IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75288 of 2026

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/DC/64/2026 dated 22.01.2026 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1 Strand Road, Kolkata-700001)

The Commissioner of Customs(Preventive), Kolkata : **Appellant**
Customs House Kolkata-700001

VERSUS

M/s. Shree Durga Trader, : **Respondent**
19, Armenian Street, 1st Floor,
Room No. 216, Kolkata-700001

APPEARANCE:

Shri F. Ahmed, Authorized Representative, for the Appellant / Revenue

Shri N. K. Chowdhury, Advocate, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75618/2026

DATE OF HEARING / DECISION: 20.05.2026

Order: [PER SHRI ASHOK JINDAL]

The Revenue has filed this appeal against the impugned Order-in-Appeal No. Kol/Cus/CCP/DC/64/2026 dated 22.01.2026, passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1 Strand Road, Kolkata-700001 dated 22.01.2026, wherein the Ld. Commissioner (Appeals) has set aside the Order-in-Original dated 13.11.2025 and allowed the appeal filed by M/s. Shree Durga Traders, the Respondents herein.

2. Facts leading to the case are summarized below:

(i) Roasted Arecanut having net weight of 135MT, were imported from Indonesia by the Respondent from the supplier- PT. Gajamukha. The Respondents have duly filed B/E No- 2122144 dated 13.02.24 at ICD, Durgapur.

(ii) Samples were drawn by the Officers of Customs and sent for testing to a FSSAI accredited laboratory, named EFRAC. The test report issued by EFRAC opined that the samples conforms to the standards as laid down in FSS Regulations 2011. ('First test report')

(iii) DRI, Kolkata intervened the cargo just before Customs clearance. 100% examination of the goods was done in front of DRI officers, Customs officers and importer.

(iv) Samples were again drawn by DRI officers from 05 containers and sent for testing to NFL, Kolkata. Reports from NFL, Kolkata opined that samples do not confirm to the standards as laid down in FSS Regulations 2011. The NFL, Kolkata also stated in their report that they cannot differentiate between Raw Arecanut and Roasted Arecanut as there is no such provision of distinctive parameters to differentiate between the two in FSSAI Regulations. ('Second testing report' dated 18.03.2024)

(v) Summons were issued by DRI, Kolkata. Statement was recorded on 28.03.2024 and seizure memo dated 28.03.2024 was served by hand on the grounds that the impugned goods have been mis-classified as 'Roasted Arecanut'.

(vi) The Respondent prayed to the Commissioner of Customs for provisional release of goods vide their letter dated 09.04.2024. However, no action was taken and hence they filed a Writ Petition before the Hon'ble Calcutta High Court in WP No- 15177 of 2024. The Hon'ble High Court directed the appellant/Revenue to provisionally release the goods and complete the adjudication process within 12.08.2024.

(vii) The Customs authority did not release the goods provisionally and adjudicated the case. The Additional Commissioner of Customs passed the Order in Original No. 34/ADC/CC(P)/WB/2024-25 dated 24.10.2024, wherein he has confiscated the goods u/s 111(m) of the Customs Act 1962 and ordered for destruction of whole cargo with 100% penalty imposition.

(viii) Being aggrieved by the said order, the Respondent filed another Writ Petition before the Hon'ble Calcutta High Court being WP No. 26594 of 2024. The Hon'ble High Court vide their order dated 28.04.2025 set aside the Order in Original dated 24.10.2024 and directed

the appellant to re-adjudicate the matter. Also, the Hon'ble High Court directed the appellant/Revenue to draw fresh samples to iron out all differences and send the same to FSSAI accredited laboratory; the appellant-Revenue was also directed to complete the entire adjudication process within 04 months from 28.04.2025 i.e., by 31.08.2025.

(ix) The Customs authority drew samples from the consignment lying at ICD Durgapur on 14.07.2025 and sent the same for testing to NFL, Ghaziabad. The test report dated 24.07.2025 opined that the samples are of Roasted Arecanut, conforms to the standards laid down under Regulation No- 2.3.55 of FSS Regulations 2011 ('Third Test Report' done through Referral lab of NFL, Ghaziabad).

(x) The adjudicating authority passed the Order-in-Original No. 96/JC/CC(P)/WB/2025-26 dated 13.11.2025 after delay of approximately 2.5 months beyond the time period set by Hon'ble Calcutta High Court. In the order, the ld. adjudicating authority again ordered for confiscation of the goods and imposed penalty.

