Ltd. — 2024 (390) E.L.T. 545 (S.C.)

xii) Century Metal Recycling P Ltd vs UOI 2019 (367) ELT 3 (SC).

13. Per contra, the learned ASG for the respondents would reiterate the various contentions urged in the objections and submit that the impugned communications/orders dated 23.05.2025 were issued by the respondents to give effect to the orders passed by this Court and that it was factually incorrect to state that final assessment has been done and there was no requirement to hear the petitioner before provisional assessment was ordered by the respondents. It was submitted that the respondents had correctly determined the issues of tariff classification and valuation as per the DGFT Notification dated 02.04.2025 and the release of the subject goods would necessarily have to be done accordingly in terms of the orders passed by this Court. It was therefore submitted that the impugned SCN, proceedings, communications etc., are legal, correct and proper and that there was no merit in the petitions and that the same are liable to be dismissed.

14. I have given my anxious consideration to the rival submissions and perused the material on record.

15. The following points arise for consideration in the present petitions:

i) Whether the impugned provisional assessment is in accordance with the provisions contained in the Customs Act, 1962 and the Rules made there under?

ii) Whether the tariff classification adopted by the respondents in relation to the subject goods is legal, valid and proper?

iii) Whether the valuation done by the respondents in relation to the subject goods is in accordance with law?

iv) Whether the impugned show cause notice and all further proceedings pursuant thereto including confiscation etc., warrant interference by this Court in the present petitions?

Re: Point No. (i);

16. A perusal of the undisputed material on record will indicate that after the subject goods were imported, the bills of entry were filed provisionally; in this context, it would be apposite to note that the import took place on 06.09.2024 where the bills of entry produced have been marked as "F" which means final but subsequently on 23.05.2025, the bills of entry have been changed to "P" by the Department meaning 'provisional', thereby indicating that the first time that the Department modified the bill of entry was on 23.05.2025. The seizure memo dated 06.12.2024 which states

that the consignment was put on hold and sent for testing also states that on 11.9.2024, samples were sent to CRCL, New Delhi and the test reports were received on 30.09.2024, subsequent to which the sample was re-sent to ICAR, Kasargod on 08.10.2024 by the respondents and the test report was received on 11.11.2024. It is a matter of record that all these aspects were noticed by this Court in its interim order dated 29.04.2025 passed in W.P.No.33823/2024 as hereunder:

> " *The petitioners in all the petitions seek quashing / setting aside of the action of the respondents in seizing / detaining the subject goods viz., Arecanut imported by them from Indonesia and for other reliefs. By way of interim prayer, petitioners seek direction to the respondent to release the subject goods imported by them and for other reliefs.*
>
> *2. Since common questions of law and fact arise for consideration in these petition, they are taken up together for consideration.*
>
> *3. Briefly stated, the petitioners contend that they are proprietary concerns / partnership firms carrying on business in importing and trading of roasted Arecanuts having obtained the Importer / Exporter Code from the DGFT and having got registered for payment of GST under the CGST / KGST Act, 2017. It is contended that the petitioners import roasted Arecanuts, which are not prohibited and permitted by the respondents and in respect of which, customs duty*

payable is 'Nil' in view of the provisions of the Customs Act, 1962 and the Notifications, Circulars etc., issued by the respondents. It is further contended that the petitioners imported their respective subject roasted Arecanuts during August – September, 2024, samples of which were sent by the respondents to the Central Revenue Control Laboratory, New Delhi (CRCL), who issued / submitted reports during September, 2024 stating that the petitioners had imported roasted Arecanuts which were not raw Arecanuts, on which, customs duty was payable by the petitioners. Subsequently, respondents sent samples of the Arecanuts to Indian Council for Agricultural Research – Central Plantation Crops Research Institute (ICAR-CPCRI), Kasargod, Kerala, who submitted reports during October - November, 2024, to the effect that the subject goods were raw and dried Arecanuts and not roasted Arecanuts as contended by the petitioners. It is the grievance of the petitioners that subsequent to receiving the reports from ICAR – CPCRI, the respondents seized the subject goods during December, 2024 vide the impugned seizure and as such, the petitioners are before this Court by way of the present petitions putting forth various contentions along with documents.

4. The respondents have contested the petitions as well as the interim prayer by filing their statement of objections and documents specifically contending that the subject goods were raw Arecanuts and not roasted Arecanuts as claimed by the petitioners and that their claim was liable to be rejected. It is contended that since there were various discrepancies and ambiguities in the CRCL reports, *Arecanuts were once again sent to the ICAR-CPCRI, which submitted reports stating that the Arecanuts were raw / dried Arecanuts and not roasted Arecanuts and in the light of the said reports by the ICAR-CPCRI, the respondents detained and seized the subject goods and have issued show cause notices to the petitioners and the said proceedings are pending adjudication. It is therefore contended that the petitioners are not entitled to any relief in the present petitions which are liable to be dismissed.*

5. Heard learned Senior counsel for the petitioners and learned ASG for the respondents and perused the material on record.

6. Learned Senior counsel for the petitioners would reiterate the various contentions urged in the pleadings and documents and contend that in the light of the reports submitted by the CRCL prior to the petitions and during the pendency of the present petitions, pursuant to interim orders passed by this Court, the subject goods were roasted Arecanuts and not raw / dried Arecanuts and since the reports of the ICAR – CPCRI were not conclusive apart from the fact that the said organization was not a duly accredited laboratory, respondents were not entitled to detain / seize the Arecanuts which were to be released in favour of the petitioners. In support of his submissions, learned Senior counsel placed reliance upon the following judgments:-

> ***(i) The Commissioner of Customs vs. M/s.Shahnaz Commodities International Pvt. Ltd., - CMA No.600/2023 & connected matters Dated 01.08.2023;***
> ***(ii) M/s.Optimist Impex LLP vs. Union of India & others – R/Spl.Civil Application No.1254/2025 Dated 19.03.2025.***

(iii) The Commissioner of Customs vs. Laltanpuii Cus.Application No.1/2021 Dated 28.10.2021 confirmed in SLP Diary No.27003/2022 Dated 28.10.2021.
(iv) Ayesha Exports vs. Union of India & others – 2019 SCC OnLine PAT 3405;
(v) Commissioner of Customs vs. M/s.Neena Enterprises – W.A.No.3647/2024 & connected matters Dated 04.03.2025.
(vi) M/s.Universal Intex vs. Commissioner of Customs – W.P.No.23836/2024 & connected matters dated 22.11.2024.
(vii) M/s.Prenda Creations Pvt. Ltd., vs. Union of India – CWP – 28682/2024 Dated 09.04.2025;
(viii) Commissioner of Income Tax vs. Smt.Godavari Devi Saraf – 1977 SCC OnLine Bombay 215;

7. Per contra, learned ASG for the respondents would reiterate the various contentions urged in the statement of objections and submit that neither the Food, Safety and Standards Act, 2006 nor the FSS (Recognition and Notification of Laboratories) Regulations, 2018, or the FSS (Food Products Standards and Food Additives) – 2016 and 2017 are applicable to the Arecanuts, which were detained and seized under the CBIC Circular No.46/2020- Customs dated 15.10.2020, which permit testing of goods of outside samples by laboratories other than Revenue Laboratories and as such, the respondents were fully justified in sending the samples to ICAR – CPCRI which has issued reports to the effect that Arecanuts imported by the petitioners are not roasted Arecanuts and the respondents correctly detained and seized the subject goods by the impugned seizure which does not warrant interference by this Court in the present petitions, which are liable to be dismissed.

8. I have given my anxious consideration to the rival submissions and perused the material on record.

9. A perusal of the material on record will indicate that both sides have urged various factual and legal contentions in support of their respective claims regarding the subject goods being roasted Arecanuts as claimed by the petitioners or raw / dried Arecanuts as claimed by the respondents; so also, there are disputes between the parties in relation to the applicability of the FSS Act and Regulations vis-a-viz the Customs Act to the subject Arecanuts as well as the applicability and relevance of the Notifications, Circulars etc., relied upon by both sides, which would necessarily have a direct / substantial bearing / impact on the very detention / seizure which would necessarily have to be decided at the time of final disposal of the petitions; it is however an undisputed fact and the matter of record that immediately upon import of the subject Arecanuts by the petitioners along with Bills of Entry, the respondents on their own / suo moto thought it fit and appropriate to send the samples to the CRCL, Delhi; in this context, it is relevant to state that on 30.07.2024, the Government of India, Ministry of Finance, Department of Revenue / CBIC issued / addressed a communication to the Customs Authorities across India specifically stating that the CRCL has complete facility to test all samples described as "Arecanuts/Betelnuts" either in the form of splits, whole, broken or powder including answering the query as to whether they are raw or dried or roasted etc., and that the CRCL has complete facility to test these samples and reports are issued based on FSSAI Regulations and BIS Specifications. The said communication also states that since there were no facilities for testing *microbiological parameters at present in other revenue laboratories, it was decided by the competent authority to direct all samples pertaining to "Arecanuts/Betelnuts" in any form to CRCL for testing until further orders. The said communication reads as under:-*

F.No.:14-Adm/2023-24/Pt.I
Date: 30.07.2024

To

Date: 30.07.20124

The Pr. Commissioner/Commissioner of Customs, Chennai/Cochin/Goa/Kandia/Kolkata/Mangalore/Delhi, Mumbai/Tuticorin/Nhava Sheva/Vadodara & Vizag

Subject: Test of Areca Nut/ Betel Nut (raw/dried/roasted/powder) Reg.

Madam/Sir,

CRCL, New Delhi has been receiving samples described as Areca nut/Betel nut either in the form of splits, whole, broken or powder, for testing. The queries that are required to be answered includes mainly whether raw or dried or roasted, scented or not fit for human consumption, moisture content, are coline content, additive present or no etc. CRCL has the complete facility to test these samples and reports are issued based c the FSSAI regulation and BIS specification,

2. As there are no facilities for testing microbiological parameters at present in on revenue laboratories, it has been decided by the competent authority to direct all laboratory In-charges to henceforth forward any sample pertaining to "Areca nut/nut" in any form to CRCL, New Delhi for testing until further orders.

3. This issues with the approval of Director (RLs).

Yours faithfully,

(V.Suresh)
Joint Director(NFSG)

10. A perusal of the aforesaid communication will prima facie indicate that it is the CRCL which is the competent /

designated laboratory to test "Arecanuts/Betelnuts" in any form and submit a report including whether they are raw, dried, roasted etc., and the contention of the respondents that the said reports of the CRCL cannot be considered or looked into cannot be accepted, especially in the light of the aforesaid communication issued by the respondents themselves.

11. Learned ASG has contended that the said communication merely states that all samples are to be forwarded to the CRCL only because of lack of facilities for testing microbiological parameters in other laboratories and there was no bar for the respondents to send the samples to ICAR, which has issued a report against the petitioners and correctly accepted by the respondents; in this regard, the said issue regarding interpretation / construction of the said communication in the light of the statutory provisions would have to be dealt with at the time of final disposal of the petitions; at this stage, suffice it to state that so long as the respondents themselves had not only specifically stated that the CRCL had complete testing facilities coupled with the undisputed fact that the respondents themselves elected / chose to send the samples to the CRCL without any request made by the petitioners is sufficient to come to the conclusion that the respondents are estopped from now / subsequently contending that no reliance can be placed on the said CRCL reports for the purpose of ascertaining prima facie as to whether the subject goods were roasted Arecanuts as contended by the petitioners or raw / dried Arecanuts as contented by the respondents and *consequently, the said contention of the respondents is clearly barred by the principles of acquiescence and estoppel and the same cannot be accepted.*

12. A perusal of the material on record will also indicate that this Court heard both sides and passed the following order on 27.01.2025 as hereunder:-

> *" In these writ petitions, the petitioners are before this Court with a prayer to quash the seizure of Bill of Entry No.5470956 dated 06.09.2024 in W.P.No.33823/2024; Bill of Entry No.5040352 dated 13.08.2024 and Bill of Entry No.5164270 dated 21.08.2024 in W.P.No.33844/2024; and Bill of Entry No.5739104 dated 21.09.2024 in W.P.No.33855/2024 in respect of imported areca nuts and for a direction to the respondent to release the detained goods imported under Bill of Entry No.5867184 dated 29.09.2024 in W.P.No.33844/2024; and Bills of Entry Nos.5195460 dated 22.08.2024, 5743140 dated 22.09.2024, 5763310 dated 24.09.2024, 5866956 dated 29.09.2024 and 5887000 dated 29.09.2024 in W.P.No.33855/2024.*
>
> *The only question that would arise is as to whether the imported areca nuts are roasted one or raw areca nuts for the purpose of assessing the duty. The report on which respondent places reliance is disputed by the petitioners.*
>
> *Learned counsel for respondent submits that respondent has no objection to obtain report from any accredited Laboratory by sending the samples of areca nuts imported by petitioners.*
>
> *In the facts and circumstances existing in the present case, I deem it appropriate to direct the respondent to get the areca nuts in question tested from the accredited laboratory indicated in the respondent's statement of objections i.e., the documents produced by respondent - Annexure to Notification No.17/2023 dated 03.07.2023 of the Ministry of Commerce & Industry, Department of Commerce, Directorate General of Foreign Trade. i.e., Central Revenues Control Laboratory, Hillside Road, Pusa, New Delhi-110012.*
>
> *The respondent shall seek report on the following as indicated in the Annexure to the above Notification:*
>
> *i. Physical description of the sample: please comment on the size, shape, colour, nature and composition?*
>
> *ii. Whether these are de-husked or not?*

iii. Whether these are roasted areca nuts or not?

iv. Whether these are sundried/moderately heated areca nuts?

v. Whether the samples presented are raw areca or betel nuts (fresh or dried)? If not, what is the process that these nuts have undergone?

vi. What are the percentage of arecoline and tannin?

vii. Does the sample present a different appearance or consistency from raw dried areca or betel nuts?

viii. Does the sample retain the essential characteristics of raw, dried Areca nuts

ix. Please comment on the difference between raw dried areca or betel nuts and the sample presented.

x. Does the sample contain any flavouring materials or additives or preservatives? If yes, please mention the nature and composition of the same.

xi. What is the percentage of ash content?

xii. What is the percentage of water content,

Xiii. Please confirm presence of lime, katha (catechu) and tobacco, if any.

The respondent shall make arrangement to forward the samples of areca nuts imported by the petitioners covered under Bill of Entry No.5470956 dated 06.09.2024 in W.P.No.33823/2024; Bill of Entry No.5040352 dated 13.08.2024, 5164270 dated 21.08.2024 and 5867184 dated 29.09.2024 in W.P.No.33844/2024; and Bill of Entry No.5739104 dated 21.09.2024, Bills of Entry Nos.5195460 dated 22.08.2024, 5743140 dated 22.09.2024, 5763310 dated 24.09.2024, 5866956 dated 29.09.2024 and 5887000 dated 29.09.2024 in W.P.No.33855/2024 forthwith to the Central Revenues Control Laboratory, Hillside Road, Pusa, New Delhi-110012 to examine whether imported areca nuts are roasted or raw areca nuts and get the report within 10.02.2025.

List on 11.02.2025.

