Reserved On : 05/12/2025
Pronounced On : 24/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO.507 of 2025
With
CIVIL APPLICATION (FOR STAY) NO.1 of 2025
In R/TAX APPEAL NO. 507 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

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Approved for Reporting	Yes	No
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THE COMMISSIONER OF CUSTOMS - KANDLA
Versus
M/A DEVAM IMPEX

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Appearance:
MR ANKIT SHAH(6371) for the Appellant(s) No. 1
MR MIHIR JOSHI, SENIOR ADVOCATE with MR HARDIK P MODH (5344) for the Opponent

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

(1) The present Appeal under section 28KA of the Customs Act, 1962 (herein after referred as "the Act") emanates from the decision of the Customs Authority for Advance Rulings dated 23.04.2025.

(2) Respondent - M/s Devam Impex, a proprietorship firm, is a holder of valid Importer-Exporter Code (IEC), applied for an Advance Ruling under

section 28H of the Act on the applicability of Notification No.25/2023-Cus dated 01.04.2023, which provides exemption from Basic Customs Duty on imports under Transferable Duty Free Import Authorizations (DFIAs for short) issued in line with Paragraph Nos.4.24 and 4.26 of the Foreign Trade Policy (FTP).

(3) On the facts, the respondent - assessee is a transferee of DFIA issued against the export of Assorted Confectionary Products (SION E-1) and Biscuits (SION E-5). The respondent - assessee had filed an application under Section 28H of the Customs Act, 1962 before the Customs Authority for Advance Rulings ("CAAR") seeking a ruling on the permissibility of importing Inshell Walnuts by availing the benefit of Customs Notification No.25/2023-Cus dated 01.04.2023. The said import item was claimed to be covered under the description of "Other Confectionary Ingredients" — viz. (i) Relevant Fruits; and (ii) Nut and Nut Products - under Sr. No.7 of the DFIA issued as per SION E-1, and also under the description of "Dietary Fibre" at Sr.No.4 ("Biscuit and Additives and Ingredients") of the DFIA issued as per SION E-5. The authority answered the question in the affirmative, holding that the import of Inshell

Walnuts is permissible under the said DFIAs, subject to compliance with the value-based limitations endorsed therein.

(4) The DFIA is a post-export duty credit instrument and is freely transferable in terms of Paragraph No.4.26 read with Paragraph No.4.28 (viii) of the Foreign Trade Policy. The Standard Input Output Norms ("SION") for various export products are notified by the Director General of Foreign Trade ("DGFT"). Each SION prescribes the permitted inputs (ingredients) along with their corresponding quantity norms required for manufacturing the resultant export product. In the present case, the applicable notified norms are SION E-1 for the export of *Assorted Confectionary Products* and SION E-5 for the export of *Biscuits*.

SUBMISSION ON BEHALF OF THE APPELLANT :

(5) Learned Senior Standing Counsel Mr.Ankit Shah appearing for the appellant – Department has submitted that the CAAR, Mumbai by Ruling dated 23.04.2025 extended exemption under Notification No.25/2023-Cus dated 01.04.2023 on the premise that Walnuts can be regarded as "confectionery ingredient/dietary fibre", which is erroneous, since the exemption has been granted despite absence of specific endorsement of this HS Code

in DFIA, and without establishing actual technical usage in the exported products as mandated by Paragraph No.4.12 of FTP and the Notification's conditions.

(6) The authority erred in treating in-shell walnuts as "dietary fibre" under SION E-5, since the expression (Dietary Fibre) commercially refers to cellulose or pectin-based roughage used in biscuit formulation and not high-fat nuts predominantly composed of oils and proteins. Such a generic reading dilutes the technical meaning in FTP/SION and is impermissible where exemption provisions require strict construction (Commissioner of Customs (Import), Mumbai vs. M/s.Dilip Kumar & Co & Ors. [2018 (361) ELT 577 SC]).

(7) It is submitted that Notification No.25/2023-Cus requires that the imported input be specifically named and technically correlated with the material actually used in the export products, as per the provisions linked to FTP Paragraph Nos.4.12 and 4.29. "Walnuts In-shell", having a distinct HS Code (08023100), cannot be covered under generic heads such as "Dietary Fibre" or "Other Confectionery Ingredients" without proof of such technical use. Allowing exemption on

broad descriptions, without HS-based linkage or evidence of actual usage is contrary to the conditions of the Notification.