(xi) Being aggrieved by the said Order-in-Original dated 13.11.2025, the Respondent preferred an Appeal before the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) vide his Order

dated 22.01.2026 (the order impugned herein) ordered classification of the goods under CTH 20081920 as 'Roasted Arecanut' and set aside the confiscation of goods under section 111(d) and 111(m) . He also set aside the penalty imposed under Section 112(a) and (b) of the Act and directed the appellant-Revenue to release the goods within 30 days of receipt of the said order.

(xii) The Revenue has filed this appeal against the impugned Order-in-Appeal dated 22.01.2026.

3. The Respondent submits that they have obtained an Advance Ruling dated 17.11.2023 from the Customs Authority for Advance Rulings, New Delhi regarding classification of Roasted Arecanut; the Advance Ruling Authority has categorically stated that Roasted Arecanuts are appropriately classifiable under the Tariff Heading of 20081920. It is submitted by the respondent that the Department has challenged the operation of the Advance Rulings before the Hon'ble Calcutta High Court after importation of the above said consignments, but the Hon'ble High Court has not granted any Stay against the operation of the Advance Ruling. Thus, it is the respondent's contention that the classification of Roasted Arecanut confirmed under CTH 20081920 vide the the Advance Ruling, specifically in their own case, is binding on the Department.

3.1. The respondent further submits that in similar cases, such as before the Hon'ble Madras High Court in CMA NO- 600 of 2023 (order dated 01.08.2023) and before the Hon'ble Calcutta High Court in

CUSTA/9/2023 (order dated 30.08.24), the Advance Rulings passed by the Ld. Advance Ruling Authority have been upheld.

3.2. The respondent also makes the submission that the Ld. Commissioner (Appeals) has rightly determined the classification of Roasted Arecanuts under the Customs Tariff heading 20081920 since this decision is supported by the Test Report dated 24.07.2025 received from NFL, Ghaziabad, wherein it is opined the samples are of Roasted Arecanut and conform to the standards laid down under Regulation No- 2.3.55 of FSS Regulations 2011.

4. In support of their classification of Roasted Arecanut under the Customs Tariff heading 20081920, the Respondent relied on the following decisions:

(a) In the matter of *Neena Enterprises vs Commissioner of Customs Chennai (WP No- 24237 of 2024).* Single bench order stating if moisture content is below 10% it should be treated as Roasted Arecanut.

(b) Department challenged the above order but Division Bench of Hon'ble Madras High Court (W.A. No- 3648 of 2024) passed the order dated 04.03.2025 and upheld the order of the Single Bench.

(c) The Department challenged the order of Division Bench in Supreme Court in petition for Special Leave to Appeal No- 17655-17656/2025. Hon'ble Supreme Court vide their order dated 25.07.2025 upheld the Order of Hon'ble Division Bench.

4.1. The Respondent also submits that all the above cited case laws have been brought to the notice of the Department during the process of adjudication vide their letter dated 08.10.2025 and the ld. adjudicating authority has taken on record all the case laws cited by them in the Order-in-Original dated 13.11.2025 at paragraph no. 39.7; that however, he has not followed the ratio decided in the said orders.

5. In view of the above submissions, the Respondent has prayed for immediate release of the cargo, stating that the Department have failed to follow the Judicial Discipline on earlier occasions.

6. The Ld. Authorized Representative of the appellant-Revenue submitted that the Test Report received by the Department has categorically stated that the goods are unfit for human consumption. He submits that in the Report, it has been stated that there is no mechanism to distinguish between the Raw Arecanut and Roasted Arecanut; thus, the Ld. adjudicating authority has adopted the findings in the First Test Report. Accordingly, he prayed for setting aside the impugned order passed by the Ld. Commissioner (Appeals) and allowing the appeal filed by the Department.