13. A perusal of the aforesaid orders will indicate that this Court has recorded the specific contention of the respondents that the following are accredited laboratories *where testing can be done in relation to the petitioners herein;*

a. ICAR – CPCRI, Kasargod;

b. CRCL, New Delhi;

c. CRCL, Mangalore;

d. CRCL, Chennai;

14. After hearing both sides and with the express consent of the respondents who have stated that they had no objection to obtain a report from any of the aforesaid accredited laboratories by sending samples of Arecanuts imported by the petitioners, this Court sent it to the CRCL, New Delhi, which has issued / submitted reports to this Court in the present petitions, specifically stating that the subject goods are roasted Arecanuts, thereby reiterating its earlier reports issued prior to the present petitions being filed wherein they had stated that the subject goods are roasted Arecanuts.

15. The aforesaid facts and circumstances prima facie indicate that in view of the fact that even according to the respondents who had themselves accepted not only that CRCL, New Delhi was a duly accredited laboratory but had also stated that they had no objection for the samples to be sent to CRCL, New Delhi and both the reports indicating that the subject goods are roasted Arecanuts and not raw / dried Arecanuts is yet another circumstance to come to the unmistakable conclusion that prima facie the reports of the CRCL, New Delhi deserves to be accepted and the contention of the respondents in this regard is liable to be rejected.

16. The respondents placed reliance upon CBIC Circular No.46/2020- Customs dated 15.10.2020, which reads as under:

Circular No.46/2020-Customs

F.No: 21019/08/2020-Cus(AS)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs

***

North Block, New Delhi

Dated 15th October, 2020

To,
All Pr. Chief Commissioners/Chief Commissioners of Customs,
All Pr. Chief Commissioners/Chief Commissioners of Customs (P),
All Pr. Chief Commissioners/Chief Commissioners of CGST,
All Pr. Commissioners/Commissioners of Customs/Customs (Preventive),
All Pr. Commissioners/Commissioners of CGST,
The Director, Central Revenues Control Laboratory, New Delhi, Web Master CBIC.

Subject: Testing of outside samples by Revenue Laboratories-reg.

Madam/Sir,

Central Revenues Control Laboratories (CRCL), assist the field formations in chemical analysis of samples of various trade commodities to enable appropriate assessment of duties. These laboratories also assist in enforcement of Customs Act, NDPS Act, GST Laws, Central Excise Act and other allied Acts including for the purpose of environment protection, food safety etc.

2. The Revenue Laboratories have been extensively modernized over past 03 years with the induction of state-of-the-art equipment and *improvement of physical infrastructure. New man-power has also been inducted at the cutting-edge levels in Group 'A', Group 'B' and Group 'C'. Eight (08) of these laboratories have obtained NABL Accreditation, as per ISO/IEC 17025:2017, for defined scope from March, 2019 onwards. The CRCL, New Delhi; Custom House Laboratory, Mumbai; JNCH Laboratory, Nhava Sheva; Custom House Laboratory, Chennai; Custom House Laboratory, Cochin; Custom House Laboratory, Visakhapatnam; Custom House Laboratory, Kandla and C.Ex & Customs Laboratory, Vadodara are having NABL accreditation.*

3. CRCL laboratories are now equipped to test samples which are hitherto forwarded to Food Safety and Standards Authority of India (FSSAI), Central Drug Standard and Control Organization (CDSCO) and Textile Committee in order to improve proficiency, ensure optimum utilization of equipment and other resources. Therefore, here is now an opportunity for Revenue laboratories for optimum utilization of the upgraded facilities, especially with state-of-the art instruments and to cater to the needs of these agencies with respect to the samples drawn at the customs area. Using CRCL by these agencies will not only help in optimal use of the available equipment but also reduce the dwell time.

4. Accordingly, the Board prescribes the following guidelines:

(i) As Revenue Laboratories can deal with the samples related to Drug Controller, FSSAI & Textile Committee, all the customs samples, are preferably be tested in the Revenue Laboratories only.

(ii) In case facility to test particular commodity or parameter is not available in the nearest Revenue Laboratory, such cases shall be referred to the nearest government laboratory where such facility is available.

(iii) CRCL, New Delhi shall also function as Referral Laboratory along with other referral laboratories in Pharma, Textile & Food.

(iv) Whenever CRCL laboratories are not in a position to carry out a test, they shall make use of nearest CDSCO/FSSAI approved laboratories/Textile Committee.

5. Keeping in view the above position, the relevant Custom House Laboratories are mapped with different Ports as per Annexure-A.

Facilities available at CRCL, New Delhi as Referral Laboratory in Food testing are listed at Annexure-B.

6. Further, Revenue Laboratories are not equipped to test samples related to Animal Quarantine (AQCS), Plant Quarantine (PQCS) and Wild Life Crime Control Bureau (WCCB). Hence, the existing arrangements could continue in this regard.

7. The field formations under your jurisdiction may be sensitized suitably.

8. Any difficulty in implementing this circular may kindly be brought to the notice of the Board.

Encl: As above.

(Sharad Srivastsava)

Director (Anti-Smuggling Unit),
CBIC, New Delhi

17. Respondents contend that as per the aforesaid circular, it is permissible to get the samples tested at laboratories other than CRCL; the said contention cannot be accepted in the facts and circumstances of the instant cases inasmuch as paragraph-4(iv) of the said Circular clearly indicates that it is only when CRCL Laboratories are not in a position to carryout test, the respondents would be entitled to make use of other laboratories; in the case on hand, the respondents themselves had not only obtained the first test report from the CRCL but had also stated that they had no objection to send the samples to CRCL once again and in the absence of any contention urged by the respondents that the CRCL was not in a position to test the subject Arecanuts, it cannot be said that the respondents were justified in referring the samples for a test by the ICAR – CPCRI and on *this score also, the contention of the respondents cannot be accepted.*

18. The material on record also indicates that after receiving the test reports from the CRCL during September, 2024, the respondents unilaterally and without assigning any reasons whatsoever chose to send the samples to the ICAR - CPCRI for testing once again; in this context, it is pertinent to note that in the absence of any material to establish any reason, much less, valid or sufficient reasons / sufficient grounds on the part of the respondents to send the samples to ICAR – CPCRI for testing after receiving the reports from the CRCL without there being any material to doubt the veracity / correctness of the CRCL reports, I am of the view that prima facie, the respondents were not justified in sending the samples to ICAR – CPCRI, much less, obtain a report from them and make the said reports the basis to seize / detain the subject Arecanuts and consequently, the said detention / seizure is vitiated on this ground also.

19. Insofar as the application filed by the respondents to reject the second CRCL report submitted to this Court pursuant to the interim order dated 27.01.2025 is concerned, in the backdrop of the aforesaid facts and circumstances, coupled with the specific stance of the respondents in suggesting the names of 4 Laboratories including 3 CRCL Laboratories and ICAR – CPCRI out of which, the respondents themselves had agreed, accepted and given consent for the samples to be referred to CRCL, New Delhi, which had reiterated its earlier reports by stating that the subject goods were roasted Arecanuts, the respondents are *estopped from seeking rejection of the said reports by filing the present application which is devoid of merit and is liable to be rejected.*

20. In view of the aforesaid facts and circumstances, I am of the considered opinion that prima facie, the seizure / detention of the subject goods by the respondents is illegal and contrary to law and facts and the relevant statutory provisions and the subject Arecanuts deserve to be released in favour of the petitioners pending disposal of the petitions subject to certain terms and conditions.

21. The respondents are directed to release the subject goods viz., Bill of Entry No.5470956 dated 06.09.2024 in W.P.No.33823/2024; Bill of Entry No.5040352 dated 13.08.2024 and Bill of Entry No.5164270 dated 21.08.2024 in W.P.No.33844/2024; and Bill of Entry No.5739104 dated 21.09.2024 in W.P.No.33855/2024 in respect of imported areca nuts and for a direction to the respondent to release the detained goods imported under Bill of Entry No.5867184 dated 29.09.2024 in W.P.No.33844/2024; and Bills of Entry Nos.5195460 dated 22.08.2024, 5743140 dated 22.09.2024, 5763310 dated 24.09.2024, 5866956 dated 29.09.2024 and 5867000 dated 29.09.2024 in W.P.No.33855/2024, in favour of the petitioners within a period of 15 days from today, pending disposal of the petitions, subject to the following conditions:-

(i) Petitioners shall execute Provisional Duty Bond in favour of the respondents prior to obtaining release of the subject goods viz., Arecanuts;

(ii) Petitioners shall submit statement of accounts of all the sale proceeds etc., arising from the sale, disposal etc., of the subject goods or any portion thereof which have been directed to be released in favour of the petitioners under this order.

(iii) Respondents are directed to issue Demurrage, detention and wharfage waiver certificate in accordance with applicable Customs Regulations in favour of the petitioners.

(iv) Petitioners shall after release of the imported consignment is directed to file a compliance memo of having complied with all the above conditions."

16.1 The aforesaid interim order passed by this Court was modified only to the limited/restricted extent of modifying the terms and conditions imposed by this Court for obtaining release of the subject goods by the Hon'ble Division Bench in W.A.No.770/2025 dated 30.06.2025 as hereunder:

" The above three writ appeals are by Commissioner of Customs/respondents before the Writ Court, questioning the interim order dated 29.04.2025 passed by the learned Single Judge directing release of imported consignment i.e., imported roasted Areca Nuts.

2. Heard learned Additional Solicitor General of India Sri.K.Aravind Kamath along with learned Central Government Counsel Sri.M.Unnikrishnan for appellants/Custom Authorities and learned senior counsel Sri.Kiran S. Javali for

Sri.Shashwath S. Prakash, learned counsel for respondents/petitioners. Perused the entire writ appeal papers.

3. Learned Additional Solicitor General of India Sri.K.Aravind Kamath would submit that learned Single Judge could not have directed release of imported consignment i.e., Areca Nuts without any condition or security as required under Section 110A of the Customs Act, 1962 (for short, '1962 Act'). He would submit that the Custom Authorities dispute the case of the petitioners that it is roasted Areca Nuts. Learned Additional Solicitor General of India would further submits that to determine the tariff, the goods imported would fall under Chapter-VIII and not under Chapter-XX as contended by the petitioners. Further, he submits that the Areca Nuts are being imported by making misclassifications. Further, he submits that the respondents i.e., the petitioners before the Writ Court on release of the goods, may disappear and it would be difficult for the custom authorities to recover the duty and penalty. Therefore, learned Additional Solicitor General of India would submit that for release of the consignment, petitioners shall be put on certain conditions or furnish bank guarantee to the value of the consignment. He submits that the duty assessed in all the three petitions is around Rs.86 Crores. Thus, he prays for allowing the writ appeals.

4. Per contra, learned senior counsel Sri.Kiran S. Javali for respondents would submit that the imported consignment is roasted Areca Nuts and it would fall under Chapter-XX of the Custom Tariff and it is further submitted that the duty is Nil. Therefore, the question of putting the petitioners on terms to *deposit certain value would not arise. It is further submitted that the consignment i.e., roasted Areca Nuts' duty would be 'zero' in terms of Chapter-XX of the Customs Tariff. Therefore, learned senior counsel would submit that the learned Single Judge was justified in directing release of imported consignment without any condition or deposit. Thus, he prays for dismissal of the appeals.*

5. Having heard the learned counsel appearing for the parties and on perusal of the writ appeal papers, we are of the view that in terms of Section 110A, the petitioners/respondents herein could seek for provisional release of goods on furnishing a bond in the proper form with such security and conditions as Adjudicating Authority may require. As submitted by learned Additional Solicitor General of India, the proceedings before the Adjudicating Authority are pending. In view of the specific provision, learned Single Judge, could not have directed release of imported consignment without any security. The contention of both the learned Additional Solicitor General of India as well as learned senior counsel, whether the imported consignment would fall under Chapter-VIII or Chapter-XX is yet to be decided. For release of imported consignment apart from obtaining bond, it would also require security.

6. In the above circumstances, the following:

ORDER

a) The petitioners i.e., respondents herein would be entitled for provisional release of the imported consignment, as directed by the learned Single Judge, subject to giving security of bank guarantee or any other security to the tune of 25% of the value of the imported consignment, in terms of Section

110A of 1962 Act. To that extent, the interim order dated 29.04.2025 is modified.

b) We request the learned Single Judge to dispose of the writ petition as expeditiously as possible.

c) Accordingly writ appeals stand disposed of.

d) In view of disposal of the appeals, all the pending I.As would not survive for consideration."

16.2 For the sake of convenience and better understanding of the procedure for assessment, it would be appropriate to reproduce the flowchart submitted by the petitioner as hereunder:

<u>Flowchart of Procedure for Clearance of Imported Goods under Customs</u>

Goods imported

Bill of Entry filed by the Petitioner u/s 46 of Customs Act, 1962 on 06.09.2024

Self-assessment of duty leviable on the goods by the importer u/s **17(1)**

In terms of section **17(2)**, the **proper officer is required to verify the entries** made by the importer u/s 46 along with the self-assessment u/s 17(1)

If on verification, it is found that the self-assessment is done correctly, the same will be accepted.

Re-assessment to be done by the proper officer **u/s 17(4)** if self-assessment is found to be not done correctly.

Out of Charge order u/s 47 is issued and goods can be cleared

In terms of section **17(5)**, if the re-assessment done by the proper officer is contrary to the self-assessment done by the importer

Accepted by importer

Not accepted by Importer

Re-assessed duty to be paid and goods will be released

The proper officer shall **pass a speaking order within 15 days of re-assessment**

Section 18: Provisional Assessment of duty

In terms of **section 18(1)**, the proper officer may assess the duty leviable on such goods provisionally if the importer furnishes security as the proper officer deems fit in the following cases:

a) Where the importer is unable to make self-assessment u/s 17(1) and makes a request in writing to proper officer for assessment; or

b) **Where the proper officer deems it necessary to subject any imported goods to any chemical or other test**; or

c) Where importer has produced all necessary documents and furnished full information but proper officer deems it necessary to make further enquiry; or

d) Where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry

Section 18(1B), required the proper officer to finalise the provisional duty within 2 years from date of assessment u/s 18(1). This applies only to imports after 29.3.2025 and to pending provisional assessments.

In terms of **Section 18(1C)**, if the proper officer is not able to finalize provisional assessment u/s 18(1B), reasons for such non-finalization are to be informed to the importer, and time limit specified u/s 18(1B) shall apply from the date of such reasons.

In terms of **section 18(1A)**, the importer shall submit the required document or information to the proper officer for finalising the provisional assessment order

Section 18(2) requires the importer to pay duty along with interest in terms of **section 18(3)**, after finalisation of the provisional assessment order by the proper officer, in cases of goods cleared for home consumption and in cases of warehoused goods.

Section 18(4), being subject to the provisions u/s 18(5), provides for amount u/s 18(2)(a) to be refunded within a period of 3 months from date of assessment, otherwise be subjected to levy of interest.

Section 18(5) provides for refund of duty amount to the importer in the following cases:

a) Duty and interest paid by the importer on such duty, where he has not passed on the incidence of such duty and interest to any other person;
b) Duty and interest on imports paid by an individual for his personal use;
c) Duty and interest paid by the buyer, where the incidence of such duty is not passes to any other person;
d) Export duty u/s 26;
e) Duty drawback payable u/s 74 and 75

Section 28: Recoveries of duties not levied or not paid or short levied or short paid or erroneously refunded

In terms of **section 28(1)**, the proper is to issue a show cause notice within 2 years from the relevant date if any duty has not been levied, or not paid or has been short-levied or short paid or erroneously refunded due to reason other than collusion, or wilful misstatement or suppression of facts.

