IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10708 OF 2025

Shri Vyom Dipesh Raichanna
Age – 24 years, Occ.: Business,
Proprietor of Trinity Agro Products having its office at F-10, A.P.M.C. Market-I, Phase-II, Sector-19, Vashi,
Navi Mumbai – 400 705. … Petitioner

Versus

1. Union of India
(Through the Secretary,
Ministry of Law and Justice),
Department of Legal Affairs,
Branch Secretariat, Aaykar Bhavan,
Annexe, 2nd floor, New Marine Lines,
Mumbai 400 020.

2. The Pr. Chief Commissioner of
Customs, JNCH, Nhava Sheva,
District-Raigad,
Maharashtra – 400 707.

3. The Pr. Commissioner of Customs,
Gr.-I, IA, NS-I, JNCH, Nhava Sheva,
District-Raigad,
Maharashtra 400707.

4. The Pr. Additional Director General
(ADG), Directorate of Revenue
Intelligence, Mumbai Zonal Unit,
13, Sir Vithaldas Thackersey Marg,
New Marine Lines,
Mumbai – 400 020.

5. The Senior Intelligence Officer,
Directorate Revenue of Intelligence,
MZU, NS-II, 208/209, 2nd Floor,
'D' Wing, Navi Mumbai SEZ
Commercial Complex, Sector-11,
Near JNPT Township, Dronagiri,
Raigad, Maharashtra – 400 707.

6. The Intelligence Officer,
Directorate Revenue of Intelligence,
MZU, NS-II, 208/209, 2nd Floor,
'D' Wing, Navi Mumbai SEZ
Commercial Complex, Sector-11,
Near JNPT Township, Dronagiri,
Raigad, Maharashtra – 400 707.

7. Joint Commissioner of Customs
Group 1/1A, Office of Principal
Commissioner of Customs (NS-1),
Nhava Sheva, Raigad - 400 707.

8. Deputy Director,
JNPT (I), FSSAI, WR [Nhava Sheva]. … Respondents

Dr. Sujay Kantawala, a/w Aishwarya Kantawala, Ayushi Jha i/b. Jeffry Caleb for Petitioners.

Mr. Jitendra Mishra, a/w Ms. Sangeeta Yadav for Respondent Nos.2, 3 and 7.

Mr. Akash Vijay, for Respondent No.8 – FSSAI.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 10 September 2025

Oral Judgment (Per : M.S. Sonak, J.) :-

1. Heard the learned counsel for the parties.

2. Rule. Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The main grievance of the Petitioner concerns the refusal by the Respondents to re-test the seized goods. This relief is formulated in prayer clause (c) of the Petition and the same reads as follows:-

> *"c) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction ordering and directing the Respondents, their servants, sub-ordinates and agents to forthwith draw fresh samples from the Seized Goods covered under Seizure Memos dated 07.03.2025 and 03.04.2025 (Exhibit K and L) which are presently under control of the Respondents at the cost and expenses to be borne by the Petitioner and further Order and Direct that the fresh samples sent for Re-test at any of the Accredicted Laboratories in the state of Maharashtra as described in Exhibit J above."*

4. The record shows that even earlier, the Petitioner's goods had been seized, and the matter was referred to the FSSAI Laboratory in the State of Maharashtra. On that occasion, a report favouring the contentions of the Petitioner was received from the said laboratory.

5. On this occasion, the samples from the seized goods were sent to the laboratory in Kerala, which has given a report adverse to the case of the Petitioner. Therefore, the Petitioner, by relying upon Public Notice No.97 of 2017 dated 28 July 2017, which provides for detailed guidelines for re-

testing of samples, applied to the Respondents for re-testing by taking out fresh samples. In support, the Petitioner contended that there is no difference between the samples earlier detained in respect of which there was a favourable report from the laboratory in Maharashtra and the sample now seized.

6. Dr. Kantawala, learned counsel for the Petitioner, relies on the public notice dated 28 July 2017 and the guidelines contained therein. He emphasises clause 2(g), which provides that the facility of re-testing is a trade facilitation measure, which generally, will not be denied in the ordinary course. He submits that there is nothing extraordinary in this matter and the Respondents are acting quite unreasonably in denying this facility to the Petitioners.