7. Heard both sides and perused the appeal documents presented before us.

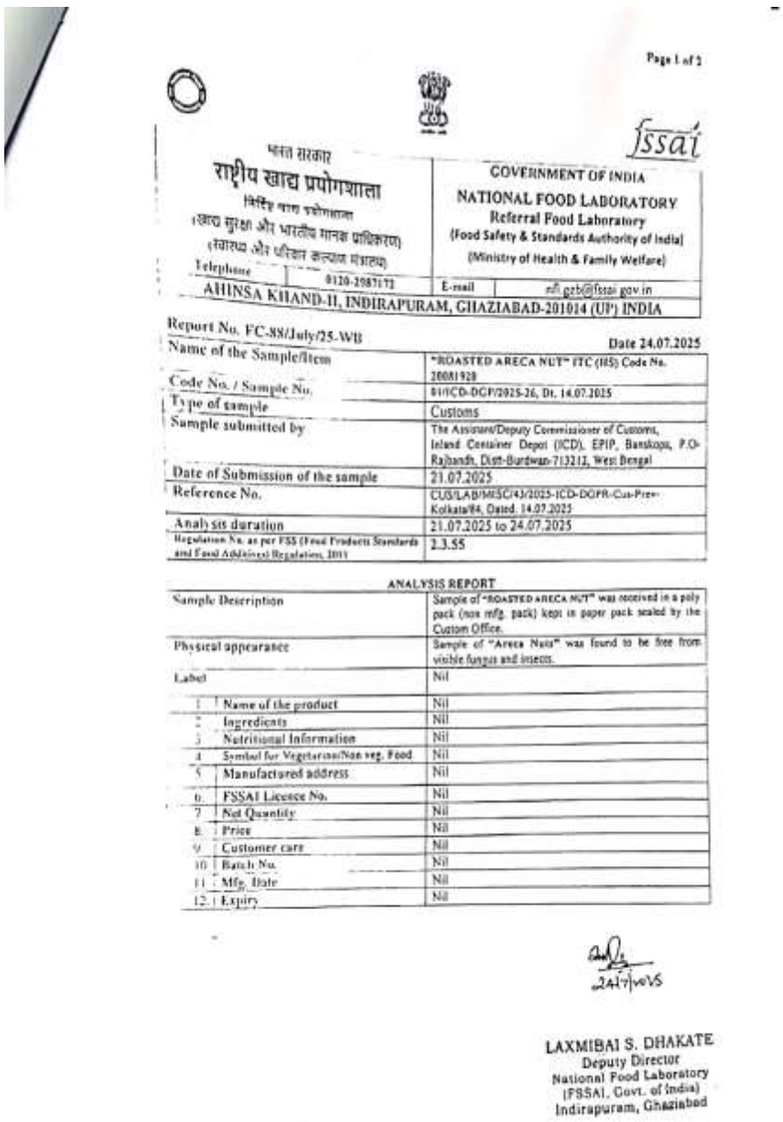
8. We find that the Respondents have filed Bill of Entry No. 2122144 dated 13.02.24 at ICD Durgapur, describing the goods imported by them as 'Roasted Arecanuts' and classified the same under the CTH 20081920. The Officers of DRI initiated proceedings against the Respondent and issued Show Cause

Notice proposing re-classification of the goods under the CTH 08028020.

8.1. It is on record that the Respondents have obtained an Advance Ruling dated 17.11.2023 from the Customs Authority for Advance Rulings, New Delhi regarding classification of Roasted Arecanut. The Advance Ruling Authority has categorically stated that Roasted Arecanuts are appropriately classifiable under the Tariff Heading 20081920. We find that the Department has challenged the operation of the Advance Rulings before the Hon'ble Calcutta High Court after importing of the above said consignments. However, the Hon'ble High Court has not granted any Stay against the operation of the Advance Ruling. We also find that in similar cases, such as before the Hon'ble Madras High Court in CMA NO- 600 of 2023 (order dated 01.08.2023) and before the Hon'ble Calcutta High Court in CUSTA/9/2023 (order dated 30.08.2024), the Advance Rulings passed by the Ld. Advance Ruling Authority have been upheld. Thus, we are of the view that the classification of Roasted Arecanut confirmed in the Advance Ruling under the CTH 20081920, specifically in Respondent's own case, is binding on the Department.