↓

In terms of **section 28(4)**, the proper is to issue a show cause notice within 5 years from the relevant date if any duty has not been levied, or not paid or has been short-levied or short paid or erroneously refunded by way of collusion, or wilful misstatement or suppression of facts.

↓

In terms of **section 28(5)**, the person may pay the duty in full or in part along with the interest u/s 28AA and penalty equivalent to 15% of the duty within 30 days from the date of receipt of notice.

16.3 From a perusal of the above, it is clear that the department has not followed any of the procedures contemplated in Section 17 at all; assuming that the entire assessment is provisional, in terms of Section 18 of the Customs Act, 1962, it was incumbent upon the respondents to have indicated that the assessment are provisional but they have failed to do so; while the imports took place on 06.09.2024, even according to the respondents themselves, they marked the bill of entry as provisional only on 23.05.2025; it would be relevant to note that assuming that provisional assessments were adopted because of subjecting the goods to test under Section 18(1)(b), Section 18(1A) prescribes that if any document is needed from the importer, he shall submit the said documents within the time frame specified; it is clear that this provision does not apply as the respondents had not asked the petitioners for any documents at this stage.

16.3 It would be relevant to note that the relevant rules which were applicable on the date of import were Customs (Finalisation of Provisional Assessment) Regulations, 2018. Rule 5 of the said Rule is reproduced hereunder:

> ***5. Time-limit for finalisation of provisional assessment. –*** *(1) Theproper officer shall finalise the provisional assessment within two months ofreceipt of:*
>
> *(a) an intimation from the importer or the exporter or his authorisedrepresentative or Customs Broker under sub-regulation (7) ofregulation 4; or*

(b) a chemical or other test report, where the provisionalassessment was ordered for that reason; or

(c) an enquiry or investigation or verification report, where theprovisional assessment was ordered for that reason.

Provided that where the documents or information required to be furnishedby the importer or the exporter or requisitioned by the proper officer aremade available intermittently, the time period of two months shall bereckoned from the date of last intimation referred to in clause (a) above,:

Provided further that where the documents or information required to befurnished by the importer or exporter, as the case may be, or requisitionedby the proper officer are not made available or made partly available andno further extension of time has been allowed under sub-regulations (3), (4)or (5) of regulation 4, as the case may be, the proper officer shall proceedto finalise the provisional assessment within two months of the expiry of thetime allowed for submission of the said documents or information.

(2) The Commissioner of Customs concerned may allow, for reasons to berecorded in writing, a further time period of three months in case the properofficer is not able to finalise the provisional assessment within the period oftwo months as specified in sub-regulation (1) above.

(3) This regulation shall not apply to such cases of provisionalassessments, where Board has issued directions to keep that pending.

16.4 As per the aforesaid provisions, since no information has been sought from the petitioner, the finalisation had to be done within 2 months of receipt of the test reports; assuming that the first and second test reports were not to be considered, it becomes clear that the third test report obtained after taking consent of both the sides and as ordered by the Court was obtained on 31.01.2025, the finalisation had to take place before end of March 2025; even on this date no such attempt seems to have been made to finalise the said assessments and it was only on 23.05.2025 that the respondents marked the bills of entry as provisional assessments ostensibly in accordance with the aforesaid interim order dated 29.04.2025 which merely/only speaks of release of goods.

16.5 In fact, the communication sent to the petitioner vide 23.05.2025 talks of provisional release of goods where they incidentally mention provisional assessment; needless to state that these two terms are significantly different in their connotations as one deals with release of goods seized under Section 110A while the other is provisional assessment under Section 18. The importance of keeping time frames in doing provisional assessment is dealt with by the Apex Court in ***Century Metal Recycling's case*** supra wherein it was held as under:

> *" The significance of Section 18 of the Act can be understood in light of the above provisions. Section 18 provides for provisional assessment of duty in cases specified in sub-section (1) of the Section. Clause (c) of sub-section (1) deals with cases where importer or exporter has produced necessary documents and furnished full information for assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty. However, Clause (d) is wider and would apply when the importer or exporter does not produce necessary documents or furnish information. In all cases covered under Clauses (a) to (d), the proper officer may direct provisional assessment of the duty leviable on the imported goods. Where duty is assessed provisionally, the importer or exporter has to furnish security as the proper officer deems fit for payment of deficiency, if any, between the duty provisionally paid and the duty finally assessed.*
>
> *On interpreting Section 18 of the Act, it is held that when there is a dispute between the Customs authorities and the importer as regards the valuation of the imported goods, on satisfaction of the conditions enumerated in*

sub-section (1), the authorities should make provisional assessment of Customs duty under Section 18 of the Act. This expedites clearance, pending final adjudication on merits which may take time. This is also the mandate of the Board Circular No. 38/2016, dated 22nd August, 2016. Any insistence and compulsion by the authorities that the importer should disclaim and forgo his statutory right under Section 18 of the Act would not be correct. Neither would it be right to reject the valuation as declared by the importer without reasonable doubt for certain reasons."

16.6 It is clear from the above enunciation of law that the respondents had not only not adopted Section 17 but also has not adopted the time lines specified in Section 18 and the objective of ensuring timely assessment and clearance of goods have been completely lost sight of and therefore, I am of the opinion that the department could not have adopted a procedure not known to law and take umbrage under the orders of this Court, which do not support the case of the respondents and consequently, the attempt on the part of the department to show that the goods are provisionally assessed only on the directions of this Court is erroneous and tantamount abdicating their basic responsibility to conduct assessments as mandated in law. It is therefore clear respondents have not followed the procedure contemplated under the provisions of the Customs Act including Section 17, 18 etc., and as such, the various contentions urged by the respondents cannot be accepted thereby leading to the sole/inescapable conclusion that the impugned provisional assessment is contrary to law warranting interference by this Court.

Point No.(i) is accordingly answered in favour of the petitioner.

Re: Point No.(ii);

17. This point relates to the question as to whether the tariff classification adopted by the respondents in relation to the subject goods is legal, valid and proper; in this context, it is relevant to state that while ordinarily, this Court would not examine disputes in respect of classification which are to be left to the authorities, in the facts and circumstances obtaining in the instant case wherein the respondents have not acted in accordance with the assessment procedures prescribed in law and have resorted to drastic measures of seizing goods, it would be necessary to consider this aspect of the matter also.

17.1 In the interim order dated 29.04.2025 supra, I have already come to the prima facie conclusion that the subject imported goods are roasted areca nuts having a moisture content of 5.9% and that the sample is different from raw areca nuts as per the 2nd CRCL test report which was obtained with consent of both parties pursuant to orders of this Court thereby indicating that this test report is conclusive as to the nature of the subject imported goods which are clearly roasted areca nuts as contended by the petitioner and not raw arecanuts as contended by the respondents; to reiterate, the aforesaid order passed by this Court was modified only to the limited/restricted extent of modifying the terms and conditions imposed by this Court for obtaining release of the subject goods by the Hon'ble Division Bench in W.A.No.770/2025 dated 30.06.2025 and all other findings recorded by this Court including the finding that the subject imported goods are roasted areca nuts as contended by the petitioner have not been reversed in the appeal. Under these circumstances, I am of the considered opinion that the material on record clearly establishes that the subject imported goods are clearly roasted areca nuts as contended by the petitioner and not raw arecanuts as contended by the respondents whose contentions in this regard also cannot be accepted.

17.2 I now consider this question in detail and find that the question/issue as regards classification of roasted areca nuts came up for consideration before the Madras High Court in the case of ***CC vs Shahnaz Commodities International Ltd., - (2023) 9 Centax 183 (Madras),*** wherein it was held as under:

> *" 7. Before proceeding further, it may be necessary to refer to the General Rules for Interpretation, relevant Tariff Entries along with Chapter Notes and HSN Notes, and its relevance for determining the classification, which are as under:*
>
> *(i) General Rules for the Interpretation of Import Tariff:*
>
> *"Classification of goods in this Schedule shall be governed by the following principles:*
>
> *1.....*
>
> *3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
>
> *a. The heading which provides the most specific descriptions shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only the materials or substances contained in mixed or composite goods or to part only of the items in a*

set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them give a more complete or precise description of the goods.

b. Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

c. When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

(ii) Relevant entries under the Customs Tariff Act:
Chapter 8
Edible fruit and nuts; peel of citrus fruit or melons
NOTES
1. This Chapter does not cover inedible nuts or fruits.
2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

(a) for additional preservation or stabilization for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate;

(b) to improve or maintain their appearance f or example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

4. Heading 0812 applies to fruit and nuts which have been treated solely to ensure their provisional preservation during transport or storage prior to use (forexample, sulphurdioxidegas, in brine, insulphur water or in other preservative solutions) ,provided they remain unsuitable for immediate consumption in that state."

Tariff Item Description of goods Unit Rate of duty

Standard Preferential Areas

(1) (2) (3.) (4) (5)

....

0802 Other nuts, fresh or dried, whether or not shelled or peeled

0802 80	*-*	*Areca nuts:*			
0802 80 10	*---*	*Whole*	*kg.*	*100%*	*90%*
0802 80 20	*---*	*Split*	*kg.*	*100%*	*90%*
0802 80 30	*---*	*Ground*	*kg.*	*100%*	*90%*
0802 80 90	*---*	*Other*	*kg.*	*100%*	*90%*
0802 90 00	*-*	*Other*	*kg.*	*100%*	

Chapter 20

Preparations of vegetables, fruit, nuts or other parts of plants

Notes

1. This Chapter does not cover:

(a) vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8 or 11;

(b) food preparations containing more than 20 by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);

Tariff Item Description of goods Unit Rate of duty

Standard Preferential Areas

…..

2008 -- …………

Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, …..

whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included

- Nuts, ground-nuts and other seeds, whether or not mixed together:

2008 11 00 -- Ground-nuts kg. 30% -

2008 19 --- Other, including mixtures:

2008 19 10 --- Cashew nut, roasted, salted or roasted and salted kg. 241[45%] -

2008 19 20 --- Other roasted nuts and seeds kg. 30% -

2008 19 30 --- Other nuts, otherwise prepared or preserved kg. 30% -

2008 19 40 --- Other roasted and fried vegetable products kg. 30% -

2008 19 90 --- Other kg. 30% -

Chapter 21

Supplementary Notes

In this Chapter "betel nut product known as Supari" means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.

Tariff Item Description of goods Unit Rate of duty

Standard Preferential Areas

(1) (2) (3) (4) (5)

……. … …………. … … …..

2106 Food preparations not elsewhere specified or included

2106 90 30 --- Betel nut product known as "Supari" kg. [150%] -

…... --- …….. … …… -

(iii) Relevant portions of the HSN:

HSN Explanatory Notes:

Chapter 8

Edible fruit and nuts; peel of citrus fruit or melons

NOTES

1. This Chapter does not cover inedible nuts or fruits.

2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:

(a) for additional preservation or stabilization by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);

(b) to improve or maintain their appearance by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts

. …

The Chapter further excludes:

(i) Fruit flour, meal and powder (heading 11.06).

(ii) Edible fruit and nuts and peel of melons or citrus fruit, prepared or preserved otherwise than as described above (Chapter 20).

(iii) Roasted fruit and nuts (e.g., chestnuts, almonds and figs), whether or not ground, generally used as coffee substitutes (heading 21.01)

Chapter 20

This Chapter includes:

(1) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.

(2) Vegetables, fruit, nuts, fruit-peel and other parts of plants preserved by sugar.

(3) Jams, fruit jellies, marmalades, fruit or nut purées, fruit or nut pastes, obtained by cooking,

(4) Homogenised prepared or preserved vegetables and fruit.

(5) Fruit or vegetable juices, neither fermented nor containing added alcohol, or of an alcoholic strength by volume not exceeding 0.5 % vol.

(6) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.

….. It includes, inter alia:

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives

Chapter 21

Miscellaneous edible preparations

Notes.

1. This Chapter does not cover:

(a) Mixed vegetables of heading 07.12;

(b) Roasted coffee substitutes containing coffee in any proportion (heading 9.01);

(c) Flavoured tea (heading 9.02);

(d) Spices or other products of headings 9.04 to 09.10;

(e) Food preparations, other than the products described in heading 21.03 or 21.04, containing more than 20% by weight of sausage, meat, meat offel, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);

(f) Yeast put up as a medicament or other products of heading 30.03 or 30:04; or

(g) Prepared enzymes of heading 35.07.

2. Extracts of the substitutes referred to in Note 1 (b) above are to be classified in heading 21.01.

3. For the purposes of heading 21.04, the expression" homogenised composite food preparations" means preparations consisting of a finely homogenised mixture of two or more basic ingredients such as meal, fish, vegetables, fruit or nuts, put up for retail sale as infant food or for dietetic purposes, in containers of a net weight content not exceeding 250 g. For the application of this definition, no account is to be taken of small quantities of any ingredients which may be added to the mixture for seasoning, preservation or other purposes. Such preparations may contain a small quantity of visible pieces of ingredients."

