CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70440 of 2021

(Arising out of Order-In-Appeal No.20-21-CUS-APPL-LKO-2021, dated - 13/01/2021 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Devraj Garg **.....Appellant**
(Mohalla Ahiran-02, Palia
Lakhimpur Kheeri, U.P.)

VERSUS

Commissioner, Customs, Lucknow **....Respondent**
(Lucknow)

WITH

Customs Appeal No.70441 of 2021

(Arising out of Order-In-Appeal No.20-21-CUS-APPL-LKO-2021, dated - 13/01/2021 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Rajiv Agrawal **.....Appellant**
(Village Sigahi Khurd Post Sampoorna Nagar,
District Lakhimpur Kheeri, U.P.)

VERSUS

Commissioner, Customs, Lucknow **....Respondent**
(Lucknow)

APPEARANCE:
Shri Anuj Agarwal, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70483-70484/2024

DATE OF HEARING : 13.05.2024
DATE OF DECISION : 30.07.2024

<u>P. K. CHOUDHARY:</u>

Both the appeals are taken up together for hearing and disposal as they arise from the common impugned Order-In-Appeal No.20 & 21-CUS/APPL/LKO/2021 dated 13.01.2021.

2. The Appellant Shri Devraj Garg is doing his business through his firm M/s Ganesh Trading Company and is dealing in edible food grains including 'Matar'. On 13.06.2019 the consignment of 80 Quintal Matar was sent to Sitapur and was apprehended on the ground that the consignment appeared to be illegally imported into India from Nepal. Show Cause Notice dated 09.12.2019 was issued to the Appellants and the same was adjudicated vide Order-In-Original No.05/उपआयुक्त/सी०शु०/म०लख०/2020-21dated 04.06.2020. The consignment of matar valued at Rs.2 lakhs have been confiscated under Section 111(B). The Truck No.UP 25 G 9937 valued at Rs.3 lakhs have been confiscated under Section 115(2) with an option to redeem on payment of redemption fine of Rs.30,000/-. Penalty of Rs.5,000/- each have been imposed on various persons including the twoAppellants. Being aggrieved, the Appellants, filed appeals before the First Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-In-Appeal sustained the confiscation of impugned consignment as well as the vehicle and also justified the imposition of penalties on the Appellants. Hence, the present appeals before the Tribunal.

3. The learned Advocate Shri Anuj Agrawal appearing on behalf of the Appellants submits that the recovered peas were purchased through an acution from Customs Nautanwa/Nanpara and from local Mandi of U.P. Government & local farmers and marketing fee was paid to the marketing committee of U.P. Government. Papers of Krishi Utpadan Mandi Samiti are annexed with the Appeal paper book. Seized Matar were being sent to Sitapur Government Regulated mandi for sale.

4. He further submits that dry pea is not notified under Section 123 of the Customs Act, 1962 hence, the onus to prove that the goods have been smuggled to India lies with the Revenue.

5. It is also submitted that the goods were loaded and dispatched within the country and the same was intercepted and seized in the course of transportation from one place of the country to otherplace. The goods were recovered under E-way Bills and there is no allegation that the receipts were forged and as such question of confiscation u/s 111 of the Act does not arise and imposition of penalty under Section 112 (a) & (b) of the Act is also unwarranted.

6. Learned Departmental Representative justified the impugned order and has prayed that the appeals being devoid of any merits may be dismissed.

7. Heard both the sides and perused the appeal records.

8. I find that the Department has not established their case against the Appellants with any corroborative evidence. It is also not being brought on record that on what grounds the Department entered a view that the consignment appeared to be illegally imported form Nepal contravening the provisions of Notification No.9/96-CUS dated 22.01.1996. I find that the confiscation and subsequent seizure is only on the basis of assumptions and presumptions and no concrete evidence have been brought on record to justify the confiscation of the truck and the consignment and imposition of penalties on individuals including the two Appellants. The learned Commissioner (Appeals) has relied upon the statement of the driver of the seized vehicle. I find that the Tribunal and the Hon’ble High Courts and the Hon’ble Supreme Court have time and again observed that the statement of the driver(that to nowhere he has confessed that the he is bringing the consignment from Nepal into India) cannot be treated as conclusive evidence and

to justify the seizure and subsequent confiscation of the consignment and the vehicle.

9. In view of the above discussions, the confiscation of the consignment of Peas (Matar) cannot be justified and is accordingly, set aside. The confiscation of the vehicle is also set aside. The redemption fine of Rs.30,000/- is not justified and is liable to be set aside and I do so. Further the penalties imposed on the Appellants under Section 112 is set aside. The Appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open court on 30.07.2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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