9. It is observed that in the present case, the Respondent has approached the Hon'ble Calcutta High Court twice and on the second time, the Hon'ble Calcutta High Court has directed the appellant-Revenue to draw fresh sample to iron out all differences and send the same to FSSAI accredited laboratory. As directed by the Hon'ble High Court of Calcutta, the Customs authority drew samples from the consignments lying at ICD

Durgapur on 14.07.2025 and sent the same for testing to NFL, Ghaziabad. In the Test Report dated 24.07.2025, NFL has opined that the samples are of Roasted Arecanut, conforms to the standards laid down under Regulation No- 2.3.55 of FSS Regulations 2011. For ready reference, the copy of the Test Report received from NFL, Ghaziabad is extracted below:



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fssai

भारत सरकार
राष्ट्रीय खाद्य प्रयोगशाला
(खाद्य सुरक्षा और मानक प्राधिकरण)
(स्वास्थ्य और परिवार कल्याण मंत्रालय)

GOVERNMENT OF INDIA
NATIONAL FOOD LABORATORY
Referral Food Laboratory
(Food Safety & Standards Authority of India)
(Ministry of Health & Family Welfare)

Telephone 0120-2987173 E-mail nfl.gzb@fssai.gov.in
AHINSA KHAND-II, INDIRAPURAM, GHAZIABAD-201014 (UP) INDIA

Report No. FC-88/July/25-WB Date 24.07.2025

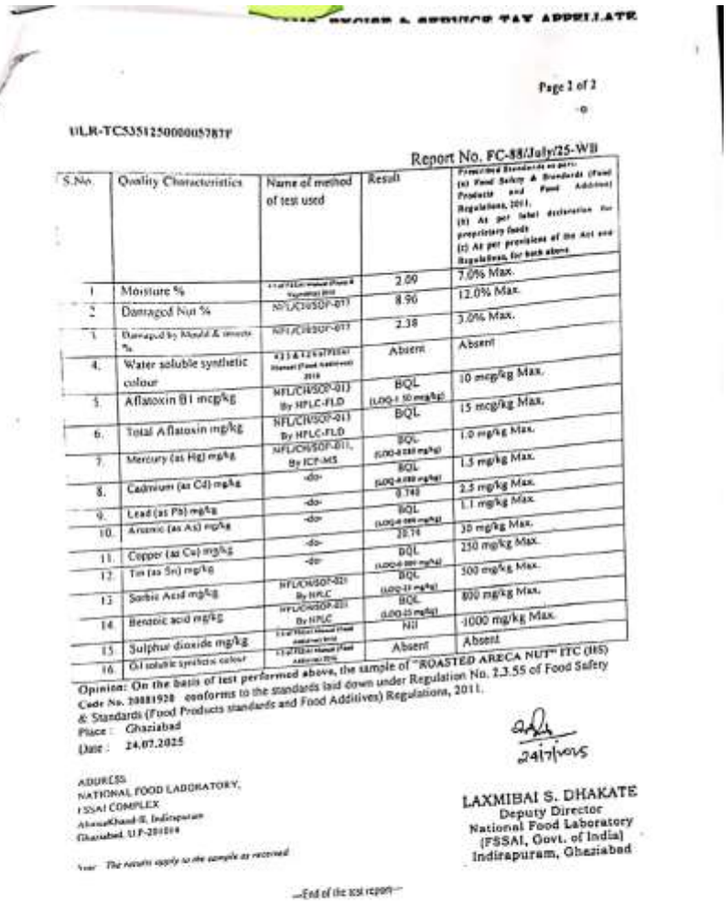
Name of the Sample/Item	"ROASTED ARECA NUT" ITC (HS) Code No. 20081920
Code No. / Sample No.	01/ICD-DGP/2025-26, Dt. 14.07.2025
Type of sample	Customs
Sample submitted by	The Assistant/Deputy Commissioner of Customs, Inland Container Depot (ICD), EPIP, Banskopa, P.O-Rajbandh, Distt-Burdwan-713212, West Bengal
Date of Submission of the sample	21.07.2025
Reference No.	CUS/LAB/MISC/43/2025-ICD-DGPR-Cus-Prev-Kolkata/84, Dated. 14.07.2025
Analysis duration	21.07.2025 to 24.07.2025
Regulation No. as per FSS (Food Products Standards and Food Additives) Regulations, 2011	2.3.55

