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W.P.(MD)No.35955 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.02.2026
Pronounced on	11.03.2026

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.35955 of 2025
& W.M.P.(MD)Nos.28565 & 28567 of 2025

M/s.Shahnaz Commodities International P Ltd,
Rep. by its Director Mr.A.Sithikgani
No.715, 7th Street Spencer Plaza
Suite 652, MOUNT Road
Chennai - 600002.

... Petitioner

Vs.

1. The Union of India,
Rep.by its Secretary
Ministry of Commerce and Industry
Department of Commerce
Vanijya Bhawan, New Delhi - 110011.

2. The Director General of Foreign Trade
Vanijya Bhawan A Wing
16 Akbar Road, New Delhi - 110011.

3. The Commissioner of Customs
Custom House, New Harbour Estate
Tuticorin - 628 004.

... Respondents



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Prayer:
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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the subject Notification No.43/2025-26 dated 15.10.2025 in File No. 01/89/180/43/AM-01/PC-2(A)/E-1256, being the Import Policy notified by the 2nd Respondent WILL NOT BE APPLICABLE to the imports made under Notification of Customs No. 46/2011 dated 01.06.2011.

For Petitioner : Mr.Vijay Narayan, Sr.counsel,
for Mr.J.Ramesh

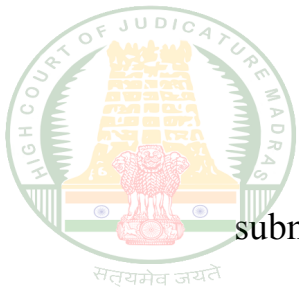
For Respondents : Mr.AR.L.Sundaresan, ASGI, for R1&2
Mr.N.Dilipkumar, for R3

ORDER

This writ petition has been filed to declare the subject Notification No.43/2025-26 dated 15.10.2025 in File No.01/89/180/43/AM-01/PC-2(A)/E-1256, being the Import Policy notified by the 2nd Respondent will not be applicable to the imports made under Notification of Customs No. 46/2011 dated 01.06.2011.

2. Petitioner's submission:

2.1 The learned Senior counsel appearing for the petitioner would
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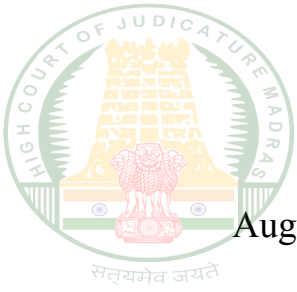


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submit that the petitioner is importing the Areca Nut, which would fall under the HSN Code 2008 1991. Now, by virtue of Notification No.43 dated 15.10.2025, the respondents had restricted the importation of roasted areca nut by fixing the Minimum Import Price (MIP) at the rate of Rs.351/- per kg. However, no proper survey was conducted before fixing the said MIP. According to the respondent, they have brought these restrictions in order to protect the interest of the Indian farmers and local market.

2.2 Further, he would contend that as per the Notification No. 46/2011, the petitioner is eligible for importation of roasted areca nut at the rate of zero custom duty. However, now, though the custom duty is continuing at the rate of zero custom duty, the DGFT had fixed MIP at the rate of Rs.351/- by virtue of impugned Notification.

2.3 In this regard, he referred to the Framework Agreement on the Comprehensive Economic Co-operation between the Republic of India and Association of Southeast Asian Nations (ASEAN) signed on 13th

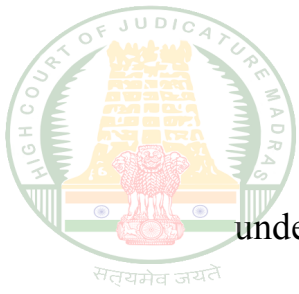


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August 2009, and would submit that the petitioner is eligible for import of areca nut without any basic custom duty as per Notification No. 46/2011.

2.4 In terms of Article 8 of ASEAN Agreement, India, being contractor party, shall not institute or maintain any non-tariff measures on the importation of goods from the other Parties, except in accordance with its WTO rights and obligations or other provisions in this Agreement. Therefore, the parties to the ASEAN Agreement are obligated to abide by the WTO agreements in this regard. Since the item is an agricultural product, the same is covered under the WTO Agreement on Agriculture, to which India is a party.