8. Relevance of Common Parlance Test vis-a-vis Specific Tariff Entry in determining Classification:

A perusal of the relevant entries under CTH 08, 20 and 21 would show that while CTH 08 is meant to cover areca nut whole, split, grounded including dried nuts subject to the process of drying which is by way of additional preservation or stabilization by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate, Chapter 20 covers roasted nuts. Apparently, legislature has for the purpose of classification treated drying and roasting as processes which are distinct/different and importantly, relevant in determining whether the nuts would fall under CTH 0802 or under 2008. The submission of the learned counsel for the appellant that roasted areca nut is in common parlance treated as areca nut, in other words, by the process *of roasting a different commercial commodity does not emerge and thus, keeping in view the restrictive language employed in Chapter 2008 viz., exclusion of items covered under CTH 8, the roasted areca nut would fall under CTH 0802, is misplaced. The said submission that the products that are commercially the same, must be classified under one heading, overlooks the fact that legislature is competent to classify differently or make a distinction even though the products in question are not commercially different. In this regard, it may be useful to rely on the decision of the Hon'ble Supreme Court in case of Sterling Foods v. State of Karnataka, reported in (1986) 3 SCC 469 = 1986 (26) E.L.T. 3 (S.C.) wherein, while dealing with the question, whether prawns, shrimps and lobsters locally purchased for export after subject to the process of cutting their heads and tails, peeling, deveining, cleaning, freezing and exporting was eligible to claim the benefit as a sale in the course of export under sub section (3) to Section 5. It was found that the benefit ought to be extended as prawns/lobsters even after being subject to the above processes do not lose their identity, but commercially remain the same. Importantly, an argument was advanced on the basis of the entries in the Schedule to the Karnataka Act and the amendments made thereto particularly in relation to classification of Shrimps, Prawns and Lobsters to suggest that enumeration of Items in different entries in the Tariff Schedule is by itself indicative of the fact that they are commercially different. However, the said contention was rejected by the Hon'ble Supreme Court* *in the following decisions, the relevant portion of which are extracted below:*

Sterling Foods v. State of Karnataka, (1986) 3 SCC 469=1986 (26) E.L.T. 3 (S.C.):

"8. This conclusion on principle was not disputed by the High Court in its judgment and the High Court conceded that even after processing such as cutting of heads and tails, peeling, deveining, cleaning and freezing, shrimps, prawns and lobsters subjected to such processing continued in common parlance to be called "shrimps, prawns and lobsters". But the High Court took the view that Entry 13-a after the amendment effected in it with retrospective effect from September 1, 1978, made a distinction between raw shrimps, prawns and lobsters and processed or frozen shrimps, prawns and lobsters. In view of this distinction made in entry 13-a, if was not possible to hold that processed or frozen shrimps, prawns and lobsters were the same commodity as raw shrimps, prawns and lobsters. The argument was that when the State legislature itself made a distinction between these categories of commodities by making purchases of one category amenable to sales tax under Entry 13-a and leaving out of the scope of taxation under Entry 13-a the other category, how could it be said that both these categories represent the same commodity and there is no difference in character and identity between the two. This argument, we are afraid, is not well founded. It is based on a total misapprehension in regard to the true object and intendment of entry 13-a and it erroneously seeks to

project that entry in the interpretation and application of Section 5 sub-section (3) of the Central Sales Tax Act. In fact Entry 13-a as amended, supports the argument that even processed or frozen shrimps, prawns and lobsters are known commercially and in the trade as "shrimps, prawns and lobsters". It is because Entry 13-a as it stood prior to its amendment, would have, on the plain natural meaning of the expression "shrimps, prawns and lobsters", included processed and frozen shrimps, prawns and lobsters, that it became necessary for the State legislature to amend Entry 13-a with retrospective effect so as to exclude from the scope and ambit of that entry processed or frozen shrimps, prawns and lobsters. Now when the State legislature excluded processed or frozen shrimps, prawns and lobsters from the ambit and coverage of Entry 13-a, its object obviously was that the last purchases of processed or frozen shrimps, prawns and lobsters in the State should not be exigible to State sales tax under Entry 13-a. The state legislature was not at all concerned with the question as to whether processed or frozen shrimps, prawns and lobsters are commercially the same commodity as raw shrimps, prawns and lobsters or are a different commodity and merely because the State legislature made a distinction between the two for the purpose of determining exigibility to State sales tax, it cannot be said that in commercial parlance or according to popular sense, processed or frozen shrimps, prawns and lobsters are recognised as different commodity distinct from raw shrimps, prawns and lobsters. The question whether raw shrimps, prawns and lobsters after suffering *processing retain their original character or identity or become a new commodity has to be determined not on the basis of a distinction made by the State legislature for the purpose of exigibility to State sales tax because even where the commodity is the same in the eyes of the persons dealing in it the State legislature may make a classification for determining liability to sales tax. This question, for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognised in commercial parlance. If in commercial parlance and according to what is understood in the trade by the dealer and the consumer, processed or frozen shrimps, prawns and lobsters retain their original character and identity as shrimps, prawns and lobsters and do not become a new distinct commodity and are as much "shrimps, prawns and lobsters", as raw shrimps, prawns and lobsters, sub-section (3) of Section 5 of the Central Sales Tax Act would be attracted and if with a view to fulfilling the existing contracts for export, the assessee purchases raw shrimps, prawns and lobsters and processes and freezes them, such purchases of raw shrimps, prawns and lobsters would be deemed to be in course of export so as to be exempt from liability to State sales tax."*

(emphasis supplied)

9. From a reading of the above judgment, it is clear that the Hon'ble Supreme Court had held that the legislature while classifying shrimps, prawns and lobsters and treating it differently/separately from frozen shrimps, prawns lobsters *by placing it under different entries, has unconcerned as to whether the two products are commercially same. This is, in view of the fact that legislature was competent to classify the products separately/differently even though they are commercially one and the same. Thus, the question of examining whether arecanut/betel nut and roasted areca nut are commercially the same or otherwise, is an enquiry which is alien in determining the classification which ought to be made on the basis of the Tariff entries. Once legislature has chosen/provided for separate and independent entry under the Tariff for roasted areca nut, it is no longer necessary nor open to examine whether roasted areca nut is commercially the same as areca nut or whether the process of roasting results in emergence of a commercially new/different commodity having a different name, character and use. It really does not matter whether roasting of betel nut results in emergence of a new commodity for even if it does not, it is still open to the legislature to classify the product differently. Once the legislature has classified roasted betel/arecanut under a separate entry, it is not open to the Revenue to discard/abandon the entries in the Tariff while examining/determining the classification of the product.*

10. Relevance of HSN Explanatory Notes in determining classification under CTH

Secondly, there is considerable force in the submission of the learned counsel for the respondents that the classification as far as possible must be in conformity and in consonance with the HSN Explanatory Notes. Perusal of

HSN Explanatory Notes would leave no room for doubt that "roasted areca nut" has been treated as falling under Chapter 20. The relevant portion of HSN Explanatory notes is extracted hereunder for better appreciation:

It includes, inter alia:

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil-roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives

10.1 To appreciate the relevance of HSN Notes in determining classification, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

(i) CCE & Customs v. Phil Corpn. Ltd.,(2008) 17 SCC 569 = 2008 (223) E.L.T. 9 (SC):

"30. In a number of cases, this Court has clearly enunciated that HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN Explanatory Notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN Explanatory Notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question has to be made under Chapter 20."

(Emphasis Supplied)

(ii) LML Ltd. v. Commr. of Customs, (2010) 10 SCC 503 = 2010 (258) E.L.T. 321 (SC)/[2010] 1 taxmann.com 333 (SC):

"13. In CCE v. Wood Craft Products Ltd. [(1995) 3 SCC 454] it was held by this Court that as expressly stated in the Statement of Objects and Reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonised System of Nomenclature (HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonised System of Nomenclature (HSN).

(Emphasis Supplied)

10.2 The above judgments would show that HSN is a safe guide in resolving dispute relating to Tariff classification. A perusal of HSN Explanatory Notes would show that Chapter 20 would cover roasted areca/betel nuts. The AAR being in conformity with the HSN Explanatory Notes, which are treated to be a safe guide in matter of Tariff classification, is yet another reason as to why it would not warrant interference.

11. Rule of Specific vis-a-vis General Entry in determining classification - Process of Roasting of Betel nuts vis-a vis other process, such as, drying, boiling, etc.

Thirdly, it is trite law that whenever there is specific entry, the same would prevail over general entry. The said general principle is statutorily incorporated in General Rules of Interpretation, in particular, under Rule 3(a) of the General Rules of Interpretation, which reads as under:

"3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods...."

(emphasis supplied)

11.1 Now, applying the above test to the competing entries viz., CTH 080280 and CTH 2008 1920, we find that while CTH 080280 covers areca nuts which are "fresh or dried whether or not shelled or pealed", chapter 2008 19 20 covers "other roasted nuts and seeds" which include roasted areca nuts. Importantly, Note 3 to Chapter 8 provides that dried nuts covered under the said Chapter are those which are partially rehydrated or treated for additional preservation or stabilization by moderate heat treatment, sulphuring, addition *of sorbic acid or potassium sorbate. Note 1 (a) to Chapter 20 expressly excludes nuts prepared or preserved by the "processes specified in Chapters 7, 8 or 11", while classifying roasted nuts and seeds. It is thus evident that roasting and drying are treated to be distinct for the purposes of classification under the Customs Tariff Heading. Any construction to the contrary would result in rendering Note 1 (a) to Chapter 20 which excludes the process specified in Chapter 8 of CTA, redundant. While fresh or dried areca nuts are covered by 080280, roasted areca nuts are covered under 2008 19 20. Roasting is a process which has been treated to be distinct from drying and has been the basis for fixing the classification under Customs Tariff Heading under 2008 19 20.*

11.2 Having examined the scope of CTH 08 and 20, it may be relevant to examine CTH 21 which is another entry dealing with Betel Nut known as "supari". Incidentally, CTH 21 06 includes betel nut product known as supari. The Note to Chapter 21 of Customs Tariff covers "betel nut products" known as "supari" containing betel nuts, but not containing anyone or more of the following ingredients viz., lime, katha (Catechu) and Tobacco whether or not containing any other ingredients, like cardamom, menthol. The expression "containing" in the said Note is indicative of the fact that the Entry covers preparations of betel nut, which contains betel nut along with other items/ingredients. In other words, "Supari" is a product which contains betel nut as one of the ingredients and would have no applicability to the facts of the present case, for admittedly, there is no other item/product *other than betel nut (roasted) which is involved in the instant case.*

11.3 We would think that CTH 2008 19 20 is a special entry covering nuts subject to the process of roasting, when contrasted with CTH 08 02 90 which covers dried nuts. Having come to the conclusion that the classification of areca nut is made on the basis of the process which it is subject to with a distinction between dried and roasted nut being maintained, we would think that CTH 2008 19 20 which covers roasted nuts including areca nut is a specific entry when contrasted with the entries/items covering nuts under CTH 08.

11.4 It is well established that when a general law/entry and a special law/entry dealing with same aspect are in question, the rule adopted and applied is one of harmonious construction, whereby the general law to the extent dealt with by the special law, would yield to the Special Law/Entry. This principle finds its origins in the Latin maxim of generaliaspecialibus non derogant i.e. general law yields to special law should they operate in the same field on same subject. The maxim generaliaspecialibus non derogant is dealt with in Vol. 44(1) of the 4th Edn. of Halsbury's Laws of England at Para 1300, as follows:

"The principle descends clearly from decisions of the House of Lords in Seward v. Vera Cruz [(1884) LR 10 AC 59] and the Privy Council in Barker v. Edger [1898 AC 748)] and has been affirmed and put into effect on many occasions….

Corpus Juris Secundum, 82 C.J.S. Statutes 482 states:

when construing a general and aspecific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [137 L Ed 2d 917], Warden v. Marrero [41 LEd 2d 383])."

16. To sum up:

(a) Roasting is a process treated to be distinct from the process of boiling and drying, in fixing the classification in respect of betel/areca nut under CTH.

(b) Roasted betel/areca nut having been specifically classified under CTH 2008 19 20, the attempt to classify under CTH 08 02 80 would fall foul of the settled rule of construction that specific entry would prevail over general entry.

(c) HSN explanatory notes is normally a safe guide in determining classification under CTH. Roasted areca/betel nut having been mentioned in CTH 2008 19 20 under HSN,

the impugned Ruling is in consonance with HSN classification.

(d) When there is a specific entry covering a product/commodity, the test of common parlance is irrelevant in determining classification."

17.3 This judgment was followed by the Allahabad High Court in the case of ***Rawder Petroleum Pvt.Ltd vs UOI - (2025) 32 Centax 169,*** wherein it was held as under:

*"**28.** This Court finds that the CAAR, New Delhi has in no manner missed the woods for the tree and has addressed all the points meticulously, including the issues, which are presently being agitated by the department in the present Appeals. In the Appeal filed by the department, it has been submitted that the basis of classification of 'roasted areca nuts' is a letter dated 04.06.2024, explaining the phenomena/activity undertaken on these areca nuts. It has been contended by the department that the said letter has been issued by one M/s ANL(S) Trading & services Pte Ltd., Singapore, which according to them is a third party as the country of origin of the goods in question is Indonesia, for which they have relied on the Bill of entry filed by the importer. It has been contended by them that since the letter of process of roasting has not been issued by the owner of goods, the letter dated 04.06.2024, explaining the process of roasting is meaningless and cannot be the actual process undertaken on the imported goods. First & foremost, this*

court finds that the Bill of entry although speaks of country of origin as Indonesia, however the supplier details mentions the name of ANL(S) Trading and services Pte Ltd, of Singapore, therefore apparently although the goods imported have been sourced from Indonesia, however the same has been supplied by ANL(S) Trading and Services Pte Ltd. and as such the argument raised by the department seems to be highly technical, which are merely recorded to be rejected. Further, it is seen that the Bill of entry contains the description of the commodity being imported as "roasted areca nuts". In any case, it must be understood that the CAAR was examining the phenomena/activity explained and undertaken on the areca nuts in the said letter dated 04.06.2024, which were proposed to be imported and not actually imported, whether it was from Indonesia or from Singapore. It is one thing to say that the advance ruling was obtained for commodity "X" and the commodity actually imported was "Y", in which case the advance ruling obtained for the commodity 'X' would not be applicable to the commodity 'Y", as the same would be change in fact and not binding on the parties as per Section 28J(2) of the customs Act. However, it is absolutely erroneous to say that the advance ruling obtained for commodity 'X" would not be applicable for actually imported commodity 'X" as in this case, the advance ruling would be binding between the parties as per Section 28J of the Customs Act.

29. *Pertinently, the department has mixed the concept of advance ruling, which relates to proposed import with the actual importation of commodity by the importer. The* *department has sought to interdict the advance ruling on the ground that the commodity sought to be imported by the importer at the stage of advance ruling were not sent for independent testing or verification of the process, supporting documents, test reports etc. However, this court finds that such an argument by the department is completely alien to the concept of advance ruling. Section 28E(b) of the Customs Act inter-alia states that 'advance ruling' means a written decision on any of the questions referred to in Section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation. Further, Section 28I(2) of the said Act says that the authority may after examining the application and records called for, by order, either allow or reject the application and proviso appended to its says that the application for advance ruling has to be rejected in two situation (a) when the question raised in the application is already pending in the applicant's own case before any officer of customs or Appellate Authority or any court or (b) the question raised has already been decided by the Appellate Authority or any court. Similarly, section 28I(4) of the Act says that where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. A conjoint reading of these Sections 28I(2) & 28I(4), clearly demonstrates that 28I(4) envisages a situation wherein the advance ruling already decided in terms of section 28I(2) is sought to be reviewed, by examining further* *materials placed by the applicant or obtained by the Authority. No doubt, the advance ruling ought to be based on the materials brought on record of the advance ruling authority, however to say that advance ruling ought to be mandatorily based on the empirical data, test or laboratory report of a sample, at the stage of advance ruling, when these samples, may nor may not be even in existence for the purpose of export or import, is in aberration to the concept and scope of 'Advance ruling'. This court finds that at the stage of advance ruling, the process as explained by the importer/exporter on the commodity, to bring out a new commodity in existence is a vital tool in arriving at a decision for advance ruling on the tax liability, by making them classifiable under a particular CTH. As far as the present case is concerned, this court finds that although, it can be well argued by the department that the commodity, now imported as per the test reports are not 'roasted areca nuts', however it cannot be argued that since the advance ruling is not based on any testing or verification of the commodity sought to be imported at the stage of advance ruling is liable to be set-aside, merely because the advance ruling authority did not examine any test or laboratory report of the commodity sought to be imported/exported. It has to be understood that at the stage of advance ruling, there is no actual commodity as everything is proposed and the CAAR is invited to give an advance ruling on the assumption that the process undertaken on the commodity proposed to be imported are identifiable in definite terms.*

30. *This Court finds that the CAAR has examined the process-flow for bringing the 'roasted areca nuts" in existence and having been convinced on the facts as well as the prevailing law of the subject, has arrived at a just decision that 'roasted areca nuts' is to be classified under chapter 20 of the Customs Tariff Act. According to this court, the department is not disputing the process undertaken by the importer, but is rather questioning the end product obtained by the process undertaken by them. The department, apparently seems to be vaguely trying to build a case that "roasted areca nuts" obtained even by the process demonstrated by the importer, could not be classified under Chapter 20 and should be classified under chapter 08. Having said so, it becomes incumbent on this court to refer to the two competing entries. Chapter 8 of the customs Tariff cover goods described as 'Edible fruit and nuts; peel or citrus fruit or melons". The relevant Tariff item 0802 is set out below:*