7. Mr. Mishra, the learned counsel for the Customs Authorities, submits that in terms of the public notice dated 28 July 2017, the request for re-testing should have been made within a period of 10 days from the receipt of the communication of the test result of the first test. He submits that in this case, the request was made much later. Secondly, he submits that a re-test would be made only on the remnants of the samples originally tested or on the duplicate representative sealed samples in the custody of the Customs. He submits that the Petitioner is now seeking the drawing of fresh samples, which is impermissible even under the public notice of 28 July 2017. He submitted that on the previous occasion, samples were tested for their edibility (human

consumption), and now the test was to determine whether they were roasted. For all these reasons, Mr. Mishra opposes the grant of any relief in this Petition.

8. Since there was no clarity as to why, in this case, the samples were referred to a laboratory in Kerala when the sample had been referred to a laboratory in Maharashtra on a previous occasion, we directed the impleadment of FSSAI. It was more so, because Mr. Mishra, on behalf of the Customs Authorities, had contended that it was the prerogative of FSSAI to refer the samples to any laboratory. It was also hinted that the laboratory in Kerala was specialised for testing cashew-nuts.

9. Mr. Akash Vijay has appeared on behalf of FSSAI. On instructions, he submitted that there are 39 laboratories all over the country for testing cashew-nuts. He submitted that out of these, almost 7 are in the State of Maharashtra, which are specialised in testing cashew-nuts for human consumption. Since in this case one of the issues was whether the samples were roasted cashew-nuts, the matter was referred to the Kerala Laboratory.

10. On further instructions, Mr. Akash Vijay submitted that most of these laboratories, though accredited by NABL, are private laboratories. He submitted that there is a Central Revenues Control Laboratory in New Delhi, operated by the Government of India, also undertakes this type of testing.

11. Mr. Mishra pointed out that the show-cause notice

has already been issued to the Petitioners on 3 July 2025, and the adjudication is pending. He pointed out that the Petitioners have not yet filed their reply to the show-cause notice.

12. We think that the report from the Central Revenues Control Laboratory, New Delhi, as suggested by FSSAI would assist the Customs Authorities in disposing of the show-cause notice. Dr. Kantawala states that the Petitioner was awaiting some clarity on the issue of re-testing for filing of the reply. He states that in any event, a provisional reply will be filed within a week from the upload of this order, and once the report from the Central Revenues Control Laboratory, New Delhi, is received, the Petitioner will file the final reply.

13. As noted earlier, a report from the Central Revenues Control Laboratory, New Delhi, will assist in determining whether the seized samples of cashews are roasted or not, because it is the case of the Customs Authorities that cashews which are not roasted are prohibited.

14. We have considered the rival contentions, and in this case, we wonder at the resistance which the Customs Authorities are offering to the re-testing of this product. Such resistance is not quite consistent with the spirit of the guidelines contained in the public notice dated 28 July 2017.

15. Firstly, the public notice contains guidelines, which cannot be equated with statutory rules that require rigorous compliance. The guidelines must be substantially complied

with by taking into account all relevant facts and circumstances.

16. In this case, though, the Customs Authorities dispute the similarity between the earlier detained goods and the presently seized goods; such a dispute is neither here nor there. Suppose the customs authorities now contend that unroasted cashew nuts are prohibited. In that case, it is reasonable to presume that on the earlier occasion, the authorities must have had them tested for this aspect, not merely whether they were fit for human consumption. Admittedly, the cashews were tested in the laboratories in Maharashtra earlier.

17. In the above context, the Petitioners have made a solemn statement about there being no difference between the earlier detained goods and the presently seized goods. Nothing is produced from the record to dispute this statement. In any event, it is not as if we are ruling on the similarity of the goods which were earlier detained and which were presently seized. This observation is made only in the context of the stiff resistance being offered for re-testing.

18. Clauses 2(f) and 2(g) of the public notice dated 28 July 2017 read as follows: -

> "*2(f) The competent authority will consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority will take the decision relying upon either of the tests*

specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option will not be resorted to in every case of variation between the first test and re-test results.

2(g) The facility of re-testing, is a trade facilitation measure, which, generally, will not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. However, such denial would be occasional and on reasonable grounds to be recorded in writing."

