CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Customs Stay Application No.70105 of 2019
(On behalf of Appellant)

In
Customs Appeal No.70126 of 2019

(Arising out of Order-in-Appeal No.20-CUS/APPL/LKO/2019 dated 23.01.2019 passed by Commissioner(Appeals), Customs, GST & Central Excise, Lucknow.)

Customs of Customs (Prev.), Lucknow
(5th Floor Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

...Appellant

VERSUS

Shri Harship Garg, Prop. Harshit Enterprises

.....Respondent

(215/78, Shri Ram Complex, Subhash Marg, Lucknow-226004)

APPEARANCE

Shri Gyanendra Kumar Tripathi (Dy.Commr.) (A.R.) for the Revenue
Shri A.P.Mathur (Advocate) for the Respondent

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

MISC. ORDER NO. 70155/2019
FINAL ORDER NO. 71081/2019

DATE OF HEARING : 04.06.2019
DATE OF DECISION : 04.06.2019

SHRI ANIL G. SHAKKARWAR :

Heard on Misc. Application filed by Revenue praying for stay of operation of Order-in-Appeal No. 20-CUS/APPL/LKO/2019 dated 23.01.2019 passed by Commissioner(Appeals), Customs, GST & Central Excise, Lucknow. Through the said order learned

Commissioner(Appeals) has set aside the Order-in-Original No.15/ADC/2018 dated 14.08.2018.

2. Shri Gyanendra Kumar Tripathi, learned Deputy Commissioner(A.R.) appearing on behalf of Revenue has submitted that the learned Commissioner(Appeals) through impugned order has set aside the said Order-in-Original dated 14.08.2018 through which 19,670 kg. of betel nuts were confiscated under section 111(b) and (d) Customs Act, 1962 and an option to redeem the same on payment of redemption fine of Rs.12.00 Lakhs was provided. He has stated that if the order of the learned Commissioner(Appeals) dated 23.01.2019 is allow to operate it will cause loss of Government revenue. He has relied on the grounds mentioned in the grounds of appeal.

3. After going thorugh the grounds of appeal in the main appeal and with consent of both sides I have taken up the main appeal for decision.

4. Shri Gyanendra Kumar Tripathi, learned Deputy Commissioner(A.R.) has presented the grounds of appeal raised by Revenue. He has submitted that there are two grounds of appeal raised by Revenue. One is that the Certificate issued by Arecanut Research and Development Foundation is authentic and it is established that the impugned goods were of Indonesian origin and the other ground is Shri Ram Prakash Kapoor, Driver of the vehicle AS-01/FC-4083 carrying the impugned goods in his statement dated 15.04.2017 recorded under section 108 of the Customs Act, 1962 has stated that Shri Vikash Giri got the impugned betel nuts loaded in the subject vehicle through godown of Shri Bhanwar Lal and asked him to deliver the same to M/s.Harshit Enterprises, Lucknow and that the impugned betel nuts were smuggled from north-east border of India, and stored in Dhupguri and loaded in his truck. He has further submitted that the statement is a clear admission of foreign origin of impugned betel nuts.

5. Shri A.P.Mathur, learned Advocate appearing on behalf of the respondent has submitted that original authority in paragraph No.C 8.1 to 8.3 of said Order-in-Original dated 14.08.2018 has summarized the

gist of submission of Shri Ram Prakash Kapoor in reply to show cause notice for the present proceedings and Shri Ram Prakash Kapoor in his reply has stated that the goods loaded on the said truck were with valid Indian made goods and has charged the prescribed charges for delivering the same at the destination and the authorities of the customs department wrongly seized the said goods and also stated that he had loaded Indian made betel nuts on his truck and had never loaded the foreign betel nuts as alleged by the customs authorities. Further as recorded at para C.8.1 of the said Order-in-Original Shri Ram Prakash Kapoor had stated that he loaded betel nuts of Indian made from sShyam Biswas, Prop. of Maa Gauri Traders, Jalpaiguri with the necessary papers of Indian made betel nuts and said truck has been illegally detained by Customs authorities near Ram Leela Maidan, Lucknow on the wrong presumption that the said betel nuts were of Indonesian origin. He has submitted that the only ground on which Revenue is relying is the statement of Shri Ram Prakash Kapoor and Shri Ram Prakash Kapoor has in his reply to show cause notice stated that the impugned goods were of Indian origin.

6. Having considered the submissions from both the sides and on perusal of record I note that learned Commissioner(Appeals) in his impugned order has observed that betel nuts are not notified under section 123 of Customs Act, 1962 and therefore onus is on Revenue to prove that impugned goods were not properly imported into India. He has further held that no such evidence was produced by Revenue and therefore the said Order-in-Original dated 14.08.2018 was not sustainable. I note that to prove that the goods were of smuggled nature Revenue has relied upon statement of Shri Ram Prakash Kapoor in the grounds of appeal. However, the said admission by Shri Ram Prakash Kapoor in his statement dated 15.04.2017 was disowned by himself and in reply to show cause notice he has stated that the goods were of Indian origin. Further, after hearing both sides and on perusal of record I did not find any evidence produced by Revenue to establish as to thorugh which route the good were smuggled into India and

therefore I do not find any infirmity in the impugned order-in-appeal. I therefore uphold the impugned order-in-appeal and reject the appeal filed by Revenue. Miscellaneous Application is also rejected as infructuous.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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