0802		*Other nuts, fresh or dried, whether or not shelled or peeled*
	-	*Almonds:*
0802 11 00	*-*	*In Shell*
0802 12 00	*-*	*Shelled*

	0802 21 00	-	*Hazalnuts or filberts 9 Corylus sup.)*
		-	*In Shell*
	0802 22 00	-	*Shelled*
		-	*Walnuts*
	0802 31 00	-	*In Shell*
	0802 32 00	-	*Shelled*
		-	*Chestnuts (Castanea spp.)*
	0802 41 00	-	*In Shell*
	0802 42 00	-	*Shelled*
		-	*Pistachios*
	0802 51 00	-	*In Shell*
	0802 52 00	-	*Shelled*

		-	*Macadamia nuts*
	0802 61 00	-	*In Shell*
	0802 62 00	-	*Shelled*
	0802 70 00	-	*Kola nuts (Cola Spp.)*
	0802 80	-	*Areca nuts*
	0802 80 10	-	*Whole*
	0802 80 20	-	*Split*
	0802 80 30	-	*Ground*
	0802 80 90	-	*Other*
		-	*Other*

	0802 80 00	

31. *Chapter 20 of the Customs Tariff covers goods under the heading 'preparation of vegetables, fruit, nuts or other part of plants'. The relevant Tariff Item is quoted below:*

2008	*Fruits, Nuts and other Edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.*		
2008 11 00	*-*	*Nuts, groundnuts and other seeds, whether or notmixed together;*	
2008 19	*-*	*Ground Nuts*	
	-	*Other, including mixtures*	
2008 19 10	*-*	*Cashew nut, roasted, salted or roasted and salted*	
2008	*-*	*Other roasted nuts and seeds*	

	19 20	*-*	*Other nuts, otherwise prepared or preserved*
		-	*Other roasted and fried vegetable products*
	2008 19 30	*-*	*Other*
	2008 19 40		
	2008 19 90		

32. *This Court in examining the classification of 'roasted areca nuts", finds that as a matter of fact, there is no definition of "roasted" given in the Custom Tariff Act. As far as Chapter 08 is concerned, it speaks of process like chilling or steaming, boiling, drying and provisionally preserving. It is important to note that although, the said chapter contains the entry of areca nuts at "0802 80" and consists of whole, split, ground and other forms, but the description of these items has to be understood in the form it assumes after the* *process as mentioned under the said chapter is undertaken on them. That is to say, the end product obtained by the process mentioned in this chapter becomes significant for its classification. It has been rightly held by the CAAR that there is a marked difference between the processes of moderate heat treatment & dehydrating/drying referred in chapter 8 and processes of dry-roasting, oil-roasting and fat-roasting referred in Chapter 20. Although, the terms dry-roasting, oil-roasting and fat roasting are also not defined in the Customs Tariff Act, 1975, however, these terms have to be understood in a commonly accepted sense. Further, this court has no hesitation in subscribing to the view of CARR that in common trade parlance, "drying" is a method of food preservation by the removal of water content, whereas on the other hand, "roasting" means the excess or very high heat treatment that produces fundamental chemical and physical changes in the structure and composition of the goods, bringing about a charred physical appearance. Therefore, while drying is a moisture removal process involving methods such as dehydration, evaporation, etc., whereas roasting is a severe heat treatment process. The end product changes with the degree of heat it is subjected at the time of processing.*

***33.** Further, it also has to be understood that as per Note 1 (a) to Chapter 20, the Chapter does not cover vegetables, fruits or nuts prepared or preserved by the processes specified in Chapters 7, 8 or 11. Therefore, vegetable, fruit or nut products or preparations made other than by the processes specified in Chapters 8 like freezing, steaming,* *boiling, drying, provisionally preserving and milling etc. are liable to be classified under a different head, which is Chapter 20. It is easily verifiable that the Heading 2008 covers fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere, specified or included.*

34. *This Court finds that roasting is a process used for bringing in to existence roasted nuts and finds that the processes mentioned in chapter 8 do not cover roasting process. Further, this court cannot be oblivious to the fact that roasting, as submitted by the importer by virtue of letter dated 04.06.2024 issued by ANL(S) Trading & services Pte Ltd., Singapore, is carried out using roasting ovens due to which betel nuts are roasted in the range of 150 degrees Celsius then cooled in room temperature and the cycle is repeated until the moisture content is less than 6%. This clearly indicates that the roasting is much more than mild heat treatment. Even in the generally understood meaning of the terms, it is understood that roasting involves severe heat treatment and is different from moderate heat treatment as well as dehydration. Thus, drying and roasting cannot be equated and both the process are diametrically different.*

35. *Additionally, this court finds that the Hon'ble High Court of Madras in its judgement on Civil Miscellaneous Appeal (CMA) No's 600/2023, No. 1206/2023 and No. 1750/2023, dated 01.08.2023, had upheld the classification of 'Roasted areca Nuts' under CTH 2008 19 20. Further, this court takes*

Judicial notice of the recent development, wherein a Notification No. 02/2025-26 dated 02.04.2025 has been issued by the Department of Commerce, Directorate General of Foreign Trade, relating to "amendment in import policy and policy condition of Roasted Areca Nuts falling under ITC(HS) Code 2008 19 20 of chapter 20 of ITC(HS), 2022, Schedule-I(Import Policy). The effect of the said notification is that the import policy of 'roasted Areca nuts' falling under ITC (HS) Code 08028090 and 2008 19 20 stands revised from "free" to "prohibited" and a kind of clarification has been sought to be given by the department, that as far as the Tariff entry 2008 19 20 relating to other roasted nuts and seeds are concerned, "roasted areca nuts" are not covered as they are specifically covered under 08028090.

***36.** In view of the aforesaid recent development, it can be safely concluded that a doubt always existed in the mind of the department relating to the tariff entry of 'roasted areca nuts", otherwise there was no occasion nor any need for issuance of the recent notification dated 02.04.2025, wherein the department was compelled to clarify and specify in clear terms that 'roasted areca nuts' are not covered under ITC (HS) Code 2008 19 20 as they are specifically covered under 08028090.*

***37.** As a sequel to the above discussion and in view of the CAAR findings, this Court holds that "roasted areca nuts' have been rightly classified under Tariff Entry 2008 19 20. The grounds raised by the department in Custom Appeal No. 3 of 2024, challenging the advance ruling dated 19/09/2024* *is unmerited and, as such, the same is, accordingly, dismissed. As a result of dismissal of Custom Appeal No. 3 of 2024, connected Custom Appeal No. 3 of 2025 also stands dismissed on similar terms.*

38. *As far as the second issue relating to whether the commodity imported by the importer/petitioner of the Writ Tax No. 71 of 2025 are "roasted areca nuts", so as to be classifiable under CTH 2008 19 20 or are merely dried areca nuts and could be classified under CTH 080280 is concerned, the test reports gains prominence. It is pertinent to mention herein that the commodity was imported on 06.11.2024 and samples were drawn from the said commodity from time to time. The test report drawn from the samples drawn from the commodity imported by the importer, along with the date of collection of samples and the testing, whether being in conformity with the existing guidelines or not, can be displayed in a tabular chart in the following manner:*

	Date of Collection of Sample	**Date of Receiving of sample**	**Date of preparation of Report**	**Consonance with guidelines of 18/07/2017, report should be within 5 days**	**Moisture Content of Commodity**	**Testing agency**
1.	18/11/2024	19/11/2024	22/11/2024	Yes	3.39%	First Lab, Gurgaon
2.	18/11/2024	27/11/2024	16/12/2024	No (sample received after 9 days)	7.09%	CRCL, New Delhi

3.	*18/11/2024*	*19/11/2024*	*18/12/2024*	*Yes, Inference drawn that commodity is 'roasted areca nuts" and fit for Human consumptio n*	*3.9%*	*First Lab, Gurgaon*
4.	*17/01/2025* *(In view of the directions of this court vide order dated 17.12.2024)*	*11/02/2025*	*24/02/2025*	*No (sample received after 25 days)*	*7.24%*	*CRCL, New Delhi*

39. *It has been contended by the learned counsel for the importer that there had been a gross violation of the guidelines dated 18/07/2017, issued by Central Board of Excise and Customs wherein it is clearly mentioned that the samples ought to be drawn in the presence of the importer for testing purposes. Further, in Clause 2(a) it is specifically provided that the test reports if are adverse or otherwise shall be communicated to the importer and in clause 2(b) it further states that the importer can request the Additional Commissioner/Joint Commissioner of Custom for re-test. According to the learned Counsel, as per clause 2(c), when the Custom Officer provides the opportunity for second test, he must clearly indicate in writing where the second test can be carried out and such referral laboratory where desired re-*

testing facility exists and in clause 2(d) it provides that the sample should be marked as immediate for avoiding delays and most importantly, as per clause 2(e) it provided the presence of the importer at the time of drawing of samples, and the importer or representative should be present and certify the sample drawn. It is the contention of the learned counsel for the importer that although an elaborate and time-tested procedure existed for drawing of the samples and contained the rights and duties of the parties, however none of the guidelines has been followed by the department while drawing samples in the first instance or at the time, the samples were sent for re-testing to the CRCL, New Delhi. On the other hand, the learned counsel appearing for the department, although did not dispute the existence of the said guidelines nor it confirmed its compliance, however has contended that the same is merely directory and not mandatory and did not effect the issue raised in the present petition. No doubt the guidelines mentioned and relied upon herein above are directory, however this court finds that the elaborate process mentioned for sample testing is in aid of the principle of natural Justice. In the present case, the very conduct of the department in drawing the samples behind the back of the importer and not providing them with the sealed samples and test memo by taking shelter of Section 144 of the Customs Act, 1962 cannot be countenanced. Further, the rules specifically provides the importer for applying for retesting, in case they are not satisfied with the first test report, this court fails to understand as to how the department cannot be satisfied with any test report in the first *place. The act of the department apparently seems to be motivated and suspicious, in not providing the impugned letter dated 27.12.2024 in the first instance and then not taking the importer in confidence while sending for re-testing, if at all re-testing was permissible by the state as per the rules.*

40. *Time and again, this Court has held that in a welfare state, the power and function of the executive should be above suspicion like the Caesar's wife. The State is expected to be impartial, unbiased and lead the way in adhering to legal and ethical standards. In the context of sample drawing for analysis and testing, the state should ensure that samples are collected and analysed according to established procedures, preserving their integrity and reliability. This includes drawing samples in a manner that avoids tampering, contamination, or alteration, and ensuring that the analytical methods used are valid and reliable. Furthermore, the state must ensure that the Guidelines formulated is followed as the role and responsibility of the state is not of an adversarial litigator, but as an epitome of follower of law. The state cannot have the concession of not following the guidelines, which they themselves have formulated for proper administration, irrespective of whether it is mandatory or directory.*

41. *Further, this Court cannot be oblivious of the fact that the import is governed by the Food Safety and Standards (Import) Regulations, 2017, wherein the regulations 9(9) and 9(10) specifically provides that in case, if the test results of* *the first sample are adverse, then it is only the importer, who can make an Application for its Re-testing and only thereafter it could have been sent for Re-testing. However, in the present case, after sending the sample on 19/11/2024, the department on their own and without any reasons have sent another sample on 27/11/2024 to another laboratory after 5 days from receipt of report dated 22/11/2024 which dehors the provisions of the Regulations of 2017. Even, the Guidelines dated 12/07/2022, issued by Food Safety Standards Authority of India, has been seemingly ignored, as although the said guidelines provide for compliance for time-limit for analysis of sample under clause 2(ii), to be of 5 days from the receipt of the sample in case of 'Import', however the department has flouted the said timeperiod as is apparent from the tabular chart incorporated herein above, wherein the samples are received by the testing center after 9 and 25 days respectively.*

42. *There is no reasons forthcoming as to why and in what circumstances, the second samples were drawn by the department and that too without any application by the importer, as per the rules. No sustainable grounds have been made out by the department against the test-reports of First Lab, Gurgaon, nor any reasons have been forthcoming disputing the test results of the said First Lab, Gurgaon. This Court finds that the test-result obtained from First Lab for samples drawn by the department, immediately after its import, shows the moisture content of 'roasted areca nuts' to be 3.39%. The said test-report has been obtained for a sample, which was collected on 18.11.2024 and was* *received in the testing agency on 19.11.2024 and most importantly, the report was prepared within 5 days of its receipt i.e on 22.11.2024. Seemingly, the said report, which is the earliest report, appears to be the most authentic report meeting the guidelines of the FSSA as well as the Customs Department and this court finds no plausible reasons for denying the benefit of the said earliest and/or first report to the importer.*

***43.** The lackadaisical attitude of the department in not following the established guidelines relating to drawing samples and sending for testing cannot be given concession to in any manner. Apparently, it seems the department indiscriminately drew samples and sent to testing Centre at its own whims and wanted to keep the importer at bay during the pendency of the Appeal filed by them against the advance ruling, relating to classification of 'roasted areca nuts'. The act of the department in relying on a test report, which could not have been carried out in the first place, also seems to be ill-founded. Thus, the seizure of the commodity 'roasted areca nuts' apparently seems to be motivated and driven by malafide and cannot be allowed to be sustained.*

***44.** For all the above reasons, Writ Tax No. 71 of 2025 deserves to be allowed, in the peculiar facts and circumstances of the present case. This Court while directing for the release of the commodity imported as 'roasted areca nuts" classified under CTH 2008 19 20 on usual compliances of the prevailing rules, hereby quashes the seizure memo dated 10/03/2025. It is made clear that this court has only* *dealt with the issue relating to classification of the 'roasted areca nuts' imported by the petitioner under CTH 2008 19 20 and has not expressed any opinion on the other avenues of the import or any issue not raised in these Appeal/petitions. Further, it is directed that since, these 'roasted areca nuts' had been imported some six months ago, the aforesaid direction for release, is subject to the condition that the importer provides for treatment of these roasted areca nuts by 'Gamma Irradiation process', wherein the moulds and insect's in nuts can be sterilized/ treated as per the proposition of treatment laid down by the Bhaba Atomic research Centre, Trombay, Mumbai, to the compete satisfaction of the authority.*

17.4 I am in respectful agreement with the view expressed in the aforesaid judgments and consequently, I am of the opinion that the subject imported goods are roasted areca nuts which merit classification under Chapter 20 for the following additional reasons:

- Both the 1st and 2nd test reports of CRCL would conclusively establish that the goods are roasted areca nuts carrying a moisture content of 5.9%;
- The goods are also different from raw areca nuts as is forthcoming from the CRCL reports which also mention that it is 'other than' dried which would mean that the moisture content

has been brought down by a process of intense heating and not just drying which is why the term “roasted” is used as contrasted with ‘dried’ areca nuts;

- The classification of the goods under the customs tariff and the HSN clearly point towards roasted areca nuts falling under Chapter 20 as elaborately explained in the aforesaid judgments;
- It is also relevant to mention that since the Food Safety standards are to be met, the petitioner had produced a FSSAI certification dated 24.9.2024 showing the imported goods to be compliant with roasted areca nuts and even subsequently, one more report dated 20.5.2025 was also filed by the petitioner with the customs department;
- So also, the DGFT vide its notification dated 2.4.2025 initially tried to revise the classification of roasted areca nuts to Chapter 8 but rectified the same vide subsequent notification dated 15.10.2025 classifying the said products under Chapter 20.

