Form J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PRESENT: THE HON'BLE JUSTICE SMITA DAS DE

W.P.O NO 262 OF 2026

M/S. CREDENCE INTERNATIONAL
VS.
UNION OF INDIA & ORS.

AND

W.P.O NO 263 OF 2026

M/S. CREDENCE INTERNATIONAL
VS.
UNION OF INDIA & ORS.

For the petitioner:	**Mr. A.K. Jayaraj, Adv.** **Mr. Akash Dutta, Adv.** **Mr. Aditya Dutta, Adv**
For the respondent Nos. 3 and 4:	**Mr. Amit Meharia, Adv.** **Ms. Tannistha Singha, Adv.** **Ms. Paromita Banerjee, Adv.** **Mr. Sayan Dey, Adv.** **Mr. Anushka Sarkher, Adv.**
For the respondent/ Customs Authority:	**Mr. Bhaskar Prasad Banerjee, Adv.** **Mr. Anurag Roy, Adv.**
For the DRI Authority:	**Mr. Kaushik Dey, Adv.** **Mr. Tapan Bhanja, Adv.**

Hearing concluded on: July 15, 2026.

Delivered on : July 15, 2026.

SMITA DAS DE, J.

1. The petitioners in the present case are regular importers of roasted Areca nuts, food products meant for human consumption which have been detained at Kolkata Port since April 2026 seeking, inter alia, a direction for fresh drawing of samples by an authorized officer of FSSAI contending that such officer is the sole competent authority under section 25 of the Food Safety and Standards Act, 2006.
2. The core issue to be decided is whether the sampling of the imported consignment of "roasted areca nuts" at Kolkata Port by any Officer other than Food Safety and Standards Authority of India (FSSAI) Authorized Officer is illegal and without jurisdiction.
3. Apropos the facts of the case, the petitioners imported roasted Areca nuts from Belawan, Indonesia under Bills of Entry Nos. 6198642 dated December 10, 2025, 6198646 dated December 10, 2025, 6197042 dated December 9, 2025 and 6197036 dated December 9, 2025. The consignment comprised of eight containers which arrived at ICD Durgapur on December 14, 2025. Respondent No. 2 drew samples on December 26, 2025 and December 29, 2025 and forwarded the same for testing to National Food Laboratory, Kolkata.

Contention of the petitioner-

4. The Learned Counsel for the petitioner submits that, in terms of the statutory scheme and the official notification, the FSSAI is the

competent authorised officer for Kolkata Port to draw samples of imported foods.

5. The petitioner places reliance upon the following admitted documents,

i) Letter dated April 20, 2026 being Annexure C2 at page 18 of the Writ Petition, issued by the office of the authorized officer, FSSAI, Kolkata Port wherein FSSAI has admitted that sampling has not been conducted by the FSSAI authorized officer and CRCL refused to test due to improper sealing and inadequate quantity.

ii) Communication dated April 27, 2026 being Annexure P7 at page 60 of the Writ Petition issued by the FSSAI directing fresh drawal of samples to FSSAI authorized officer.

iii) Official list of notified port and designated authorities (page 30) which categorically records.

SL. No	Port Name	Port Code	State/UT	Authorized Officer	Port Type
155	AISL ICD Durgapur	INDUR6	West Bengal	FSSAI Authorised Officer	ICD AND SEZ

The list shows that for Sea Ports in West Bengal the designated authority is FSSAI authorized officer and not Superintendent/ Inspector / not examiner of Customs.

6. It is submitted that in terms of Section 25 read with Section 47(5) of the Food Safety and Standards Act, 2006 and Regulation 13(1) of the Food Safety and Standard (Import) Regulation 2017, FSSAI authorized officer have been notified for handling food import clearance procedure.

7. It is further submitted that ICD, Durgapur, is one of the notified entry point where FSSAI authorized officer has been designated for Food Import Clearance as reflected in the instruction No. 4/2026 Customs dated April 20, 2026. Despite, the statutory mandate the respondent No. 2 proceeded to draw samples and forwarded them to laboratories without involving the authorized officer of FSSAI, thereby violating the mandatory procedure prescribed under law.