2.5 By referring Article 4 of the above agreement on agriculture, he would submit that a prominent WTO Agreement, members shall not maintain, resort to or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5. The measures excluded



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under WTO Agreement are quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through State-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties.

2.6 Further, he would contend that MIP imposed by virtue of DGFT Notification No.43/2025-26 dated 15.10.2025, being a measure explicitly prohibited under WTO Agreement, cannot be applied to the goods imported under the ASEAN Agreement. In terms of Article 5 and Annex 5 of WTO Agreement on agriculture, only additional duty can be imposed and it is not meant for fixing of MIP for imported goods. Therefore, according to the petitioner, except as has been provided in Article 5, no non-tariff measures can be imposed by the parties to the framework agreement (IAFTA).

2.7 He would also submit that in similar situation, the MIP was fixed for “peas” and subsequently, the DGFT had excluded the

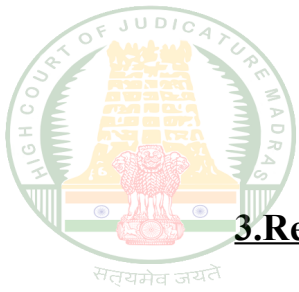


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application of this restriction to the imports involving bilateral or regional agreement or memorandum of understanding. However, the DGFT had not extent the said exclusion in the impugned notification No. 43/2025-26 dated 15.10.2025.

2.8 Further, he would submit that in this case, while issuing the impugned notice, no thorough research has been conducted with regard to the interest of farmers, which is going to be affected by virtue of fixing MIP for import of roasted areca nuts.

2.9 Therefore, he would submit that as stated above, as far as the present notification is concerned, it is not applicable for the petitioners, since they are importing in terms of Notification No.46/2011. Further, the protection available under ASEAN Agreement and WTO Agreement on agriculture would automatically come to the rescue of the petitioner. Hence, he requests this Court to pass appropriate orders and quash the impugned notification.



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3.Respondents' submission:

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3.1 Per contra, the learned Additional Solicitor General of India appearing for the respondent had strongly opposed the submissions made by the petitioners and would submit that in this case, the Notification was issued in terms of Section 3(2) of the Foreign Trade Development and Regulation Act, 1992 (hereinafter called as “1992 Act”), which enables the Central Government to make provision for prohibiting, restricting, or otherwise regulating in all cases or in specified classes of cases and subject to any exceptions, if any, as may be made by or under the order, the import or export of goods or services or technology.

3.2 By referring the said provision, he would submit that the respondent will have power to pass orders by publishing official gazette for restricting or prohibiting the import of any goods.

3.3 Further, he would submit that in this case, the prohibition, on the import of roasted areca nut, was made only in order to protect the interest of domestic agriculture and the local farmers and the same was



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done after conducting a thorough study.

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3.4 In reply to the submission made by the petitioner on the aspect of exclusion available to them in terms of the Notification No.46/2011, he would submit that certainly, an agreement, viz., WTO Agreement, was entered between the Asian countries. Further, by referring the said WTO agreement on agriculture, particularly Article 4 & 5 therein, he would submit that Article 4(1) states that market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein and Article 4(2) states that members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5. Therefore, he would contend that there is an exemption for Article 4 to the extent as provided in Article 5.

3.5 Article 5 starts with non-obstante clause, which provides that any members can take recourse to the provisions of paragraphs 4 & 5



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below in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 of this agreement. Hence, he would submit that even Clause (1) of the Article 5 clearly talks about the exclusion, by which recourse to provision 4 & 5 in connection with the importation of agricultural product in respect of measures referred to in paragraph 2 of Article 4 of this agreement, have been converted into ordinary customs duty.

3.6 Therefore, he would submit that to the extent of protection provided in Article 5 for the agricultural product, the respondents can take non-tariff measures and accordingly, in this case, to protect the local agriculture, the impugned notification has been issued. Thus, he would contend that the said notification was issued strictly in accordance with the said WTO Agreement. Therefore, the petitioner's stand that it is not in accordance with the WTO and ASEAN agreement is not correct.