ANALYSIS REPORT

Sample Description		Sample of "ROASTED ARECA NUT" was received in a poly pack (non retg. pack) kept in paper pack sealed by the Custom Office.
Physical appearance		Sample of "Areca Nuts" was found to be free from visible fungus and insects.
Label		Nil
1.	Name of the product	Nil
2.	Ingredients	Nil
3.	Nutritional Information	Nil
4.	Symbol for Vegetarian/Non veg. Food	Nil
5.	Manufactured address	Nil
6.	FSSAI Licence No.	Nil
7.	Net Quantity	Nil
8.	Price	Nil
9.	Customer care	Nil
10.	Batch No.	Nil
11.	Mfg. Date	Nil
12.	Expiry	Nil

24/7/2025

LAXMIBAI S. DHAKATE
Deputy Director
National Food Laboratory
(FSSAI, Govt. of India)
Indirapuram, Ghaziabad



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ULR-TC535125000005787F

Report No. FC-88/July/25-WB

S.No.	Quality Characteristics	Name of method of test used	Result	Prescribed Standards as per (a) Food Safety & Standards (Food Products and Food Additives) Regulations, 2011. (b) As per label declaration for proprietary foods (c) As per provisions of the Act and Regulations, for each above.
1.	Moisture %	NFLC/HSOP-017	2.09	7.0% Max.
2.	Damaged Nut %	NFLC/HSOP-017	8.90	12.0% Max.
3.	Damaged by Mould & insects %	NFLC/HSOP-017	2.38	3.0% Max.
4.	Water soluble synthetic colour	423 & 424 of FSSAI (Food Additives) 2018	Absent	Absent
5.	Aflatoxin B1 mcg/kg	NFLC/HSOP-021 By HPLC-FLD	BQL (LOQ-1.50 mcg/kg)	10 mcg/kg Max.
6.	Total Aflatoxin mg/kg	NFLC/HSOP-021 By HPLC-FLD	BQL	15 mcg/kg Max.
7.	Mercury (as Hg) mg/kg	NFLC/HSOP-011, By ICP-MS	BQL (LOQ-0.250 mg/kg)	1.0 mg/kg Max.
8.	Cadmium (as Cd) mg/kg	-do-	BQL (LOQ-0.250 mg/kg)	1.3 mg/kg Max.
9.	Lead (as Pb) mg/kg	-do-	0.148	2.5 mg/kg Max.
10.	Arsenic (as As) mg/kg	-do-	BQL (LOQ-0.500 mg/kg)	1.1 mg/kg Max.
11.	Copper (as Cu) mg/kg	-do-	28.14	30 mg/kg Max.
12.	Tin (as Sn) mg/kg	-do-	BQL (LOQ-0.500 mg/kg)	250 mg/kg Max.
13.	Sorbic Acid mg/kg	NFLC/HSOP-021 By HPLC	BQL (LOQ-15 mg/kg)	500 mg/kg Max.
14.	Benzoic acid mg/kg	NFLC/HSOP-021 By HPLC	BQL (LOQ-15 mg/kg)	600 mg/kg Max.
15.	Sulphur dioxide mg/kg	11 of Food Products standard, Food Additives Regd.	Nil	1000 mg/kg Max.
16.	Oil soluble synthetic colour	423 of FSSAI (Food Additives) 2018	Absent	Absent

Opinion: On the basis of test performed above, the sample of "ROASTED ARECA NUT" ETC (HS) Code No. 20081920 conforms to the standards laid down under Regulation No. 2.3.55 of Food Safety & Standards (Food Products standards and Food Additives) Regulations, 2011.

Place : Ghaziabad
Date : 24.07.2025

24/7/2025

ADDRESS
NATIONAL FOOD LABORATORY,
FSSAI COMPLEX
Ahinsa Khand-II, Indirapuram
Ghaziabad, U.P-201014

Note: The results apply to the sample as received

LAXMIBAI S. DHAKATE
Deputy Director
National Food Laboratory
(FSSAI, Govt. of India)
Indirapuram, Ghaziabad

---End of the test report---

9.1. A perusal of the Test Report indicates that the goods imported by the Respondent are 'Roasted Arecanuts' classifiable under the CTH 20081920. We find that the Ld. Adjudicating authority has ignored this Test Report and decided the classification of the impugned goods on the basis of the Test Report received earlier. In this regard we observe that the **Test Report dated 24.07.2025** has been received on the basis of the specific direction of the Hon'ble Calcutta High Court. Thus, we hold that the earlier Test Reports, if any, received by the appellant/Revenue is not relevant to determine the classification of the impugned goods. Accordingly, we hold that the Ld. Commissioner (Appeals) has rightly

decided the classification of goods under CTH 20081920 as 'Roasted Arecanut', on the basis of the Test Report dated 24.07.2025 received from NFL, Ghaziabad.