8. As per the detailed guidelines for retesting of samples from Imported consignments vide Circular No. 30/2017 CUS dated 18 July, 2017 it has been held that facility of retesting is done at the instance of the Department instead of the Importer. A request for resampling on the ground that the original samples have not been represented should be entertained only if the consignment is under the control of customs. At the time of drawing the samples, the importer or his representative shall be present to certify that the samples have been drawn by the authorized representative.

9. In the present case, it is submitted that the samples have been drawn for retesting in the presence of the importer's representative.

10. It is further submitted that the respondent No. 2 drew the samples in absence of the authorised officer of FSSAI and forwarded them to National Food Laboratory (NFL), Kolkata for testing without any authority of law and jurisdiction.

11. This action has been in contravention to Section 25 and 47(5) of the Food Safety and Standard Act, 2006 (hereinafter referred to as the FSSAI for the sake of brevity and convenience). As per Regulation 13(1) of the FSSAI (Imports) Regulations, 2017 the sample can be drawn only by the authorised officer of FSSAI.

12. The petitioners contend that the National Food Laboratory (NFL), Kolkata, issued the test reports without following the procedure contemplated under the FSS Act and Regulations. The said report of NFL has never been shared with the petitioners.

13. Consequently, the petitioners requested the authorities to furnish copies of the test report. However, such requests have been turned down by the respondent No. 2 who inter alia, directed the petitioners to appear for an enquiry. During the enquiry the respondent No. 2 showed copies of such test reports to the petitioners.

14. On the basis of such test report, the respondent No. 2 detained the consignment in question on February 3, 2026 under Section 110(1) of the Customs Act, 1962 arbitrarily and in excess of jurisdiction. Since the consignments being food items, the authorised officer of FSSAI has been empowered under the statute to draw the samples and forwarded them testing.

15. The petitioners through an email dated March 3, 2026 requested the respondent No. 2 for retesting the goods as per the Circular No. 30/2017-Customs dated July 18, 2014 issued by the Ministry of Finance.

16. The petitioner further requested the samples to be sent to a referral laboratory for retesting as per the guidelines issued by the FSSAI being the highest competent and well-equipped authority for food testing in India.

17. The petitioner submits that a Review Application has already been filed before the Review Officer (Regional Director, FSSAI, ERO) as per the regulation 15 of Food Safety and Standards (Import Regulations), 2017 to retest the samples against the Test Report and the Seizure Order of respondent No. 2.

18. Thereafter the respondent No. 3, FSSAI has sent an order in Review Application dated April 27, 2026 to the respondent No. 2 stating, inter alia, that "**the samples taken in respect of the Bills of Entries in question had not been referred to FSSAI, Food Import Clearance System for all food import licences for testing to be done by the Authorised officer of FSSAI as mandated under Section 47(5) of the FSS Act, 2006 read with Regulation 13(1) of the FSSAI Import Regulation, 2017**".

19. Whereas the testing ought to have been done by the Authorised officer of FSSAI, therefore the seizure order passed by the respondent No. 2 is de hors the provisions of the statute and the applicable rules and regulations in the instant case.

20. As per the Review Order the FSSAI, ERO directed the Authorised officer, of FSSAI to draw the samples and forward the same to the referral laboratory for analysis and testing as per the extant FSS Act, Rules and Regulations.

21. Despite mandatory statutory scheme the respondent No. 2 has acted arbitrarily and without jurisdiction by independently drawing food samples and forwarding them to the NFL Laboratory for testing.

22. Learned Counsel on behalf of the petitioner relies upon the judgment **Tata Chemical Ltd vs Commissioner of Customs (preventive), Jamnagar,** passed by Hon'ble Supreme Court reported in **2015(320) E.L.T 45(SC)** held that if law requires that something to be done in a particular manner, it must be done in that manner , and if not done in that manner it has no existence in eye of law at all-Customs Authorities are not absolved from following law depending upon acts of a particular assessee-Something that is illegal cannot convert itself into something legal by act of a third person.

23. Learned counsel further relies upon a judgment of **Babu Verghese and Others vs Bar Council of Kerala and others** reported in **AIR 1999 Supreme Court 1281** held that –

> *"31. It is the basic principle of law long settled that if the manner of going a particular act if prescribed under any statue, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs Taylor, (1875)1 Ch D 426 which was followed by Lord Roche in nazir Ahmad V, King Emperor 63 Ind Ap 372: AIR 1936 Pc 253 who stated as under:*
>
> *Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*

<u>Contention of the Respondent No 2-</u>

24. At the outset respondent no 2 submits that the instant writ petition is not maintainable since there is an efficacious alternative statutory remedy available for the petitioner since the order impugned is appealable order.

25. Learned counsel on behalf of the respondent no 2 being the custom authorities submits that the samples which have been taken for testing does not conform to the standards as laid down under Regulation No. 2.3.55 of Food Safety and Standards (Food Product Standard and Food Additives) Regulation 2011 as it shows damaged nuts and damaged by mould and insects and shows total aflatoxin and aflatoxin B1 content more than the prescribed limit hence, the samples is sub-standard and unsafe as held by the National Food Laboratories.

26. It is further submitted that under Swift, Customs Officer assists FSSAI. However, it is not disputed that as per the notified list FSSAI is the authorized officer of the Kolkata Port.

27. It has been submitted that the there is no dispute that the petitioner has a statutory right for retesting under Section 47(5) of the FSS Act but contend that it should be from the second part of the existing samples.

28. It is submitted that, on January 1, 2026, representative samples drawn at the time of examination have been sent to National Food Laboratory (NFL), FSSAI, Kolkata. On January 5,2026 another set of representative samples have been sent to the office of CRCL, IARI, Hill Side Road, Pusa Campus, New Delhi -110012 for detailed analysis.

29. The CRCL, New Delhi vide its letter dated February 2,2026 forwarded the Test Report and confirmed that the samples in five numbers of containers are other than roasted Areca nuts, while the samples in three containers possessed the characteristics of roasted areca nuts. However, CRCL, New Delhi also confirmed that none of the samples may be considered fit for human consumption.

30. NFL, Kolkata also confirmed that the samples are UNSAFE under FSS Act, 2006. Thus both the Government approved Test Laboratories have separately reported that the samples under examination are unsafe and are not fit for human consumption.

31. The CRCL New Delhi has categorically reported, out of eight samples of Areca Nuts, five samples have the characteristics of other than roasted Areca Nuts, which confirms that both the importers have knowingly and wilfully mis-declared the description of goods as roasted Areca Nuts with an intention to avoid Basic Customs Duties. The importers have also mis-classified the goods under the CTH 20081991(roasted Areca Nuts) instead of CTH 08028010 (whole Areca Nuts dried).

32. It has been further submitted that, since all the imported goods are found to be 'unsafe' and unfit for human consumption, and goods in five containers are found to be mis-declared and mis-classified, they have been seized under section 110(1) of the Customs Act,1962 on February 3,2026 with corrigendum issued on February 6,2026.

33. It has been contended that Entry number 6 of Notification No. 26/2022–Customs (N.T) dated March 31, 2022 indicates that

Intelligence Officer (IO) in the Directorate Central of Revenue Intelligence is the proper officer under section 144 of the Customs Act, 1962.

34. FSSAI relies on Instruction No. 04/2026 dated April 20,2026 modifying Instruction No.31/2025–Customs dated November 3,2025 read along with the previous relevant instructions on the same subject, mentions the list of 'Authorised officers' under section 25 read with section 47(5) of FSS Act and does not talk about proper officer under Customs Act which shows that in those ports where FSSAI officers are not available, 'Superintendent/Appraiser/Inspector/examiner' of customs have been given powers to act as 'Authorised Officer' under FSS Act,2006.

Contention of the Respondent no 3-

35. The learned counsel for FSSAI being respondent No. 3 submits that for Kolkata Port the FSSAI authorized officer is the designated authority under Section 37 of the FSS Act, 2006 since the letter dated June 20, 2026 admits that the sampling has not been done by the FASSI authorized officer and accordingly CRCL rejected the samples for improper sealing despite FSSAI vide a letter dated April 27, 2026 directed fresh sampling by authorized officer.

36. It has been submitted that the communication dated April 27, 2026 by FSSAI directing, inter alia, for fresh sampling by the authorized officer is binding. Customs cannot override the statutory regulation. Such denial is arbitrary and violative of principles of natural justice.

Analysis

37. The moot question to be decided in the instant case as to –

(i) Whether the present writ petition is maintainable in view of the availability of an efficacious alternative statutory remedy?

(ii) Who is the competent authority in drawing samples for testing in order to ascertain whether the said seized goods are fit for human consumption or not?

(iii) Whether Section 89 of the FSS Act has an overriding effect over Section 144 read with Section 25 of the Customs Act, 1962 to enable the authorised officer of the FSS Act to be the competent statutory authority to draw the samples of imported food articles like roasted Areca nuts.

38. At the outset, the preliminary objection raised by the respondents regarding the maintainability of the writ petition on the ground of availability of an alternative remedy under the Food Safety and Standards (Import) Regulations, 2017 deserves consideration. Although the Regulations provide a mechanism to seek review or redressal against an adverse laboratory report, the grievance of the petitioner is not confined to the correctness of the laboratory analysis. The challenge strikes at the very root of the proceedings, namely, the competence of the authority that drew the samples and the legality of the sampling procedure itself. Such an issue pertains to jurisdiction and statutory authority rather than merely the correctness of the analytical findings.

39. It is well settled that the existence of an alternative statutory remedy is a rule of self-imposed restraint and not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. In **Whirlpool Corporation vs. Registrar of Trade Marks,** reported at **1998 (8) SCC 1**, the Supreme Court held that an alternative remedy is not a bar to the exercise of the writ jurisdiction of the High Court if the writ petition is filed for enforcement of fundamental rights; where there has been a violation of the principles of natural justice; where the order or the proceedings are wholly without jurisdiction; or when the vires of an Act is challenged. The present case falls within the first exception since the petitioner questions the statutory competence of the authority for initiating the sampling process.

40. Following the dictum of this Court in **Whirlpool (supra),** in **Harbanslal Sahnia vs Indian Oil Corporation Ltd**. reported at **AIR 2003 SC 2120**, observed that-

> *"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without*

> *jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings." (emphasis supplied)*

41. Since the challenge goes to the very jurisdiction of the authority to collect samples and the consequent validity of the laboratory report, the writ petition cannot be rejected solely on the ground of availability of an alternative remedy under the Food Safety and Standards (Import) Regulations, 2017. The issue raised requires an interpretation of the interplay between the Customs Act, 1962 and the FSS Act, 2006 and determination of the competent statutory authority empowered to draw samples of imported food articles. Such a pure question of law is eminently amenable to adjudication under Article 226 of the Constitution.

42. Accordingly, the preliminary objection regarding maintainability is liable to be rejected, and the writ petition deserves to be entertained for adjudication on merits.

43. This court finds that there is a conflict regarding the authority to draw samples of imported food articles like roasted Areca Nuts, between the Food Safety and Standard Act, 2006 (FSS Act) and the Customs Act, 1962. Both the Act operates in distinct legal fair meaning in as much as both authorities are the authorized to act within their respective statutory mandates.

44. Section 25 read with Section 47(5) of the FSS Act, 2006 and Regulation 13(1) of the FSSAI (Import) Regulations, 2017 confers exclusive jurisdiction on the notified authorized officer. For Kolkata Port FSSAI is the authorized officer which excludes the Customs Officer. As demonstrated by the letter dated April 20, 2026 and August 6, 2025 issued by the Ministry of Finance notified the list of Authorized Officer of every port under section 25 read with section 47(5) of the Food Safety Standards (FSS) Act and regulation 13(1) of FSS (Import) Regulation, 2017.

45. In the conspectus of the above as adumbrated herein, that FSSAI is an authorized officer for Kolkata Port under Section 25 read with Section 45(5) of the Food Safety and Standards Act, 2006, regulation 13(1) of the FSSAI (Import) Regulations, 2017, DGFT Notification No. 57/2015-20 dated February 10, 2021 and officially notified list of ports, thereby entitling the petitioner to fresh drawal of sample by FSSAI Authorized Officer.

46. Section 89 of the FSS Act, 2006 overrides other laws. Judicial interpretation clarifies that the overriding effect applies strictly to Food Safety, Standard and adulteration. It does not however disturb the distinct statutory machinery under the Customs Act, 1962 designed to protect revenue and enforce import restrictions. Any proper officer under Section 144 of the Customs Act may take samples of imported goods for testing to determine their proper classification, valuation, duty liability or potential mis-declaration. Assessment is required to ascertain whether an item is raw Areca nuts disguised as roasted Areca nuts with an intention to evade minimum import price restrictions on custom duty.

47. In the case of **M/s Unik Traders Rep. Vs Commissioner of Customs 2025 MHC 2380** the Court has been pleased to observe that FSSAI certification confines itself whether that food item is safe and edible. It does not satisfy or preclude the Customs Department from verifying that trade classification of the commodity under the Customs Tariff Act.

48. The custom department is not vested with the task of classification of the food for the purpose of custom duties. In the instant matter it is the FSSAI that is vested with the statutory authority to draw samples for testing.

49. The custom authority retains the legal competence to draw separate samples for the purpose of investigating misclassification, duty evasion or trade policy compliance. Therefore there is no absolute exclusion of one authority by the other rather they exercise concurrent sampling power for entirely different statutory purposes. The Hon'ble Supreme Court has clarified that the Food Safety and Standard Act, 2006 (FSS Act) possess the absolute primacy and an overriding effect via Section 89 over other statutes when it comes to evaluate food safety and compliance. It has been explicitly established that Act carries a powerful non-obstante clause which overrides all other laws concerning Food Safety standards. The Apex Court held that when a specialised statutory body like the FSSAI is established to monitor, test and declare the safety of food articles, its findings hold definitive legal sanctity.

50. In the case of **NBG International Private Ltd. Vs. The Union of India**, **W.P 3161 of 2026** the importer brought in imported roasted Areca Nuts. The FSSAI authorised officers drew samples Under Sections 25 and Section 47, tested them at a National Food Laboratory and issued a No Objection Certificate declaring them fit for human consumption. However, the customs authority invoked Section 144 to draw samples for testing.

51. As it appears from the observation laid down by the Hon'ble Supreme Court in the case of **NBG International Private Ltd.(Supra)** that customs authority cannot arbitrarily utilise its powers to override or sideline, FSSAI certification. Once the FSSAI clears an imported food item as edible the Custom Department cannot question the wisdom of the FSSAI or perform secondary retesting on food parameters to stall the imports without extraordinary, substantiated proof of fraud.

52. It is therefore, well settled proposition that Section 89 of FSSAI completely overrides the Customs Act. If the samples tested by the National Food Laboratory of FSSAI confirm that the product complies with the prescribed food safety standards, the Customs authorities cannot declare the food article unfit on the basis of separate sampling. The proper officer power under Section 144 of the Customs Act remains alive only for revenue purposes but it cannot defeat a positive FSSAI safety report for clearing food into the domestic market as held by the Hon'ble Apex Court.