17.5 Under these circumstances, I am of the view that tariff classification adopted by the respondents in relation to the subject goods is contrary to facts and law and that the same are to be classified under Chapter 20 as contended by the petitioner.

Accordingly, **Point No.(ii)** is also answered in favour of the petitioner.

<u>Re: Point No.(iii);</u>

18. The next question that arises for consideration is as to whether the valuation done by the respondents in relation to the subject goods is in accordance with law; in this context, as rightly contended by the learned Senior Counsel for the petitioner, the subject goods having been imported on 06.09.2024, it is this date which would be relevant for the purposes of fixing the rate and the tariff valuation as per Section 15 of the Customs Act; the Apex Court in the case of ***UOI vs G.S.Chatha Rice Mills - 2020 (374) ELT 289*** held as under:

> *" **16.** Chapter V of the Customs Act provides for the levy of and exemption from customs duties. Section 12(1), which is the charging provision, provides for the levy of duties of customs on goods imported into, or exported from India at the rates specified by the Customs Tariff Act or, in any other law for the time being in force. Section 15(1) is extracted below :*

*"**15. Date for determination of rate of duty and tariff valuation of imported goods.** - (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -*

(a) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section];

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

The provisions of this section shall not apply to baggage and goods imported by post."

(emphasis supplied)

***17.** Section 12 specifies that the rates of duty on goods imported and exported are those which are provided in the Customs Tariff Act or in any other law. Section 12 does not indicate when the duties under those enactments will come into being or force. Section 15 specifies the date with* *reference to which the rate of duty and tariff valuation of imported goods is determined. Clauses (a), (b) and (c) of sub-section (1) of Section 15 contain distinct provisions which apply to :*

(i) in respect of such goods is presented under that Section. In relation to the rate of duty, the effect of clause (a) of Section 15(1), is that the rate which is in force on the date on which a bill of entry is presented under Section 46 (in the case of goods entered for home consumption) is applicable to the imported goods. When the duties come into force under the enactments imposing them is dependent on and defined by the terms of the particular enactment.

18. *Chapter IX of the Customs Act contains provisions for warehousing. Section 68 which falls under that Chapter stipulates that goods which have been warehoused may be cleared for home consumption if :*

(a) A bill of entry for home consumption has been presented;

(b) Import duty, interest, fine and penalties, as applicable, have been paid; and

(c) An order for clearance for home consumption has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

For goods which are cleared from a warehouse under Section 68, clause (b) of Section 15 (1) provides that the rate of duty and valuation are those "in force" "on the date" on which a bill of entry for home consumption is presented under Section 68. In the case of other goods, it is the date of the payment of duty which determines the rate of duty under clause (c) of Section 15(1).

The proviso to Section 15(1) contemplates a situation where a bill of entry has been presented before the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle through which the goods are imported. Under the proviso to Section 46(3), a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vehicle by which the goods have been shipped for importation into India. Dealing with such a situation, the proviso to Section 15(1) states that if a bill of entry has been presented prior to the date of the entry inwards of the vessel or the arrival of the aircraft or vehicle by which the goods are imported, the bill of entry is deemed to have been presented on the date of the entry inwards or the arrival of the goods. Hence even where the bill of entry has been presented before the date of the entry inwards or the arrival of the aircraft or vehicle, the rate of duty is determined with reference to the date of entry inwards or the arrival of the aircraft or vehicle. This is a consequence of the deeming fiction under the proviso, as a result of which the presentation of the bill of entry, when filed prior to the arrival of the goods, is deemed to be on the date of the entry inwards or the arrival of the aircraft or vehicle. Hence, implicit *in the provisions of Section 15(1) are the dual or (as counsel before the court described them) the twin requirements of (i) the presentation of the bill of entry; and (ii) the entry inwards of the vessel or, as the case may be, the arrival of the aircraft or vehicle.*

***19.** Section 17 provides for the assessment of duty. Section 46 provides for the entry of goods on importation. Both the provisions of Section 17 and Section 46 have undergone legislative changes by Act 8 of 2011 and by the Finance Act of 2018. By Act 8 of 2011, Section 17 was substituted and Section 46 was amended to provide for the presentation in the electronic form of a bill of entry for home consumption or warehousing. Section 46 provides as follows;:*

*"**46. Entry of goods on importation.** - (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed;*

Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner :

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under Section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing :

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India :

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed],

(4A) The importer who presents a bill of entry shall ensure the following, namely :-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force………"

(emphasis supplied)

Sub-section (1) of Section 46 requires an importer of goods to make an entry by presenting a bill of entry for home consumption or warehousing "electronically on the customs automated system" to the proper officer "in such form and manner as may be prescribed". The word 'electronically' was introduced by Act 8 of 2011 with effect from 8 April, 2011. The provision for the presentation of the bill of entry on the customs automated system and in 'such form and manner as prescribed' was introduced by the Finance Act of 2018. Under sub-section (3) of Section 46, a bill of entry under sub-

section (1) must be presented before the end of the day following the day on which the aircraft, vessel or vehicle carrying the goods arrives at a customs station at which the goods are to be cleared for home consumption or warehousing (holidays being excluded). The first proviso to sub-section (3) enables the presentation of a bill of entry before arrival, at a time not exceeding thirty days prior to the expected arrival of the aircraft, vessel or vehicle by which the goods have been shipped for importation. Under the second proviso if the bill of entry is not presented within the specified time without sufficient cause, the importer is required to pay the charges prescribed for late presentation of the bill of entry.

20. *Section 17 makes provisions for the assessment of duty :*

"Assessment of duty.

17. Assessment of duty. *- (1) An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.*

(2) The proper officer may verify [the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary :

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods"

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which *the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."*

(emphasis supplied)

Prior to its substitution by Amending Act 8 of 2011, Section 17 contained requirements for (i) examination and testing of goods; and (ii) assessment. Section 17, as it stood prior to substitution, was in the following terms :

*"**17. Assessment of Duty.** - (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under, section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.*

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer,

exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the enter relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefore under this Act, and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

The amendment of 2011 has made significant legislative changes in the procedure and modalities for assessment of duty under Section 17. Under sub-section (1) of Section 17, the importer entering imported goods under Section 46, has *to 'self-assess' duty (except as otherwise envisaged in the provisions of Section 85). Under sub-section (2), the proper officer may verify the entries made under Section 46 and the self-assessment made under sub-section (1) and may examine or test the goods. The selection of goods for verification has to be primarily on the basis of risk evaluation through appropriate selection criteria. Under sub-section (4), where it is found on verification, examination or testing of goods or otherwise that the self-assessment has not been done properly the proper officer is entrusted with a power of re-assessment. Sub-section (5) requires the passing of a speaking order upon re-assessment.*

21. *Section 47 provides for the clearance of goods for home consumption :*

*"**Clearance of goods for home consumption.** - (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption :*

Provided that such order may also be made electronically through the customs automated system on the basis or risk evaluation through appropriate selection criteria :

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of *importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.*

(2) The importer shall pay the import duty -

(a) on the date of presentation of the bill of entry in the case of self assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment under the proviso to subsection (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent, but not exceeding thirty-six per cent, per annum, as may be fixed by the Central Government, by notification in the Official Gazette….."

(emphasis supplied)

Sub-section (2) of Section 47 requires the importer to pay import duty "on the date of presentation of the bill of entry in the case of self-assessment". Alternatively, where the bill of entry is returned to the importer for the payment of duty in the case of assessment, re-assessment or provisional assessment, the import duty has to be paid within a day, after excluding holidays.

The provisions contained in Section 46 for the entry of goods on importation and those in Section 17 for assessment form part of a composite scheme. Section 46 requires an importer of goods to make an entry in the electronic form of a bill of entry for home consumption or, as the case may be, for warehousing, on the customs automated system. An exception is contained in the proviso to Section 46(1) for cases where it is not feasible to make an entry in the electronic form on the customs automated system. The bill of entry under sub-section (1) has to be presented not later than the day following the arrival of the goods though it can be presented before the arrival of goods, at a time not exceeding thirty days prior to their expected arrival. In tandem with the provisions of Section 46, Section 17 provides for the self-assessment of duty by the importer.

Section 46(1) stipulates that the bill of entry has to be presented in the form and in the manner 'prescribed'. The expression 'prescribed' is defined in Section 2(32) to mean prescribed by regulations made under the Act. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 have been made in pursuance of the enabling power conferred by Sections 46 and 47 and Section 157 which contains a general power to make regulations. Section 157(2)(a) was amended by the Finance Act, 2018 (Act 13 of 2018) to allow for the power to frame regulations on the form and manner of delivering or presenting inter alia a bill of entry. Regulation 2(c) of the 2018 Regulations defines the expression bill of entry in the following terms :

"(c) "bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs"

Regulation 2(d) defines the expression electronic integrated declaration :

"(d) "electronic integrated declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System"

Under Regulation 2(e), "ICEGATE" is the customs automated system of the Central Board of Indirect Taxes and Customs. Regulation 3 requires the authorized person [defined in Regulation 2(b)], which includes the importer, to enter the electronic integrated declaration and supporting documents by affixing a digital signature. Regulation 3 is as follows :

"3. The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre."

Regulation 4 provides as follows :

"4.(1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre.

(3) Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of……………"

(emphasis supplied)

22. *The Regulations of 2018 have made provisions for submission of a declaration and generation of the bill of entry in an electronic form on the automated platform provided by the Central Board of Indirect Taxes and Customs. Sub-regulation (2) of Regulation 4 embodies a legal fiction. Regulation 4(2) stipulates that the bill of entry is deemed to have been filed and self-assessment completed when after* *the entry of the electronic integrated declaration on the customs automated system (or by data entry through a service centre) a bill of entry number is generated by the Indian Customs Electronic Data Interchange ("EDI") System. The self-assessed copy of the bill of entry may be electronically transmitted to the authorized person under the deeming fiction which is created by Regulation 4(2). Hence, the bill of entry is deemed to be filed and the self-assessment completed when the requirements of Regulation 4(2) are fulfilled namely by the (i) entry of the declaration on the customs automated system; and (ii) generation of a bill of entry number by the EDI system. Following this, the self-assessed copy of the bill of entry is electronically transmitted to the authorized person.*

23. *In terms of the provisions of Section 15(1)(a), in the case of goods which are entered for home consumption under Section 46, the date of presentation of the bill of entry determines the rate of duty and tariff valuation. Under Section 47(2)(a), the importer is obliged to pay the import duty on the date of the presentation of the bill of entry in the case of self-assessment. Regulation 4(2) of the Regulations of 2018 categorically stipulates when the presentation of the bill of entry is complete. Once the bill of entry is deemed to have been presented in terms of Regulation 4(2) the rate and valuation in force stand crystalized under Section 15(1)(a). Section 17(4) confers a power of re-assessment on the proper officer where it is found on verification, examination or testing of the goods or otherwise- that the self-assessment has not been done correctly. In the present* *case the customs authorities sought to exercise the power of re-assessment on the ground of the subsequent notification enhancing the rate of duty. The fact of the matter is that self-assessment was carried out on the basis of the rate of duty which prevailed at the time of the presentation of the bill of entry. This is not and cannot be a matter of dispute. Notification No. 5/2019, which introduced a new Tariff Entry - 9806 00 00 - in the First schedule to the Customs Tariff Act covering all goods originating in or exported from the Islamic Republic of Pakistan, was not in force at the time when the self-assessment was carried out.*

24. *Under Section 15(1)(a) the rate of duty is the rate in force on the date of the presentation of a bill of entry where the goods are entered for home consumption under Section 46. The submission of the Learned ASG is that the expression "on the date" is adopted by the legislature in clauses (a) and (b) and in the proviso to Section 15(1). He urged that Section 15(1) has no reference to time but only to the date of the presentation of the bill of entry and once a notification was issued on 16 February, 2019 enhancing the rate of duty, that is the duty 'in force' on the date of presentation. Section 15(1)(a) uses two expressions (i) the rate and valuation "in force"; and (ii) "on the date" of the presentation of the bill of entry for home consumption under Section 46. The provisions of Section 15(1)(a) have to be read in conjunction with the provisions of Section 46 which are referred to in the former provision. Section 46 has incorporated a regime which encompasses the submission of the bill of entry for home consumption or warehousing in* *an electronic format, on the customs automated system in the manner which is prescribed. The Regulations of 2018 stipulate the manner in which the bill of entry has to be presented. The deeming fiction in Regulation 4(2) specifies when presentation of the bill of entry and 'self- assessment' are complete. The rate of duty stands crystallized under Section 15(l)(a) once the deeming fiction under Regulation 4(2) comes into existence. The regulations have to be read together with the statutory provisions contained in Section 15(l)(a) and Section 46, while determining the rate of duty.*

G. Precedent

25. *At this stage it is necessary to analyze the precedent on the subject. In Bharat Surfactants (Private) Limited v. Union of India [(1989) 4 SCC 21 = 1989 (43) E.L.T. 189 (S.C.)] ("Bharat Surfactants"), customs duty was imposed on the import of edible oil by the petitioners at the rate of 150 per cent on the basis that the import was made on the date of the inward entry, which was 31 July, 1981. The vessel arrived and registered in the Port of Bombay on 11 July, 1981 but since a berth was not available, the cargo could not be unloaded. The vessel left Bombay and proceeded to Karachi and returned towards the end of July, 1981. The rate of customs duty prevailing on 11 July, 1981 was 12.5 per cent and the contention of the importer was that but for the fact that the vessel was unable to secure a berth, it would have delivered the cargo. Speaking for a Constitution Bench, Chief Justice R.S. Pathak rejected the contention of the importer that the import of goods must be* *deemed to have taken place on 11 July, 1981 when the ship originally arrived in Bombay port and registered itself. The Constitution Bench held :*

"14...The provisions of Section 15 are clear in themselves. The date on which a Bill of Entry is presented under Section 46 is, in the case of goods entered for home consumption, the date relevant for determining the rate of duty and tariff valuation. Where the Bill of Entry is presented before the date of Entry Inwards of the vessel, the Bill of Entry is deemed to have been presented on the date of such Entry Inwards."

The Constitution Bench held that the date of entry inwards of the vessel in the Customs' register was mentioned as 31 July, 1981 and the rate of import duty and tariff valuation would be that which was in force on that day. The decision in Bharat Surfactants was adverted to in the decision of this court in Priyanka Overseas Pvt. Ltd. v. Union of India [1991 Supp (1) SCC 102 = 1991 (51) E.L.T. 185 (S.C.)]. Justice N.M. Kasliwal, speaking for the two judge Bench, observed :

"34...The rate of duty and tariff valuation on the imported goods may be changed from time to time and as such the legislature has clearly expressed its intention under Section 15 as to on what date the rate of duty and tariff valuation is to be determined...