19. Clause 2(f) refers to the cases where there is a variation in the results of the first test and the retest. Clause 2(g) clarifies that this facility of re-testing is a trade facilitation measure, which, generally, will not be denied in the ordinary course. However, there might arise circumstances where the Customs officer is constrained to deny the re-testing facility. However, such denial would be occasional and, on reasonable grounds to be recorded in writing.

20. Considering the circumstances of the case, including the admitted fact that previously detained goods were sent to the laboratory in Maharashtra, we do not think that this was the appropriate occasion for the Customs Authorities to deny the facility of re-testing. Ultimately, such denial must be only occasional and that too, on reasonable grounds to be

recorded in writing. The guidelines emphasised that this facility of re-testing is nothing but a trade facilitation measure, which, generally, will not be denied in the ordinary course.

21. All this emphasises the intention of the department itself that requests for re-testing should ordinarily be considered unless, of course, there are exceptional circumstances to deny them. The objective of such guidelines is to determine the correct status of the imported goods in a mutually fair manner. The object is not to trip on the importers or to make the determination of truth difficult.

22. Suppose the seized goods are found to be prohibited after following a fair process. In that case, additional steps can always be taken, including re-export if allowed or paying the differential duty, which has already been secured. If the seized goods match the description declared by the petitioner, there is no point in allowing this issue to linger. This is not trade facilitation. Such an approach contradicts the objectives of the guidelines.

23. The Government of India is taking several measures for 'Ease of Doing Business'. This is commendable. It is the duty of all Departments of the Government of India to facilitate the policy of the Government of India about the 'ease of doing business'. The Public Notice dated 28 July 2017 is a step in that direction when it provides that this facility of re-testing is also a trade facilitation measure. This means that

on paper, there is every intention to facilitate the trade. However, when it comes to implementation, stiff resistance is offered by officials who are otherwise duty-bound to implement and promote the policy of the Government of India.

24. The arguments suggesting that the request was not made within 10 days do not persuade us. Dr. Kantawala states that such a request was made within three days, although, as usual, the Respondents dispute this without providing any detailed explanation. Even the argument that the re-test should only be conducted on the remnants of the samples originally tested should not apply in this case, especially when no convincing reasons are provided as to why the samples, in this instance, were sent to Kerela and not to one of the several laboratories in Maharashtra. While we do not for a moment suggest that the testing cannot be done in Kerala, there must be some convincing reason why the usual procedure or the procedure followed in the earlier instance was deviated from on this occasion. In any event, if the Petitioner wishes to have a re-test carried out by collecting fresh samples that are in the custody of the Customs officials themselves, such a request cannot be refused on unreasonable grounds.

25. On behalf of the Customs Authorities, it was pointed out that there is already an order for the provisional release of these goods, and they were wondering why the Petitioner is not availing the benefit of this provisional release. Mr

Mishra submitted that the Petitioner must accept the provisional release and get on with the show cause notice.

26. Dr. Kantawala submitted that the necessary Bank guarantees and bonds have already been furnished. He pointed out that, given the defences that the Customs Authorities are raising in this matter, they would, in all probability, contend that once the goods are released, there is no question of re-testing from out of the samples in custody of the Customs Department. At least in the facts of this case, we cannot rule out such an argument on behalf of the Customs Authorities.

27. Therefore, we direct the drawal of fresh samples from out of the goods seized within five days from the date this order is uploaded in the presence of the representative of the Petitioner which is also the requirement under the Public Notice dated 28 July 2017. Such samples should now be sent to the Central Revenues Control Laboratory, New Delhi, by FSSAI. The Central Revenues Control Laboratory, New Delhi, which is not a private laboratory, but the Government of India Laboratory, is requested to submit its report within one month from the receipt of the samples. The FSSAI must communicate this order to the Central Revenues Control Laboratory and pursue the matter so that the report is received within a month from the receipt of the samples.

28. Upon the drawal of the samples, subject to the Petitioner fulfilling the prescribed requirements and in

accordance with the previous orders made by this Court, the Petitioner would be entitled to seek the provisional release of the seized goods.

29. The Rule in this petition is made absolute to the above extent. We were considering the imposition of costs. However, in the hope that the Customs Department will hereafter contribute to the promotion of the Government of India's policy of 'ease of doing business', we refrain from imposing any costs in this matter.

30. All concerned are to act upon an authenticated copy of this order.

(Advait M. Sethna, J) (M.S. Sonak, J.)