9.2. In the matter of *Neena Enterprises Vs Commissioner of Customs Chennai (WP No- 24237 of 2024),* the Hon'ble Single Member bench of the Madras High Court has held that if moisture content is below 10%, the same should be treated as 'Roasted Arecanut'. The Department challenged the above order before the Division bench of Hon'ble Madras High Court (W.A. No- 3648 of 2024) and the Division Bench passed the order dated 04.03.2025, upholding the order of the Single Member bench. The relevant part of the said decision by the Division Bench of the Madras High Court is reproduced below for ready reference: -

> *4. Respondents had imported goods, which were declared as roasted areca nuts, from Indonesia. According to respondents, these goods would fall under Chapter 20 of Tariff 2008 1920 and were declared as such.*
>
> *5. According to appellant revenue, what is imported was raw areca nuts, which would fall under Chapter 8 of Tariff 0802 80. Both areca nuts, whether raw or roasted, are not prohibited goods and can be imported. For the importation of raw areca nuts, a minimum price is fixed at Rs.351/- per kg., whereas no such minimum price was fixed for roasted areca nuts.*
>
> *6. Respondent importers filed applications before the Customs Authority for Advance*

Rulings in terms of Section 28H of the Customs Act, 1962. Applications seeking advance rulings were made on the classification of roasted areca nuts (whole/cut/split), which the party intended to import.

7. In the case of Neena Enterprises, a ruling was given on 1st March, 2023, in which paragraph 6.17 reads as under:

> *"6.17 Among many objections I find one observation of the jurisdictional Customs Commissionerate quite important. The applicant's claim that after repeated roasting for 2-3 days under 130150 degrees Celsius in a roasting oven due to which the water content is reduced to 10-15% is a complete misrepresentation of facts. Jurisdictional Commissionerate has stated that it is evident by the fact available with this office vide (based on) test reports that a raw betel nut falling under Chapter 8 has a moisture content of less than 10% and the betel nut undergoing repeated roasting and severe heat treatment has a water content 10 to 15% appears incorrect. I agree with this observation of the Commissionerate. As mentioned earlier, actual samples of the imported goods can be drawn and tested for ascertaining the actual moisture content by the jurisdictional Customs Commissionerate at the time of Customs Compliance Verification (CCV) of the imported goods before clearance (Out of Charge (OOC) is granted to ensure that*

the goods are conforming to what is declared in the import documents. I also do not agree with the comment of the jurisdictional commissionerate that there was any misrepresentation of facts or non-observance of due process. Applicant has a right to present its case during the course of personal hearing. Veracity of applicant's claim related to issues like moisture content can be very well examined by the jurisdictional Customs Commissionerate at the time of actual import by drawing and testing of the samples of imported goods from the concerned agency."

8. In the case of Universal Impex, a ruling dated 12th May, 2023 was given, where paragraph 4.17 reads as under:

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

(CCV) process on importation of goods. Jurisdictional Customs Commissionerate carry out process of testing of imported goods with the help of concerned government partner agencies (GPAs) to crossexamine accuracy of declaration of goods in the import documents namely a Bill of entry and it's supporting documents before an out of charge (OOC) is granted. Hence, the utility of sample test report at this stage is limited to only support applicant's contention that the goods were subjected to the process of roasting and not merely to a moderate heat treatment."

9. Appellants did not permit clearance of the goods holding that what was imported was raw areca nuts and not roasted areca nuts. Show cause notices were issued and orders-in-original dated 22nd July, 2024 were passed holding that the goods imported were raw areca nuts and not roasted areca nuts. The orders-in-original levied various amounts as penalty, customs duty and also ordered for confiscation. Against the ordersin-original, writ petitions were filed and the writ petitions were disposed of by a common order pronounced on 22nd November, 2024 i.e., impugned in these appeals.

10. The two issues that came up for consideration before the learned Single Judge were: (a) whether the Court should exercise its jurisdiction under Article 226 of the Constitution of India to decide about the nature of imported areca nuts, which were disputed questions of fact and, therefore, respondents should be directed to exercise alternative remedy of filing an appeal?; and, (b) whether the areca nuts imported by respondents were actually roasted areca nuts or raw areca nuts?.

