

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70434 of 2023

(Arising out of Order-in-Appeal No.118-CUS/APPL/LKO/2020, dated - 24/06/2020 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Mohd Musharraf

.....Appellant

(S/o Late Mohd. Badre Alam
R/o Ganghar, Baisi Purnia,
Baisi, Bihar 854315)

VERSUS

Commissioner, Customs (Preventive), Lucknow

....Respondent

(Hall No.3 5th & 11th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow, Uttar Pradesh-226024)

APPEARANCE:

Absent for the Appellant

Smt. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70279/2025

DATE OF HEARING : 06.05.2025
DATE OF DECISION : 06.05.2025

SANJIV SRIVASTAVA:

This Appeal is directed against the Order-In-Appeal No. 118-CUS/APPL/LKO/2020, dated-24/06/2020 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow. By the impugned order following has been held:-

"5. I have gone through the case record. The appellant has challenged the seizure of the betel nuts consignment. From the Seizure Memo and Panchnama, it is apparent that the consignment appeared liable to confiscation on the basis of

local trade opinion regarding origin of the betel nuts. Morphological features of betel nuts, though not conclusive, are indicative of the origin thereof. Therefore, seizure of the goods on the basis of morphological features is justified. Thus, the impugned order of seizure is legally sustainable and is upheld. The appeal is dismissed."

2.1 Acting on the information, the Officers of Gorakhpur Customs intercepted a truck bearing Registration No. UP 17 AT 0875 at Tenua Toll Plaza on 24.02.2020 on its way to Delhi. On examination it was found that the vehicle was carrying 17,780 kg betel nuts of foreign origin valued at Rs.53,34,000/-.

2.2 On the basis of prior information and local trade opinion thus there was a reasonable belief that the beetle nuts was of foreign origin and illegally imported into India in violation of Notification No.63/94-CUS (N.T.) dated 21.11.1994. The consignment was seized as per seizure memo dated 25.02.2020 under Section 110 of the Customs Act.

2.3 Aggrieved by the seizure Appellant filed appeal before the Commissioner (Appeals) challenging the seizure which has been disposed of as per the impugned order.

2.4 Hence this appeal.

3.1 None appeared for the Appellant despite notice. Matter has been listed on number of occasions in the past. Hence, I do not find any justifiable reason to adjourn this matter any further.

3.2 Heard Smt. Chitra Srivastava, learned Departmental Representative appearing on behalf of the Revenue who reiterates the finding recorded in the impugned order.

4.1 I have considered the impugned order alongwith the submissions made in the appeal and during the course of arguments.

4.2 I find that the appeal before the learned Commissioner (Appeals) was filed against the seizure memo. No order of any authority has been passed confiscating the seized goods.

4.3 Appeal against the Commissioner (Appeals) does not lie against the seizure memo against Section 110 of the Customs Act. Section 128 of the Customs Act reads as follows:-

Section 128 in The Customs Act, 1962

128. Appeals to [Commissioner (Appeals)] [Substituted by Act 22 of 1995, Section 50, for "Collector (Appeals)" and "Collector of Custom" , respectively (w.e.f. 26-5-1995).]

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner (Appeals) may appeal to the [Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1-A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.][Inserted by Act 23 of 2004, Section 68 (w.e.f. 10-9-2004).]

(2)Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

4.4 Section 110 under which seizure is made is only an Interim Order where proper officer seizes the goods for which he has reasonable belief that they are liable for confiscation. After completion of the investigation in the matter a Show Cause Notice under Section 124 is to be issued and proceedings is initiated against the concerned persons. Thereafter order for confiscation etc is passed under Section 125 of the Customs Act.

4.5 There is no provision under which this appeal could have been filed before the Commissioner (Appeals) prior to the confiscation order made in terms of Section 125 of the Customs Act. If the Appellant was aggrieved with the seizure and was suffering loss and damages on that account he could have asked for provisional release of the seized goods under Section 110A of the Customs Act. Nothing has been placed on record to show that they have approached for provisional release of the seized goods and an order on such request has been made.

4.6 In case of Jaymatajee Enterprises [AIR ONLINE 2020 ALL 2150] Hon'ble Allahabad High Court has observed as follows:

"On the basis of the arguments advanced at the bar, the first question to be considered is whether the alternative remedy of appeal before the Commissioner (Appeals) is an efficacious remedy and in view of the said remedy, the writ petition cannot be entertained.

We are in complete disagreement with the counsel for the respondents for the following reasons:-

- (i) No appeal lies against a seizure order;**
- (ii) the goods detained are perishable in nature and considering the fact that relegating the petitioners to the appellate remedy would render the entire exercise futile as by then the goods itself will be of no value;*
- (iii) the seizure memo as well as the provisional release order are contrary to the Act and the departmental instructions;*
- (iv) order has been passed in violation of principles of natural justice inasmuch as neither in the provisional release order has the contention of the petitioners being addressed nor has any opportunity of hearing accorded before passing the provisional release order, and ;*
- (v) the order of provisional release has been passed even contrary to terms of the circular issued and there is no*

independent exercise of discretion by the Adjudicating Authority while passing the provisional release order.

Thus, on all the above grounds, which are all well carved out exceptions for exercise of jurisdiction under Article 226 of the Constitution, we reject the preliminary objection of the counsel for the respondents that in view of the remedy of appeal writ petition is not maintainable.”

4.7 In absence of any such order which could have been taken up in appeal before Commissioner (Appeals) or before this Tribunal I find all this entire proceeding before the First Appellate Authority and before this Tribunal to be premature.

5.1 There is no merit in this appeal. Accordingly, the appeal is dismissed.

(Dictated & pronounced in open court)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

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