

# Shabeer Enterprises vs Union Of India on 3 August, 2021

**Author: P Gopinath**

**Bench: P Gopinath**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 3RD DAY OF AUGUST 2021 / 12TH SRAVANA, 1943

WP(C) NO. 11153 OF 2014

PETITIONER:

SHABEER ENTERPRISES

7/299, KUMARANELLLOOR P.O., WADAKKANCHERRY,

TRISSUR DT. PIN: 680 590,

REP. BY PROP: A.H.MOHAMMED.

BY ADVS.

SRI.C.K.KARUNAKARAN

SMT.T.P.LEKSHMI VARMA

RESPONDENTS:

1 UNION OF INDIA

REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH &  
FAMILY WELFARE GOVERNMENT OF INDIA,  
NEW DELHI -100 110.

2 AUTHORISED OFFICER

COCHIN SEAPORT AND AIRPORT FOOD SAFETY AND STANDARDS  
AUTHORITY OF INDIA,  
MINISTRY OF HEALTH AND FAMILY WELFARE,  
GOVERNMENT OF INDIA, 1ST FLOOR, MARINE BUILDING,  
NORTH END, WELLINGTON ISLAND, COCHIN - 682 009.

3 COMMISSIONER OF CUSTOMS

CUSTOM HOUSE, WELLINGTON ISLAND, COCHIN - 682 009.

BY ADVS.SRI.P.PARAMESWARAN NAIR,ASG OF INDIA

SRI. SUMIT BABBAR

SHRI.SANTHAN V. NAIR, SC, FOOD SAFETY AND STANDARDS  
AUTHORITY OF INDIA

SRI.PAUL JACOB

SRI.I.K.RAJU

SANTHAN V NAIR , SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
03.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:  
WP(C) NO. 11153 OF 2014

## JUDGMENT

This writ petition has been filed seeking the following reliefs:-

"a. To issue a writ of mandamus or such other appropriate writ, order or direction commanding the 3<sup>rd</sup> Respondent to release the consignment covered by Exhibit P1 Bill of entry and similar consignments of the Petitioner without insisting on the condition that the raw Betel Nuts should obtain NOC from 2<sup>nd</sup> Respondent before being permitted to be cleared for home consumption.

b. To declare that raw Betel Nuts imported by the Petitioner do not constitute food or article of food and also that the provisions of FSS Act are not applicable to such goods. c. To direct the Respondents to forthwith release the imported consignments of the Petitioner without subjecting it to tests under FSS Act.

d. To direct the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to bear the liability of demurrage incurred on the Petitioner's imported goods as a consequence of the illegal detention. e. To grant costs of these proceedings to the Petitioner. f. To grant such other appropriate reliefs in the nature of writs, orders or directions that this Hon'ble Court may deem fit and proper to grant on the facts and in the circumstances of the case."

2. The learned counsel for the petitioner submits that the issue arising for consideration in this writ petition has already been adjudicated by the Division Bench of this Court through Ext.P3 judgment dated 04.01.2007. It is further submitted that similar issue was also considered by this Court in Haripriya Traders v. Union of India [2014 (4) KHC 576], wherein it was held as follows:-

"5. I am unable to accept the arguments advanced by the petitioners that betel nuts cannot be considered as "food". The definition of "food" is expansive in S.3(j) which includes any type of substance whether processed or unprocessed, which ultimately is intended for human consumption would attract the meaning of food within Clause (j) of S.3. The meaning of food do not depend upon immediate or proximate use of the substance for human consumption. The only criteria to WP(C) NO. 11153 OF 2014 determine a substance is food or not is whether the substance is intended for human consumption or not. The ultimate purpose must be for human consumption. Therefore, any substance which is intended for human consumption would fall within the definition of food as defined under the FSS Act.

6. Next question is whether FSS Act provides standard for betel nuts. There is no specific standards prescribed for betel nuts under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (hereinafter referred to as the "FSS Regulations"). According to the Food Safety and Standards Authority, betel nuts fall within the category of "nuts and raisins" as prescribed under Regulation 2.3.47, particularly, in the class of dry fruits and nuts mentioned in

sub-clause 5. The reference of sub-clause (5) in Regulation 2.3.47 clearly points out what are the types of food that fall into the above category. Those are categories of food articles immediately used for human consumption. Merely because nuts are mentioned in sub-regulation (5) that will not bring betel nut within that meaning. The intention is very clear. The intention is to classify certain types of nuts used for immediate human consumption. This is obvious from classification of dry fruits and nuts. That means the nuts must be in the nature of dry fruits."

Regarding the issue as to whether betel nuts can fall within the category of 'nuts and raisins' in the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, it was held as follows:-

"Thus in the light of the above, betel nuts are of heterogeneous class from dry fruits and nuts. This Court is of the view that the standards prescribed in sub-clause (5) of Regulation 2.3.47 of the FSS Regulations for fruits and nuts have no application for betel nuts which by very nature, form a different class."

3. However in the facts of the present case it is noticed that, this Court had passed an interim order on 22.04.2014, which reads as follows:-

"Admit.

The learned Assistant Solicitor General takes notice for R1. Adv.Paul Jacob, learned Standing Counsel takes notice for R2. Notice to R3.

The imported goods under Ext.P1 bill of entry shall be WP(C) NO. 11153 OF 2014 allowed to be cleared for home consumption without insisting on an NOC by 2nd respondent under the Food Safety and Standards Act, 2006 of course subject to compliance of other statutory conditions."

It is submitted by counsel on either side that pursuant to the interim order, the goods have been released without a NOC from the 2nd respondent under the Food Safety and Standards Act, 2006. That being the position, this writ petition is closed in the light of the interim order dated 22.04.2014, making it clear that any future import will abide by the conditions specified by this Court in Ext.P3 judgment and the judgment in Haripriya Traders(supra).

GOPINATH P. JUDGE and WP(C) NO. 11153 OF 2014 APPENDIX OF WP(C) 11153/2014 PETITIONER EXHIBITS EXT.P1: TRUE COPY OF BILL NO.5153897 DATED 9/4/2014 FILED WITH THE 3RD RESPONDENT.

EXT.P2:

TRUE COPIES OF THE INVOICE DATED 24/3/2014, THE FUMIGATION CERTIFICATE DATED 22/3/2014 AND THE PHYTO-SANITARY CERTIFICATE DATED 24/3/2014.

EXT.P3:

TRUE COPY OF THE JUDGMENT OF A DIVISION BENCH OF THIS HON'BLE DATED 4/1/2007 IN

W.A NO.2179 OF 2006.

EXT.P4:

TRUE COPY OF INTERIM ORDER DATED  
4/11/2013 PASSED IN WPC NO.26214 OF 2013.

RESPONDENTS' EXHIBITS : NIL