(8) That the Central Board of Indirect Taxes & Customs (CBIC) / DGFT circulars cannot override HS-code requirements under DFIA/SION. It is submitted that In-shell Walnuts (08023160) are unspecified, so CAAR's generic, "dietary fiber" exemption is unsustainable and risks misuse.

(9) The condition (iii) of Notification No.25/2023-Cus, requires clear description, specifications, value, and quantity of imported materials in the authorization. It is submitted that without a precise match, the exemption must be denied. The Supreme Court in the case of ***M/s.Dilip Kumar & Co. (supra)*** held that exemption notifications are to be strictly construed, with the burden on the importer.

(10) The "FTP" expressly requires that materials imported must be the same in name, characteristics, and specification as actually used in the exported product. It is submitted that no evidence is placed of use of walnuts in the exported items. It is submitted that statutory pre-conditions being unsatisfied, exemption cannot be granted.

(11) Reliance is placed on the DGFT's (Directorate General of Foreign Trade) Public Notice No.20/2025-26 dated 26.08.2025, which is subsequently issued after the filing of the appeal, and it is submitted that it suspends SION norms in the food sector, including SION E-1 and SION E-5, and hence the very norms forming the legal basis of the CAAR Ruling stand in abeyance.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

(12) Learned Senior Advocate Mr.Mihir Joshi has submitted that the "Inshell Walnuts" are fully covered by the description of 'Dietary Fibre', as held by the Bombay High Court in the judgment dated 27.07.2022 rendered in Customs Appeal No.6 of 2021 with Interim Application (L) No.16390 of 2021 (in the case of The Commissioner of Customs, Nhava Sheva-V vs. VKC Nuts Private Limited), wherein the Court categorically affirmed that walnuts (including inshell form) fall within the broader classification of *dietary fibre* for the purposes of DFIA entries and, hence the respondent's case is squarely covered by the said judgement. It is contended that it is not disputed that Inshell Walnuts are covered by the description of 'Nut and Nut Products' as mentioned in SION E-1.

(13) Reliance is placed on Board Circular No.20/2025-Cus dated 24.07.2025, and it is contended that the same clarifies that no correlation is required to be established for inputs other than specified under Paragraph No.4.29 of the FTP.

(14) It is submitted that the Central Board of Indirect Taxes and Customs (CBIC), vide Circular No.20/2025-Cus dated 24.07.2025, has reiterated the settled policy position that no correlation is required to be established between the technical characteristics, quality, or specifications of the inputs used in the export product and those imported against DFIA, except in respect of the inputs specifically listed under Paragraph No.4.29 of the Foreign Trade Policy (FTP), and *Inshell Walnuts are not among the inputs specified under Paragraph No.4.29 of the FTP*. Accordingly, no correlation is mandated in the present case.

(15) Reliance is placed on the order dated 07.11.2022 of the High Court of Tripura Agartala by judgement rendered in WP(C)(PIL) No.18 of 2022 in the case of Sri Subhankar Bhowmik vs. Union of India & Ors., wherein the High Court had rejected the departments contentions that material permitted to be imported would include

not only the material imported but also even such material used which is domestically procured, and that material actually imported need not match the goods inputs used in the export product if it is domestically procured for discharging the export obligation under the DFIA.

ANALYSIS AND OPINION :

(16) The following questions of law are proposed in the present appeal :

> "2.1 "Whether the applicant is entitled to claim exemption from payment of Basic Customs Duty against Custom Notification No.25/2023-Cus dated 01.04.2023 under Transferable Duty-Free Import Authorisations (DFIAs) for their import of Walnuts Inshell against import goods description of 'Fruits & Fruit Products and Nut Products' against Export of Assorted confectionary goods and against the description of 'Dietary Fibre' against Export of Biscuits?
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> 2.2 Whether the applicant is required to match the ITC (HS) numbers mentioned in the DFIA vis-a-vis the ITC (HS) Number of import goods for clearance against Notification No.25 of 2023 under DFIA Scheme ?
>
> 2.3 Whether the CAAR erred allowing the exemption as per for Notification No.25/2023 dated 01.04.2023 "Walnuts In-shell" under general heads such as "Dietary Fibre" and "Other Confectionery Ingredients" without technical linkage to actual exports.
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> 2.4 Whether the CAAR's approval of the clearance of imported goods-without matching the ITC (HS) number as required under Notification No.25/2023 dated 01.04.2023-is appropriate, considering that the imported product merely fits the general description mentioned in the DFIA licence, despite lacking technical specifications, quality parameters, and characteristics aligned with the actual exported goods."