11. Learned Additional Solicitor General of India submitted compilation of test reports. Though these reports do not state that samples tested were drawn in the presence of the importers, still none of the reports says that the moisture content was 10% or above. The highest in one case, we find, is 9.2%.

12. The Authority for Advance Rulings, from the portions quoted above, has indicated that where moisture content in areca nut is found to be in the range of 10-15%, the same would fall under the category of raw areca nut.

13. Admittedly, in these cases, the moisture contents found were all below 10%. Even in the reports relied upon by learned Additional Solicitor General of India, which were tendered across the bar today, it ranges from 3.79%; 7.9%; 8.1%; 9.2%; 7.8% and 5.4%. The

maximum being 9.2%. None of the samples drawn indicate it to be 10% or above.

14. The learned Single Judge has also considered the admitted position that there is no definition as to what is roasted areca nuts. Learned Additional Solicitor General of India pointed out that the learned Single Judge has used his so-called personal experience in view of his family background to determine what is roasted areca nuts or what is raw areca nuts. Even if we ignore that one paragraph from the impugned judgment, still we would find that the learned Single Judge was justified in his approach. Admittedly, the rulings of the Authority for Advance Rulings have attained finality. In fact, it was challenged by the department before this Court in C.M.A.Nos.600, 1206 and 1750 of 2023, which came to be disposed, vide common judgment dated 1st August, 2023. A Co-ordinate Bench of this Court, of which one of us [Mohammed Shaffiq, J.] was a member, declined to interfere with the ruling of the Authority for Advance Rulings. The ruling has, therefore, attained finality.

15. Therefore, as per the parameters fixed by the Authority for Advance Rulings, if the moisture content is between 10% and 15%, the same would be considered as a raw areca nut and

anything below the said category would be considered as roasted areca nut. The said finding has attained finality. All the laboratory reports also state that the moisture content of the areca nuts is below 10%. Therefore, we find no reason to interfere with the impugned order.

16. Appeals are dismissed. There shall be no order as to costs. Consequently, interim applications also stand dismissed. The department shall permit clearance of the goods within a week of this judgment being uploaded.

17. Learned Additional Solicitor General of India indicates that Revenue would be challenging this judgment in the Apex Court.

18. In view thereof, clearance be permitted against the importers giving a personal bond to be liable for any difference and import duty or penalty etc.

9.3. In the present case, we find that the Test Report received from NFL, Ghaziabad dated 24.07.2025 indicates that the moisture content is 2.09%, which is much less than 10% prescribed in the order of the Hon'ble Madras High Court for 'Roasted Arecanut'. Thus, there is no doubt that the impugned goods imported by the Respondents conforms to the standards prescribed for classifying the goods as 'Roasted Arecanut'.

9.4. We find that the Department has challenged the order of Division Bench in Supreme Court in petition for Special Leave to Appeal No- 17655-17656/2025. The Hon'ble Supreme Court vide their order dated 25.07.2025 upheld the Order of Hon'ble Division Bench.

9.5. Thus, by relying on the ratio of the decision in the case of *Neena enterprises Vs commissioner of Customs Chennai,* cited supra, and the Test Report dated 24.07.2025 received from NFL, Ghaziabad, we hold that the Ld. Commissioner (Appeals) has rightly decided the classification of goods under CTH 20081920 as 'Roasted Arecanut' vide the impugned order.

9.6. In view of the above findings, we pass the following orders:

(i) We uphold the classification of goods under the CTH 20081920 as 'Roasted Arecanut' as ordered by the Ld. Commissioner (Appeals) and reject the reclassification of the goods sought by the Revenue under the CTH 08028020.

(ii) As there is no mis-classification of the goods on the part of the Respondent, the confiscation of goods under Section 111(d) and 111(m) of the Customs Act is not sustainable and hence the same is set aside.

(iii) As the allegation of mis-classification with intention to evade the customs duty is not sustained, we set aside the Penalty imposed on the Respondents.

(iv) We direct the Department to release the goods within 3 days from the date of receipt of this Order.

10. In the result, we uphold the impugned order passed by the Ld. Commissioner (Appeals) and reject the appeal filed by the Revenue.

11. Order be given *dasti.*

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp