CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Customs Appeal No. 71398 of 2018

(Arising out of Order-in-Appeal No.509/CUS/APPL/LKO/2018 dated 28/09/2018 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

Commissioner of Customs (Prev.), Lucknow .....Appellant

(5^{th} Flooor, Kendriya Bhawan, Sector-H,

Aliganj, Lucknow)

VERSUS

Sh. Rakesh Kumar Verma, ...Respondent

(Village- Nayak gali, Tikamgarh, M.P.-472001)

APPEARANCE:

Shri Shiv Pratap Singh, Authorized Representative for Appellant
Shri Shubham Agarwal, Advocate for Respondent

CORAM :
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71784 / 2019

DATE OF HEARING: 26 September, 2019
DATE OF DECISION: 26 September, 2019

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned Authorized Representative Shri Shiv Pratap Singh appearing on behalf of the Revenue and learned advocate Shri Shubham Agarwal appearing on behalf of the respondent, I note that through impugned order learned Commissioner (Appeals) has set aside the order passed by Assistant Commissioner through which seized betel nuts valued at around Rs.35 lakhs were confiscated and redemption fine was imposed. Learned Commissioner (Appeals) has held that betel nuts are not notified under Section 123 of the Customs Act, 1962 and the onus is on

Revenue to prove that the seized consignment was not properly imported and the said onus has not been discharged by the Department and therefore, it is not proved that the seized betel nuts were improperly imported in India. Revenue is challenging the said finding of learned Commissioner (Appeals). For challenging the said finding, the contention of Revenue through grounds of appeal is as follows:-

> *"Sh. Rakesh Kumar Verma, Prop. of M/s Sri Gajanan Enterprises, Muktipada Main Road, Post- Falakata, Distt. Alipurdwar, West Bengal-735211 in his statement before Superintendent of Customs, Siliguri Commissionerate, Siliguri stated that he had purchased the betelnuts from local market of Dhupguri & Falakata. He also submitted photocopies of purchase vouchers of purchase of Betelnuts for the period 14.12.2016 to 25.12.2016. Perusal of these purchase vouchers revealed that all the vouchers were prepared by M/s Gajanan Enterprises and the address of the persons selling the betelnuts were not present on the vouchers. Also many purchase vouchers were not having serial numbers. <u>Thus, the consignor has failed to produce any relevant/licit evidence/record to indicate that the said betenuts were procured locally."</u>*

2. The said ground indicates that the attempt by Revenue is to shift the onus on the respondent. The provision of Section 123 of Customs Act, 1962 has put onus on Revenue to establish that the goods are improperly imported into India so as to make goods liable for confiscation. Since the said onus has not been discharged by Revenue, I do not find any grounds to interfere with the impugned Order-In-Appeal. I, therefore, uphold the impugned Order-In-Appeal and dismiss the appeal filed by Revenue.

(Dictated and Pronounced in open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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