(17) At the outset, we may clarify that the issue raised in the foregoing proposed substantial questions of law have been already dealt with by the Bombay High Court in the case of ***VKC Nuts Private Limited (supra***). The substantial question of law before the Bombay High Court arose from the order passed by CESTAT, which had set aside the condition imposed by the adjudicating authority for permitting provisional release of seized In-shell Walnut. The relevant observations are incorporated as under:

> *"2. The relevant facts are that the respondent company inter alia had imported 791 bags of in-shell walnut under Bill of Entry No.9878513 dated 31st January, 2019 and claimed exemption under Notification No.98 of 2009- Cus dated 11th September, 2009 on the strength of the Duty Free Import Authorization (DFIA) Nos.0310704333 and 0310740591 against import item of "dietary fibre" under Standard Input Output Norms (SION) E5. The said goods statedly were allowed to be cleared without payment of duty by debiting the DFIA scrip.*
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> *xxx xxx xxx xxx*
>
> *14. Facts are not in dispute. The revenue is aggrieved that Notification No.98/2009-Cus dated 11th September, 2009 which allows duty free import of items on the condition that they are mentioned in the respective DFIA scrip or they are convincingly raw materials for the import items, mentioned in the said DFIA scrip has been violated, making the subject in-shell walnuts liable for confiscation under section 111(o) of the Customs Act, 1962 read with 46 of the said Act and the aforementioned notification.*
>
> *xxx xxx xxx xxx*
>
> *16. We observe that the seized walnuts in-shell were allowed to be cleared against import item of "nut and nut products" and "dietary fibre", following with the*

decision of the Madhya Pradesh High Court in the case of Global Exim and ors. Vs. The Union of India and ors. (supra) and the Tribunal decision in the case of Uni Bourne Food Ingredients LLP Vs. Commissioner of Central Excise Hyderabad-II (supra). The Tribunal had also placed reliance on the opinion given by the Joint Director, Jawahar Customs House Laboratory vide report dated 8th / 27th August, 2018. The appellant has not disputed the said technical opinion but only stated that the said authority has expertise in chemical analysis of goods but do not have expertise or mandate on food and nutrition science and that opinion appears beyond their mandate and expertise.

17. In the case at hand, the issue is whether the subject walnuts in-shell are covered under the description of input entries 'dietary fibre' and therefore, whether same can be permitted for duty free clearance against the DFIA issued against the export under SION E5 which inter-alia permits duty free import of 'dietary fiber'.

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23. In the case at hand, we observe that the respondent-company has imported 791 bags of in-shell walnuts under Bill of Entry No.9878513 dated 31st January, 2019 and has claimed exemption under the said notification dated 11th September, 2009 on the strength of the DFIA against import item of dietary fibre under SION E5. The said goods as mentioned earlier were cleared without payment of duty and exemption benefit was allowed. The custom authorities have however seized the said 791 bags lying in the godown of Hemkunt Agro Care Private Limited on the pretext that in-shell walnuts do not fit into the description of "dietary fibre". In our view, once the transferability of the DFIA having been approved and effected by the licensing authorities, customs authorities cannot impose restrictive condition on the transferee to deny the exemption sought as held in the decision of this Court in case of A. V. Industries v/s. Union of India (supra).

24. It is also not in dispute that as per law settled by this court in the case of Shah Nanji Napsi Exports Private Limited Vs. Union of India and DGFT, it has been held that the DFIA scheme does not lay down actual user condition and hence the subject in-shell walnuts were allowed to be imported under DFIA scrips.

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27. We also note that there is a technical opinion of the Joint Director, Jawahar Customs House Laboratory opining that the walnuts may be used as a source of dietary fibre in the manufacture of biscuits/cookies and confectionery. The revenue has not brought before us any evidence/report contrary to the same.