Many contingencies may happen in between the filing of bill of entry and actual removal of the goods from the warehouse for which sometimes the importer of goods may himself be *responsible, in some cases the responsibility may lie on the customs authorities and there may also be contingencies beyond the control of both the parties. In any case the intention of the legislature being clear, rate of duty is to be applied, as may be in force on the date of actual removal of goods from the warehouse under Section 15(l)(b) of the Customs Act."*

The above observations, referring to the date of the actual removal of goods from the warehouse, were made in the context of the provisions of Section 15(l)(b). In a subsequent decision in Dhiraj Lal H. Vohra v. Union of India [1993 Supp (3) SCC 453 = 1993 (66) E.L.T. 551 (S.C.)], Justice K. Ramaswamy speaking for a three judge Bench observed :

"3. It is clear from a bare reading of these relevant provisions that the due date to calculate the rate of duty applicable to any imported goods shall be the rate and valuation in force, in the case of the goods entered for home consumption under Section 46, is the date on which the bill of entry in respect of such goods is presented under that section and in the case of goods cleared from a warehouse under Section 68, the date on which the goods are actually removed from the warehouse. By operation of the proviso if a bill of entry has been presented before the date of entry inwards the bill of entry shall be deemed to have been presented "on the date of such entry inwards" but would be subject to the operation of Sections 46 and 31(1) of the Act."

In that case the ship had arrived at the Port of Madras on 20 February, 1989 and was ready to discharge her cargo.

Though the import manifest was delivered, the cargo could not be handled as a result of a continuous strike. The bill of entry for clearance of goods for home consumption was presented on 27 February, 1989. The ship arrived into the port and was berthed on 2 March, 1989 on which date the entry inwards was granted. From 1 March, 1989, the rate of duty was increased. The court rejected the contention that since the vessel had entered Indian territorial waters on 20 February, 1989 when she was ready to discharge the cargo, the rate of duty must be that which prevailed on that date :

"3...The contention, therefore that the ship entered Indian territorial waters on February 20, 1989 and was ready to discharge the cargo is not relevant for the purpose of Section 15(1) read with Sections 46 and 31 of the Act. The prior entries regarding presentation of the bill of entry for clearance of the goods on February 27, 1989 and their receipt in the appraising section on February 28, 1989 also are irrelevant. The relevant date to fix the rate of customs duty, therefore, is March 2, 1989. The rate which prevailed as on that date would be the duty to which the goods imported are liable to the impost and the goods would be cleared on its payment in accordance with the rate of levy of customs prevailing as on March 2, 1989."

Another decision of a Bench comprising three Learned Judges of this Court in D.C.M. v. Union of India [1995 Supp (3) SCC 223 = 1999 (109) E.L.T. 12 (S.C.)] held as follows :

"7...A reading of Sections 15, 46 and 68 makes it clear that they provide an option to the importer either to file a bill of

entry for home consumption straight away (in which case he has to pay the duty determined with reference to that date) or to file a bill of entry for warehousing. In the latter case, the goods are merely warehoused. The import duty will be levied at the rate and on the basis of the valuation determined in accordance with the provisions prevailing on the date of clearance from the warehouse for which purpose the importer has to file a fresh bill of entry for home consumption. In other words, it is the date of filing the bill of entry for home consumption which determines the rate of duty in clauses (a) and (b) of Section 15. Inasmuch as the matter is left to the option of the importer and also because a uniform principle is adopted by the Act, as explained above, we see no room for any legitimate grievance of discrimination. There is also no presumption that rate of duty always goes up. It may also go down, in which case, the importer stands to gain."

26. *The presentation of a bill of entry for home consumption under Section 46 is hence the definitive event with reference to which the customs' duty payable for import is determined. The duty in force on the day when the bill of entry for home consumption is presented is the duty which is applicable under Section 15(1)(a). It is in view of this principle that the entry of the vessel into territorial waters, before the presentation of the bill of entry, has been held not to fix the rate of duty where the rate of duty has undergone a change.*

H. Interpreting 'day' and 'date'

27. *The expressions "day" and "date" have been construed in varying contexts in the precedents of this Court. The underlying feature of the decisions is that the content of those expressions is based on the context. In Raj Kumar Yadav v. Samir Kumar Mahaseth [(2005) 3 SCC 601], the limitation provided by Section 81 of the Representation of the People Act, 1951 expired on the 45th day from the date of the election. Interpreting the provision, Chief Justice R.C. Lahoti while speaking for a three judge Bench of this Court observed :*

"6...The word "day" is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word "day" as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context."

Hence, in that case the Election Petition could have been presented up to midnight falling between 27 and 28 August, 2003. The Court observed that the limitation which was prescribed by the statute could not be curtailed or taken away by the rules of the High Court, governing its procedure.

28. *In New India Assurance Co. Ltd. v. Ram Dayal [(1990) 2 SCC 680] ("Ram Dayal"), a two judge Bench of this Court noted that the insurance policy in respect of the vehicle was up to 31 August, 1984 and could be renewed. Instead of renewing the policy, a fresh insurance policy was taken from 28 September, 1984, on which date the accident occurred. This Court upheld the view of the Punjab and Haryana High Court, which was supported by earlier decisions of the*

Madras High Court, Punjab and Haryana High Court and the Allahabad High Court, that the insurance cover commenced from the beginning of the day and concluded that :

"4... when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award."

29. *On the other hand, in National Insurance Company Limited v. Geeta Devi [(2010) 15 SCC 670], the cover note was issued on 9 June, 1989 at 4:40 pm while the accident took place at 11:30 am on the same day. A two judge Bench of this Court distinguished the decision in Ram Dayal (supra) and held that when the cover note mentioned the date of issue of the policy as 9 June, 1989 and the time as 4:40 pm " it necessarily means that the effective date of issue and time of issue is as mentioned on the cover note." Since the cover note mentioned both the date and time, the Court held that the principle that the insurance cover would date back to midnight of the preceding day would not cover the factual situation.*

30. *In Ahmadsahab Abdul Mulla (2) Dead by proposed Lrs. v. Bibijan [(2009) 5 SCC 462], the issue before this Court was whether the expression "date" in Article 54 of the Schedule to the Limitation Act (which prescribes the period of limitation for a suit for specific performance) is suggestive of a specific date in the calendar. The court observed :*

"11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances."

31. *The expression 'date' in Article 54 was held to be suggestive of a specified date in the calendar. In Pashupati Nath Singh v. Harihar Prasad Singh [(1968) 2 SCR 812], a three judge Bench construed the words "on the date fixed for scrutiny" in Section 36(2)(a) of the Representation of the People Act, 1951. Interpreting those words, the Court held that the qualification of a candidate must exist from the earliest moment of the day of scrutiny :*

"13. It seems to us that the expression "on the date fixed for scrutiny" in Section 36(2)(a) means "on the whole of the day on which the scrutiny of nomination has to take place". In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on this date the Returning Officer has to decide the objections and the objections have to be made by the other candidates after examining the nomination papers and in the light of Section

36(2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a position to raise all possible objections before the scrutiny of a particular nomination paper starts."

32. *A Special Bench of the Madras High Court in Re : Court Fees [ILR (1923) 46 Mad 685] dealt with the interesting issue of whether the law disregards fractions of the day. A notification was published in the Fort St. George Gazette on 5 May, 1922 by which the table of fees leviable in respect of the institution of suits under Appendix-II of the old rules on the Original side was amended. Instead of a fixed fee of Rs. 30, it was provided that Rs. 150 was to be levied in all suits where the value of the subject matter did not exceed Rs. 10,000/- and in respect of suits of a higher value, Rs. 20/- was to be levied for every Rs. 5,000/- or part thereof in excess of Rs. 10,000/-. The notification stated that "the amendments do come into force from the date of publication in the Fort St. George Gazette". The office hours of the High Court were from 11am to 5pm. The notification reached the High Court at about 5 pm, at the close of the office hours. The issue before the Special Bench was whether the rules imposing increased institution fees on suits on the Original side of the High Court would apply the new scale to suits which had already been instituted on that day. Chief Justice Schwabe, on behalf of the majority, held "that the hour of the day at which the Gazette was actually published is a wholly irrelevant consideration". The Chief Justice noted that the use of the expression 'from' may have one of two meanings namely on and after, that is including the named date, or* *merely after, that is excluding the named date. The Chief Justice took the view that it is necessary to look at the context and the circumstances of each case to arrive at the true construction. Having said this, the Chief Justice outlined the principles in the following extract on page 688 :*

"(1) that, if the named date is the beginning of a defined limited period, that, where there is a terminus ad quem as well as a terminus a quo, then prima facie the first day is excluded; (2) that, if the named date is the beginning of an indefinite period then prima facie the first day is included. I say prima facie because in my view there must be exceptions".

In his view, the expression "from a named date" meant "on and after that day". Hence the date on which the notification was published in the official Gazette was held to apply to all plaints which were filed on 5 May, 1922.

Justice Coutts Trotter, arrived at the same conclusion as the Chief Justice, following a different path, which he set out in the following observations, on page 691 :

"What I conceive to emerge from the decided cases is this : that as the law in general neglects fractions of a day you must either exclude or include the whole of the day with which a given statute or rule or regulation deals. And the exclusion or inclusion, I think, is clearly provided in two other rules. If you are fixing the point of time at which a certain state of things is to be called into existence, that state of things comes into existence at midnight of the day preceding

the day at which or on which or from which or from and after which the new state of things begins. In such cases the statue or rule is only concerned in fixing the terminus a quo of a new state of law which is enacted to continue indefinitely, in other words, until repealed by a new enactment of the legislature where, in short, you have a terminus a quo but no terminus ad quem."

In his view, on page 693 :

"Where a statute fixes only the terminus a quo of a state of things, which is envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of a day and the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated: where on the other hand, a statute delimits a period marked both by a terminus a quo and a terminus ad quem, the former is to be excluded and the latter to be included in the reckoning."

The notification, in this view, fell in the former class and was held to have come into force on the first second of the 5 May, that is to say from midnight of 4 May. Hence all plaints which were filed on 5 May were liable to the enhanced fee.

The tightly reasoned and eloquent dissenting opinion delivered by Justice Kumaraswami Sastri, on the other hand, deserves close attention. The Learned Judge noted that if the case were to be decided on the principle that the law disregards fractions of a day, it could mean any one of two *things : either that a fraction of a day is to be taken as a whole day or that it is to be excluded altogether from the calculation. Consequently, "it does not help us to determine in any particular case whether the part is to be left out or kept in". Justice Kumaraswami Sastri observed that there is no invariable rule that the use of the expression 'from' includes the first day. Nor was there any basis in principle in the submission of the Crown that the exclusion of the first day where the word "from" is used is only to be in case where there are two termini. The Learned Judge held that rules of equity and good conscience are by the Civil Courts Act to govern cases not governed by the Hindu and Mohammedan Laws. Voicing a powerful dissent, Justice Kumaraswami Sastri observed, on page 704 :*

"I do not think that the principles which govern, or the devices which are resorted to, by the Executive for the purpose of raising money by taxation ought to have any weight with us in determining whether the date of publication is to be included or excluded. I do not think the High Court is part of the tax gathering machinery of the Government or has any concern with the consequences to the Government of their decision on the construction of the rule. The rule, I take it, was passed by the Judges of the High Court in the exercise of the powers entrusted to them to control the administration of justice and the fees were raised because in the opinion of the Judges it was just and proper that litigants ought to pay more for the benefits which they derive by resorting to the jurisdiction of the High Court".

In the view of the Learned Judge, the notification having been received in the Registry of the High Court at 5 pm at the office closing hour, litigants who had filed plaints before either or they or the office had knowledge of the publication "did what was perfectly valid under the old rules and they presented the plaints with Rs. 30 stamp irrespective of the value of their claim". Looking at it from the citizens' perspective, the Learned Judge observed, on page 704 :

"A person who files a plaint which is properly stamped and which is in order at the time of presentation is entitled to have his plaint admitted on presentation though as a matter of convenience the office receives the plaints and admits them at the end of the day or later on. There seems to me to be very little justice or equity in directing that persons who have done what was perfectly a legal and valid act at the time should pay a Court-fee which is much higher simply because a notification was received at the close of the day making the higher fees chargeable from the date of the notification. It may well be that if those persons had notice that instead of Rs. 30 they had to pay at least Rs. 150 and a maximum that would range according to the value of their claim, they might rather have compromised with the other side or might have had resort to other proceedings like arbitration for settling their claims. I can find nothing to justify charging people, who filed their plaints on that day without knowledge of the notification which only reached the High Court at 5 p.m., with the higher fees in respect of plaints filed during the course of the day".

33. *Mr. Natraj, on behalf of the Union, submitted that Parliament has employed the phrase "on the date" without making a reference to time. Hence, he submitted that irrespective of the time of the publication or uploading of the notification under the Customs Tariff Act in the e-Gazette, the legislature has by a legal fiction, enacted that the rate of duty on imported goods will be the rate that is prevalent on the date of the presentation of the bill of entry for home consumption. He submitted that two different rates of duty cannot be applicable on the same day. Hence, according to the submission, once a notification is issued under the Customs Tariff Act, it will be a notification in force on that date and apply with effect from the commencement of that date.*

34. *The decisions to which a reference has been made earlier, have construed the expression "day" or, as the case may be, "date" in varying contexts ranging from the law governing elections, insurance and limitation. A general position in law has not been laid down that is divorced from subject, context and statute. In interpreting the statute, the court is guided by the terms of its provisions, the purpose underlying their adoption and the scheme which emerges from interrelated provisions and the nature of the provision. The court in the present case is interpreting the terms of a fiscal levy. The court here has to construe the scheme and provisions of the Customs Act and their relationship with the provisions of the Customs Tariff Act. The provision which falls for construction is Section 15(1) of which both clauses (a) and (b) use the expression "on the date". In clause (a),* *the rate of duty and valuation is the rate and valuation in force on the date on which a bill of entry is presented under Section 46 where goods are entered for home consumption. Under Clause (b), where goods are cleared from a warehouse under Section 68 it is the date on which a bill of entry for home consumption is presented under that Section which is determinative of the rate and valuation.*

35. *Mr. Natraj is textually right when he emphasizes that Section 15(1) contains a reference to date and not time. But there are two responses to his line of approaching the issue. First, the legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. Second, regulatory governance is evolving in India as new technology replaces old and outmoded ways of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962. Yet the Parliament has responded to the rapid changes which have been brought about by the adoption of technology in governance. In the provisions of Section 17 and Section 46, the impact of ICT-based governance has been recognized by the legislature in providing for the presentation of bills of entry in the electronic form on the customs automated EDI system. Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency.*

As we will explore in greater detail later in this judgment, technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration.

36. *It is with these principles of interpretation in mind that we must evaluate the submission which was urged by Mr. Nataraj, on behalf of the Union, that upon the issuance of a notification enhancing the rate of duty under Section 8A of the Customs Tariff Act, the date on which the notification was issued will govern the rate applicable to all bills of entry, including those which were presented before the enhanced rate was notified. The submission cannot be accepted for several reasons. For one thing, it misses the significance of the expression "in force' which has been employed in the prefatory part of Section 15(1). A notification under Section 8A(1) of the Customs Tariff Act, even though it has the effect of amending the First Schedule, takes effect prospectively. Section 8A does not confer upon the notification an operation anterior to its making. In the language of the law, its operation is prospective. To accept the submission of the*

ASG would mean that the notification under Section 8A would have effect prior to its making, something which Parliament has not incorporated by language or intent. If, as we hold, the notification operates for the future beginning with the point of its adoption, it cannot operate to displace the rate of duty which is applicable when a bill of entry is presented for home consumption under Section 46.