53. Thus, it is explicit that the custom authority has the power to seize the goods, documents and things and is also equally empowered to take samples for testing under Section 144 of the Customs Act, 1962. By virtue of Section 25 read with Section 47 the Food Safety Officer has been empowered to take a sample of food for analysis to ascertain whether such imported goods are fit for human consumption or not. Although the Customs authorities are also empowered under Section 144 to draw samples for testing but such testing are exclusively to determine their proper classification, valuation, duty liability and/or potential mis-declaration. Unless there is a valid certification from FSSAI regarding the safety and the edibility of the imported goods, the Customs department are precluded from verifying the trade classification of the imported goods.

54. Section 25(1)(iii) of the Food Safety and Standard Act, 2006 contemplates that no person shall import into India any article of food in contravention to any other provision of the FSS Act or of any rule or regulation made there-under. In the present case the imported consignment being in the nature of food articles, therefore it is mandatory that FSS Act, Rules or Regulations should be strictly complied with as regards the fulfilment of the labelling requirements. The lackadaisical attitude of the Customs Department in not following the established guidelines relating to drawing samples and sending for testing cannot be given concession to any manner. It has been categorically held by the Hon'ble Madras High Court in the case of **M/s. Unik Traders Rep. By ITS Vs The Commissioner of Customs** in para 43, which is reproduced herein below:

> *"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."*

55. The respondent placed reliance upon a Circular of the Ministry of Finance dated March 31, 2022 to demonstrate that the intelligent officer in the Directorate General Revenue Intelligent is the proper officer to initiate proceedings under Section 144. Thus, drawing samples for testing by the Customs authorities is not in excess of jurisdiction and the same is sustainable in the eye of law. In this context, the Learned Counsel appearing for the petitioner draws the attention of this Court to a circular dated April 20, 2026 and August 6, 2025 to demonstrate that FSSAI has been notified to be the competent officer to draw samples for testing in respect of the goods confiscated. Only FSSAI can certify imported food for human consumption. Custom cannot detain on separate sampling once FSSAI posses.

56. The laboratory report is only as reliable as the sampling process itself. If the sampling is shown to have been undertaken by an authority lacking statutory competence or in violation of the prescribed procedure, the report based on such samples cannot legally sustain adverse civil consequences against the importer.

57. In concise, the FSSAI Authorised Officer is the sole competent authority to draw samples and issue No Objection certificate for human consumption. Section 144 of the Customs Act operates independently for revenue protection and classification.

58. In view of the admitted position and upon considering the letters dated April 20, 2026, August 6, 2025 and April 27, 2026 respectively, the FSSAI is the authorized officer for Kolkata Port.

59. Having regard to the findings recorded hereinabove, the present writ petition stands decided in terms of the following directions: -

(a) That FSSAI authorized officer is the sole competent authority for drawal of samples of imported foods under Section 47(5) of the FSS Act, 2006. The sampling conducted by any other officer, is illegal and without jurisdiction and void. The Test report based on such samples stands quashed.

(b) The second part of the sample shall be forwarded to the referral laboratory, central food laboratory, Kolkata within 24 hours of drawal. CFL Kolkata shall submit its analytical report within 5 days on receipt.

(c) The respondent no 3 is directed to conduct fresh drawal of samples from the petitioner's consignment of roasted areca nuts within 48 hours from the date of communication of this order in the presence of the writ petitioner's representative. The procedure shall be video graphed and sealing shall be as per FSSAI norms. The respondents are restrained from taking any coercive steps including destruction or re- export till 7 days after the referral laboratory report is served upon the petitioner.

60. However, it is made clear, if the referral laboratory's report finds the consignment conforming to standard, the respondents shall release the consignment within 24 hours thereafter, without levying any demurrage or detention charges from April 27, 2026 till the date of release.

61. With the above observations and directions the Writ Petition **W.P.O No 263 of 2026** and **W.P.O No 262 of 2026** stand disposed of. There shall be no order as to costs.

62. Since the affidavits have not been called for the allegations made in the Writ petition shall be deemed to have been denied and not admitted.

63. Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

(**Smita Das De, J.**)