28. The technical opinion by JNCH Lab dated 8th August, 2018 suggests that in-shell walnuts can be used as dietary fibre. The usability of walnuts in biscuits is well known. It is settled law that it would not be open to any one to take a contrary stand unless and until such technical opinion is displayed by specific and cogent evidence in the form of technical opinion. Our view is fortified by the decision of Gujarat High Court in case of Inter Continental (India) v/s. Union of India, 2003 (154) ELT 37 (Guj) and there is no contrary technical opinion produced before us.

29. We are therefore of the view that the proposed question (a) does not raise any substantial question of law."

(18) Thus, the Bombay High Court, after considering the array of judgments has examined the issue as to whether the subject walnuts in-shell are covered under the description of input entries 'dietary fibre' and therefore, whether the same can be permitted for duty free clearance against the DFIA issued against the export under SION E5 which *inter alia* permits duty free import of 'dietary fiber'. The Bombay High Court has also placed reliance on the technical opinion of the Joint Director, Jawahar Customs House Laboratory, who opined that the walnuts may be

used as a source of dietary fibre in the manufacturing of biscuits / cookies and confectionery, which has not been refuted.

(19) In the instant case, CAAR, Mumbai, while placing reliance on the legal precedent set by the various High Courts and Tribunal and the conditions prescribed in the Notification No.25/2023-Cus dated 01.04.2023, along with the DFIA licenses issued by the DGFT in terms of Paragraph Nos.4.24 and 4.26 of the Foreign Trade Policy for import of input used in exported products for SION Norms has held that the import of "Walnut Inshell" against the entry of "Dietary Fibers" in the DFIA license issued under SION Norms E-5 for export Biscuits is permissible. It is also held that the "Dietary Fibers" are mentioned at Item No.4 under the Generic Input Entry "Biscuit Additives and Ingredients" and DGFT vide Public Notice No.41/2015-2020 dated 02.11.2016 have put a value criterion apart from the quantity mentioned therein, and hence the total CIF value of all the imports of inputs mentioned under Item No.4 cannot and should not exceed 10% of the total CIF value of DIFA license. The appellant has not pointed out any breach of the aforesaid value to us.

(20) It is not disputed that the DIFA license issued to the Respondents permit the import of goods described as “Other Confectionary Ingredients” such as Fruit and Fruit products, Nut and Nut products under Sr.No.7 in accordance with SION E-1, and also goods described as “Dietary Fibre” under Item No.4, i.e Biscuits and Additives and Ingredients”, of the DFIA issued pursuant to SION E-5. The Inshell-Walnuts fall under Chapter 8 and are classifiable under ITC HS 08023100. Since, the DFIA allows import based on input description and group classification i.e Nut and Nut products-Dietary Fiber, the absence of ITC HS 08029900 as an active tariff line, does not affect the import. With regard to the proposed question of law relating to matching of ITC (HS), numbers mentioned in the DFIA vis-a-vis the ITC (HS) Number of import goods for clearance against Notification No.25 of 2023 under DFIA Scheme is concerned, the same is also settled. In this context , we may refer to the decision of the CESTAT in the case of Unibourne Food Ingredients LLP vs. Commissioner of Customs, Mundra, 2022(381) ELT 810 (Tri-Ahd) under Paragraph No.14, which is reproduced below:-

> “4. That for claiming DFIA benefit, under Notification No. 19 of 2015, the appellant is only required to satisfy the description, value and

quantity mentioned in the DFIA. The imported goods are covered within the description, value and quantity of the DFIA. Therefore, the submission that the appellant has not satisfied with the conditions of Notification is not correct. There is no such condition either in the policy or in the procedure or in the Notification No. 19 of 2015 which stipulates that ITC (HS) No. is a criteria for claiming DFIA benefits as held by this Tribunal in the case of USMS Saffron Co. Inc. v. Commissioner of Customs, ACC, Mumbai vide Final Order No. A/3627/15/CB, dated 30-9-2015 [2016 (331) E.L.T. 155 (Tri. - Mum.)] … … …".