The submission of the Union cannot be accepted in view of the provisions contained in Section 46 for the presentation of a bill of entry for home consumption in an electronic form on the customs automated system. While making that provision, specifically by means of an amendment by Act 8 of 2011 and later by the Finance Act of 2018, Parliament used the expression "in such form and manner as may be prescribed." Regulation 4(2) of the Regulations of 2018 provides when the bill of entry shall be deemed to have been filed and self-assessment completed. The legal fiction which has been embodied in Regulation 4(2) emanates from the enabling provisions of Section 46. The provisions of Sections 15(1)(a), 17, 46(1) and 47(2)(a) constitute one composite scheme. As a result of the modalities prescribed for the electronic presentation of the bill of entry and self-assessment after the entry of the electronic declaration on the customs automated system, a bill of entry number is generated by the EDI system for the declaration. Regulation 4(2) provides for a deeming fiction in regard to the filing of the bill of entry and the completion of self-assessment. In the context of these specific provisions, it would do violence to the overall scheme of the statute to interpret the language of Section

15(1)(a) in the manner in which it is sought to be interpreted by the ASG. The submission of the ASG, simply put, is that because Notification No. 5/2019 was issued on 16 February, 2019, the court must regardless of the time at which it was uploaded on the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February, 2019. The consequence of this interpretation would be to do violence to the language of Section 8A(1) of the Customs Tariff Act, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment."

18.1 In the instant case, the material on record clearly establishes that as held by the Apex Court in the aforesaid judgment, the date for fixing the rate and tariff valuation is the date when the BOE was presented which is 06.09.2024 and the subsequent DGFT notifications issued on 02.04.2025 and 15.10.2025 would therefore not be applicable to the facts of the instant case and consequently, in the light of the judgment of the Apex Court supra, no reliance can be placed upon the said notifications which purport to prohibit the import of roasted areca nuts below a particular value by the respondents whose contention in this regard also cannot be accepted.

18.2 Insofar as the question/issue of valuation is concerned, learned Senior Counsel for the petitioner is also correct in his submission that this aspect is covered by the provisions contained in Section 14 of the Customs At as held by the Apex Court in the case of ***Century Metal Recycling India Pvt.Ltd vs UOI - 2019 (367) ELT 3,*** wherein it was held as under:

*" **6.** We would begin by reproducing Section 14 of the Act and Rules 3 and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('the 2007 Rules', for short) which read as under :*

*"**Section 14 : Valuation of Goods.***

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any *amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf :*

Provided further that the rules made in this behalf may provide for, —

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to

do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. — For the purposes of this section —

(a) "rate of exchange" means the rate of exchange —

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

xx xx xx

Rules

Rule 3. Determination of the method valuation :

(1) Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted :

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that

the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods :

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9.

xx xx xx

Rule 12. Rejection of declared value :

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence

and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that : -

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with Rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

***7.** Section 14 has to be read with Rule 12 of the 2007 Rules. Rule 12 uses the expression 'the proper officer has reason to doubt the truth or accuracy of the value declared in relation to the imported goods'. This expression is distinctly different from the words and preconditions imposed for rejecting the declared transactional value under the repealed Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ('the 1988 Rules', for short) and the pre-amended Section 14(1) of the Act which were considered* *and interpreted by this Court in Eicher Tractors Limited, Haryana v. Commissioner of Customs, Mumbai [(2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.)]. In fact, the judgment in Eicher Tractors Limited (supra) had not considered Rule 10-A of the 1988 Rules enforced with effect from 19th February, 1998 as the imports therein related to the year 1993. Rule 10A brought the concept of 'reason to doubt the declared value' in place of special or extraordinary circumstances particularised in Rule 4(2) of the 1988 Rules. However, the interpretation given to Section 14(1) in Eicher Tractors Limited (supra) as to the meaning of the word 'payable' used therein would be still applicable. The word 'payable' used in Section 14(1) refers to the particular transaction and the payability in respect of 'the transaction'. It refers to the notional value, albeit the transaction value as declared in the bill of entry plus the amount which has to be added in terms of Rule 10 of the 2007 Rules.*

8. *This Court in M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. (supra), while interpreting the provisions of Section 14 and Rules 3, 4 and 12 of the 2007 Rules, had held as under :*

"10. The law, thus is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the

course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. This is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which Assessing Officer arrives at his own assessable value."

The Division Bench has quoted the following sub-para from Commissioner of Customs, Calcutta v. South India Television (P) Ltd. [(2007) 6 SCC 373 = <u>2007 (214) E.L.T. 3 (S.C.)</u>].

"13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment

of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

9. *As per Section 14(1) of the Act, value of the imported goods shall be the transactional value of such goods, which means the price actually paid or payable for the goods when sold for export to India where the buyers and sellers are not related and the price fixed is the sole consideration for sale. As per the first proviso to Section 14(1) of the Act, the transactional value for the purpose of Customs duty would include amounts paid or payable as costs and services like commission, brokerage, engineering, design work, cost of transportation, etc., as may be specified in the rules made in this behalf. These amounts are to be added to the declared transactional value. Accordingly, in terms of Rule 10 of the 2007 Rules, the value and price of costs and services are added to the price actually paid or payable for the imported goods for determining the transaction value.*

10. *Sub-section (2) of Section 14 is a non obstante provision, which applies notwithstanding sub-section (1), i.e. when the Board has issued a notification in the Official Gazette fixing tariff values for any class of imported or exported goods. The Board has been authorised to issue notifications under Section 14(2) of the Act when it is satisfied that it is necessary or expedient. Thus, whenever tariff has been fixed vide notification issued by the Board* *under Section 14(2) of the Act, then notwithstanding the transactional value of the imported goods under sub-section (1) to Section 14 of the Act, as per sub-section (2) to Section 14 of the Act the customs duty is payable as per the tariff value so fixed. In the present case, the Board has not considered it necessary and expedient to issue a notification under Section 14(2) of the Act to fix a tariff for the imported aluminium waste.*

11. *The second proviso to Section 14(1) deals with different situations, enumerated under the three clauses; (i) when buyers and sellers are deemed to be related; (ii) when there is no sale, or buyers and sellers are related or the price is not the sole consideration for sale, etc. and (iii) where the proper officer has reason to doubt the truth or accuracy of such value. When the conditions specified in the second proviso are satisfied, the transactional value for the purpose of charging of Customs duty is to be made as per rules framed in this behalf.*

12. *Rules 3 and 12 of the 2007 Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007 replacing and superseding the 1988 Rules. Rule 3(1) of the 2007 Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub-*

rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. Sub-rule (2) to Rule 3 states that value of the imported goods under sub-rule (1) shall be accepted i.e. accepted by the Customs authorities. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.

13. *Sub-rule (3) to Rule 3 deals with cases when the buyer and seller are related. We would not dilate on the said sub-rule for this is not required for the purpose of the present decision. As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8* *deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.*

14. *Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of* *parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.*

Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

***15.** The requirements of Rule 12, therefore, can be summarised as under :*

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. *Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.*

17. *The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.*

__18.__ The expression 'proof beyond reasonable doubt' in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge 'beyond reasonable doubt'. In Ramakant Rai v. Mad an Rai & Ors. - (2003) 12 SCC 395 referring to the expression 'reasonable doubt' in criminal law it was held as under :

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

Proof beyond 'reasonable doubt' is certainly not the requirement under proviso to Section 14 of the Act and Rule 12 of the 2007 Rules, albeit the above quote draws a distinction between a simple doubt and a doubt which is reasonable. In the context of the proviso to Section 14 read with Rule 12 and clause (iii) of Explanation to the 2007 Rules, the doubt must be reasonable and based on 'certain reasons'. The proper officer must record 'certain reasons' specified in (a) to (f) or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding *sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable. Reasonable doubt will exist if the doubt is reasonable and for 'certain reasons' and not fanciful and absurd. A doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere perception not founded on reasonable and 'certain' material. It should be based and predicated on grounds and material in the form of 'certain reasons' and not mere ipse dixit. Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods."*

18.3 In the case on hand, if the subject goods are construed or treated as raw areca nuts, their valuation would have to take place under Section 14(2) of the Customs Act, 1962, wherein tariff values are fixed through a Notification issued by the Board, which in the instant case is notification 54/2024-Cus (NT) dated 14.8.2024; conversely, in view of my findings recorded herein before that the subject goods are roasted areca nuts, the government has not fixed the tariff values and therefore, it is essential to resort to the valuation mechanism under Section 14(1) of the Customs Act; further, since the valuation of the respondents rested on the classification under Chapter 8 which has been already been negatived by me supra by holding that the subject goods are classifiable under Chapter 20, it is clear that the transaction value in terms of Section 14(1) has to be accepted, especially in the absence of any quarrel on the transaction value and consequently, having regard to the fact that the mandatory procedure in terms of Section 14 and Rule 12 as set out by the Apex Court having not been followed, the transaction value declared by the petitioner deserves to be accepted by holding that valuation done by the respondents in relation to the subject goods is contrary to law and the same deserves to be quashed.

Accordingly, **Point No.(iii)** is also answered in favour of the petitioner.

Re: Point No.(iv);

19. The last question that arises for consideration in the present petitions is as to whether the impugned SCN proposing duty demands and confiscation and all further proceedings pursuant thereto in respect of the subject goods warrant interference by this Court in the present petitions.

19.1 A perusal of the material on record will indicate that the impugned SCN and proposed duty demand and confiscation are clearly premature having been done on 17.12.2024, particularly when even according to the respondents themselves, the provisional assessment was resorted to only on 23.5.2025; even assuming that provisional assessment was done on the day of import i.e., on 6.9.2024, show cause notices under Section 28 or Section 124 could not have been issued unless the assessments were finalised in the light of the judgment of the Apex Court in the case of ***CC vs Canon India Pvt.Ltd - 2024 (11) TMI 391 (SC)*** wherein it was held as under:

> ***" iv. Scheme of Sections 17 and 28 of the Act, 1962***
>
> *95. Section 17 read with Sections 46 and 47 of the Act, 1962 deals with the assessment and re-assessment at the first instance that is, upon entry of the consignments and clearance of bill(s) of entry. The amendment to Section 17 introduces the process of self-assessment and subsequent re-assessment upon verification by the proper officer, if so required, for undertaking a check at the first instance.*
>
> *96. The proceedings under Section 28 are subsequent to the completion of the process set out in Section 17 of the Act, 1962. The procedure envisaged under Section 28 is in the nature of a quasi-judicial proceeding with the issuance of the show cause notice by the proper officer followed by adjudication of such notices by the field customs officers. It is also worth noting that in the case of DRI, the proceedings under Section 28 start only after an investigation has been undertaken by DRI. This is reaffirmed by Circular No. 4/99-Cus dated 15.02.1999 and Circular No. 44/2011- Customs dated 23.11.2011. Therefore, the nature of review under Section 28 is significantly different from the nature of assessment and reassessment under Section 17. The ambit of Section 28 has also been restricted to the review of assessments and re-assessments done under Section 17 for ascertaining if there has been a short-levy, non-levy, partpayment, non-payment or erroneous refund."*

19.2 In this context, it is also necessary to advert to Section 28 of the Customs Act which reads as under:

[1][28. Recovery of [7][duties not levied or not paid or short-levied or short-paid] or erroneously refunded.

(1) Where any [8][duty has not been levied or not paid or has been short-levied or short- paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within [9][two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [10][or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

[18][Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section

28AA or the amount of interest which has not been so paid or part-paid.

*[3][**Provided** that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]*

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made there under in respect of such duty or interest.

*[4][**Provided** that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]*

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in

respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [11][two years] shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been [12][levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [13][so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any [14][duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under

*sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [5]**[f**ifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of theopinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or subsection (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [15][two years] shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of [16][two years] referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

[19][(7A) Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).]

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice [20][***] in respect of cases falling under clause (a) of subsection (1);

(b) within one year from the date of notice [20][***] in respect of cases falling under sub-section (4).

[21][Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the

amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]

[22][(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that-

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned,

the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.]

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

[23][(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.]

[2][(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have

*been and always had been the proper officers for the purposes of this section.**]***

***Explanation** 1. - For the purposes of this section, "relevant date" means,-*

(a) in a case where duty is [17][not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

[26][**(ba) in a case where duty is paid under clause (a) of sub-section (3) of section 18A, the date of payment of duty or interest;**]

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.'.

***Explanation 2.** - For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.]*

[6]***[Explanation 3.-*** *For the removal of doubts, it is hereby declared that the proceedings in respect of any case of non-levy, short-levy, non-payment, short payment or erroneous refund where show cause notice has been issued under subsection (1) or sub-section (4), as the case may be, but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, be deemed to be concluded, if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within thirty days from the date on which such assent is received.]*

[25]***[Explanation 4.-****For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018.), such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.* ***]***

19.3 So also, Section 124 of the Customs Act, reads as under:

> ***SECTION 124. Issue of show cause notice before confiscation of goods, etc. -*** *No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of [1][an Assistant Commissioner of Customs], informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter :*
>
> ***Provided that*** *the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *[2][Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]*

19.4 If the impugned SCN is examined in the light of the aforesaid provisions, it is clear that even if provisional assessments were to be resorted to under Section 18, they would necessarily have to be finalised in terms of Section 18 before a proceeding under Section 28 can be commenced by the respondents; the definition of relevant date found in Explanation 1(b) to Section 28 also provides that the time period for issuing show cause notice under Section 28 would arise from the date of adjustment of duty after final assessment in cases covered under Section 18; in the instant cases, in view of the undisputed fact that provisional assessments are still continuing as per the stance of the respondents themselves, it was impermissible in law to issue the impugned SCN under Section 28, thereby leading to the sole conclusion that the impugned SCN was clearly illegal, invalid, premature and contrary to the provisions of the Customs Act and the impugned SCN and all further proceedings thereto deserve to be quashed as a consequence of which even the continuation of the impugned confiscatory proceedings is impermissible and unsustainable in law, especially when I have already come to the conclusion that the subject goods being roasted areca nuts are not prohibited and therefore, the question of confiscating them will not arise in the facts and circumstances of the instant case. Under these circumstances, I am of the considered opinion that the impugned SCN proposing duty demands and confiscation on the subject goods imported by the petitioner and all further proceedings pursuant thereto including confiscation of the subject goods deserve to be quashed by directing the respondents to release the subject goods in favour of the petitioner within a stipulated time frame by issuing certain directions in this regard.

Accordingly, **Point No.(iv)** is also answered in favour of the petitioner.

20. In the result, I pass the following:

ORDER

(i) W.P.No. 33823/2024 is hereby allowed.

(ii) The impugned seizure memorandum at Annexure-D dated 06.12.2024 is hereby quashed.

(iii) W.P.No.17776/2025 is hereby allowed.

(iv) The impugned communication at Annexure-A dated 23.05.2025 is hereby quashed.

(v) W.P.No.24075/2025 is hereby allowed.

(vi) The impugned show cause notice at Annexure – B dated 17.12.2024 is hereby quashed.

(vii) The respondents are hereby directed to release the subject imported goods in favour of the petitioner within a period of 7 days from the date of receipt of a copy of this order by adopting the classification and valuation adopted by the petitioner and as the petitioner - importer has already filed the FSSAI reports, which would be sufficient compliance for the said purposes.

(viii) Respondents are also hereby directed to issue a certificate of waiver of demurrage, detention and ground rent charges in favour of the petitioner within a period of seven days from the date of receipt of a copy of this order.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SRL