3.7 As far as a submission made by the petitioner that since the import was free, the same cannot be brought under the category of



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prohibition is concerned, he had referred to the judgement of the Hon'ble

Supreme Court rendered in ***Commissioner of Customs, New Delhi vs.***

Brooks International reported in ***2007 (213) E.L.T. 161 (S.C.)*** and would submit that the word “strict prohibition” includes both absolute as well as partial. Even if the partial restriction is provided, the same can be termed as a prohibition to that extent. Accordingly, in this case, it is not completely prohibited but there is only a partial restriction for import of the roasted areca nut below the rate of Rs.351/- per kg.

3.8 Further, in order to substantiate his submissions, he referred to the judgement of the Hon'ble Apex Court in ***Union of India and others vs. Agricas as LLP and others*** reported in ***(2021) 14 SCC 341*** (hereinafter called as “***Agricas*** case”) and prays for dismissal of this petition.

4. I have given due consideration to the submissions made by the learned Senior counsel appearing for the petitioner and the learned Additional Solicitor General appearing for the respondents and also



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perused the entire materials available on record.

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5. In the case on hand, according to the respondents, the DGFT will have power to issue notification under Section 3(2) of 1992 Act. Now, it would be apposite to extract the said provision, which reads as follows:

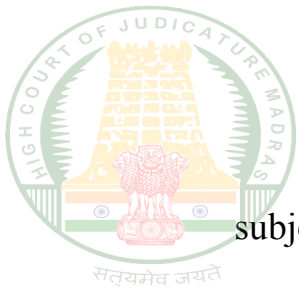
3. Powers to make provisions relating to imports and exports.—

(1)

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.

6. A reading of the above makes it crystal clear that the Central Government, by order, shall make provision for prohibition, restriction, otherwise regulating, in all cases or in specified classes of cases and
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subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology. By invoking the said power, now, the respondents had issued the impugned Notification No.43/2025-26 dated 15.10.2025.

7. Further, it appears that the Central Government can formulate and announce the foreign trade policy in terms of Section 5 of the 1992 Act. At this juncture, it would be apposite to extract the provisions of Section 5, which reads as follows:

5. Foreign Trade Policy.-

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

8. By reading the above, it is clear that certainly, the Central Government will have power to formulate and announce the foreign

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trade policy periodically.

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9. The above provisions have also been upheld by the Hon'ble Supreme Court in *Agricas* case (referred supra), wherein it was categorically held that in terms of Section 5 of 1992 Act, the Central Government will have power to formulate and announce foreign trade policy from time to time. Further, it was held that certainly, the Central Government can put any restrictions for import and export by invoking the power available for them under Section 3(2) of the 1992 Act. Therefore, it is clear that the issuance of impugned Notification No. 43/2025-26 dated 15.10.2025 by the Central Government is well within the powers available to them in terms of the provisions of 1992 Act.

10. Yet another submission was made with regard to the exclusion available to the petitioner in terms of Notification No.46/2011 dated 01.06.2011. According to the petitioner, they are importing the roasted areca nuts by invoking the aforesaid Notification No.46/2011 and in terms of the said Notification, the petitioner is not liable to pay any duty



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for such import.

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11. In this case, MIP was imposed by the respondents for the importation of roasted areca nut, by virtue of the impugned notification No.43/2025-26 dated 15.10.2025, with an intention to protect the interest of the Indian farmers. On the other hand, by citing the ASEAN and WTO Agreements on agriculture, the petitioner is taking a stand that no such restrictions can be imposed by the respondents and even if it is imposed, the same would not be applicable for the petitioner, who is importing the roasted areca nuts under the aforesaid Notification No.46/2011.

12. Now, it would be apposite to analyse the relevant portion of ASEAN Agreement, which reads as follows:

Article 4

Tariff Reduction and Elimination

1.Except as otherwise provided for in this Agreement, each party shall gradually liberalise, where applicable, applied MFN tariff rates on originating goods of the other parties in accordance with its schedule of tariff commitments as set out in Annex 1.