20.1 Similar view has been taken in the case Unibourne Food Ingredients LLP vs. Commissioner of Central Excise (Hyderabad) by the CESTAT vide decision dated 25.03.2019 and has held as under:

"10. In the instant case, the issue is whether Walnuts in shell is covered under the description of input entries 'relevant food flavor/flavouring agent/flavor improvers' and dietary fibre and therefore can be permitted for duty free clearance against a transferable DFIA issued against export of Biscuits (SION E-5). There is no dispute that goods exported are Biscuits and are covered by SION E-5. The said SION E-5 inter alia permit duty free import of relevant food flavor/flavouring agent/flavor improvers' (Sl No. 6) and dietary fibre (Sl No.11).

11. The Ld. Advocate has produced IIT Certificate and technical reference books and several wrappers to show that Walnuts are indeed used as relevant food flavor/flavouring agent/flavor improvers' and dietary fibre in biscuits manufacturing. We agree with the contentions of the Ld. Counsel in this regard. The usability of Walnuts in Biscuits is beyond doubt. It is settled law that it would not be open to any one to take contrary stand, unless and until such technical opinion is displaced by specific and cogent evidence in the form of another technical opinion as held by the Hon'ble Gujarat High Court in the case of Inter Continental (India) Vs. UOI- 2003 (154 ELT 37 (Guj). There is no such contrary technical opinion is produced by the revenue. The Ld. Commissioner

> (Appeals) in the OIA himself accepts that Walnuts in shell contain dietary fibre albeit in small portion; In this regard, the ratio of judgement in the case of Commissioner of Customs, Kolkotta Vs. G.C. Jain is relevant and squarely covered in the present case. The Ld. Counsel for appellant is right in relying upon the judgement whereby the Hon'ble Apex Court has held that Material would mean Material required for manufacture of export products encompasses entities not only directly used/usable but also which could be used with some processing. Therefore we are in agreement with the contention of the Ld. Counsel that Walnuts can be used with some processing as a dietary fibre , flavor etc., As regards, the mismatching of ITC (HS) Numbers, we find that the Hon.Tribunal (Mumbai) in the case of USMS Saffron Co has held that the ITC (HS) number is not a criteria for extending DFIA benefit under custom notification No. 98/2009. We further find that neither SION nor the relevant notification specifies that relevance of ITC (HS) numbers for claiming DFIA benefits. We therefore accept the contentions of Ld. Counsel for the appellant in this regard. … … …"

(21) The purpose of incorporating the provision of section 28J of the Customs Act, 1962 was only to give certainty in the matter specified in Section 28H(2) of the Act. It is intended to provide clarity, certainty and transparency to importers, exporters and other stock dealers as a measure of trade facilitation and to reduce the scope for litigation. It is settled legal precedent that the scope of appeal under Section 28KA of the Customs Act, 1962 is very restricted, unless the ruling of the Authority is profoundly illegal or arbitrary or unreasonable or bereft of proper reasoning, and hence, it cannot be interfered by this Court under Section 28KA of the Customs Act, 1962.

(22) It appears that after the instant CAAR dated 23.04.2025, the Government of India, Ministry of Finance, Department of Revenue CBIT & Customs has issued a Circular No.20/2025-Cus dated 24.07.2025, clarifying the Notification dated 01.04.2023 to the extent that the only in case of imports of inputs mentioned in Paragraph No.4.29 of the FTP, 2023, the correlation of technical characteristics, quality and specification of the inputs with the export product is required to be established when imported under DFIA Scheme, whereas in case of inputs mentioned in Paragraph Nos.4.12 and 4.28(iii) of the FTP, 2023, only name of the specific input along with the quantity is required to be declared in the shipping bill/bill of export, and declaration of technical characteristics, quality and specification of the inputs used in the manufacture of the export product is not required.

(23) Thus, in view of the aforementioned clarificatory Circular and on an overall analysis of CAAR, we are of the opinion, that the proposed questions of law already stand answered by legal precedent. We are not inclined

to frame the substantial questions of law. Hence, the present appeal stands ***dismissed***. Civil Application, accordingly stands disposed.

Sd/- .
(A.S.SUPEHIA, J)

Sd/- .
(PRANAV TRIVEDI, J)

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*Bhavesh-[pps]**

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: BHAVESH PARSOTTAM KATIRA(HC00176), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 24/12/2025 15:09:15