2.Nothing in this Agreement shall preclude any



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party from unilaterally accelerating the reduction and/or elimination of the applied MFN tariff rates on originating goods of the other parties as set out in its tariff reduction/elimination schedule in Annex 1.

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Article 8

Non Tariff Measures.

1.Each party shall:

(a) not institute or maintain any non-tariff measure on the importation of goods from the other parties or on the exportation or sale for export of goods destined for the territory of the other parties, except in accordance with its WTO rights and obligations or other provisions in this Agreement.

13. Article 4 talks about the tariff reduction and elimination over a period of time, whereas, Article 8 talks about the non-tariff measures. Therefore, except in accordance with WTO rights and obligations or other provisions in this agreement, the parties to the ASEAN Agreement cannot take any non-tariff measures on the importation of goods.

14. In this case, the grievance of the petitioner was that MIP imposed by the respondents would amount to taking non-tariff measure,



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which is against the terms and conditions of WTO Agreement on Agriculture. However, by analysing the aforesaid Articles, it is clear that the non-tariff measures can be made by the member-countries to the extent till the rights are protected under WTO Agreement.

15. Further, by referring Article 4 of WTO Agreement on Agriculture, a submission was made by the petitioner that as per the said provision, the respondent can only levy additional customs duty against the petitioner, however, the question of imposing MIP would not arise. At this juncture, it would be apposite to extract the relevant Articles of WTO Agreement, which reads as follows:

Article 4

Market Access

1. Market Access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.

2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as



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otherwise provided for in Article 5 and Annex 5.

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16. By reading the Article 4(1), it is clear that market access concession are required to be made to the extent containing in Schedule relating to bindings and reductions of tariffs and to other market access commitments as specified therein. Further, Article 4(2) states that members shall not maintain, resort to or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.

17. As per the Article 5, non-tariff can be imposed and the relevant provisions of Article 5 reads as follows:

Article 5

Special Safeguard Provisions

(1) Any member may take recourse to the provisions of paragraphs 4 & 5 below in connection with the importation of an agricultural product, in respect of, which measures referred to in paragraph 2 of Article 4 of the Agreement have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol “SSG” as being the subject of a concession in

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respect of which the provisions of this Article may be invoked.

(a) the volume of imports of that product entering the customs territory of the member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in paragraph 4; or, but not concurrently.

18. The above provision dealt with the aspect of special safeguard provided for importation of agricultural products. In order to protect the local Agriculture of any Country, the Officials can very well take recourse to the provisions of paragraphs 4 & 5 below in connection with the importation of an agricultural product, in respect of, which measures referred to in paragraph 2 of Article 4 of the Agreement. In the present case, according to the respondent, after thorough study, MIP was fixed, in accordance with the provisions of WTO Agreement on Agriculture, in order to protect the interest of local agriculture.

19. Further, in this case, there are no restrictions for importation of roasted areca nuts, but in order to safeguard the interest of the local



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agriculture, the price level of MIP has been fixed by the respondents, which means, only the trigger level has been fixed in the form of MIP, at the rate of Rs.351/- per kg, but, no limitation has been fixed on the quantitative aspect. Therefore, the impugned Notification issued by fixing MIP is well within the scope of the provisions of Article 4 & 5 of the WTO Agreement on Agriculture.

20. Since the MIP was fixed in consonance with the ASEAN and WTO Agreement, wherein provisions have been provided to safeguard the interest of the local farmers, the same would apply for petitioner as well and no exemption can be availed by citing the Notification No. 46/2011. In such case, it is clear that the impugned Notification No. 43/2025-26 dated 15.10.2025 will bind each and every importers. No importer, including the petitioner, will be excluded from the purview of the impugned notification.

21. In view of the above, this Court does not find any substance in the submissions made by the petitioner and is inclined to dismiss the



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present case as devoid of merits. Accordingly, this writ petition is dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

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Speaking/Non-speaking order
Index: Yes / No
Neutral Citation: Yes / No
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