CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Stay Application No.70150 of 2019
(On behalf of Appellant)
in
Customs Appeal No.70212 of 2019-Division Bench

(Arising out of Order-in-Appeal No.21-23-CUS/APPL/LKO/2019 dated 23/01/2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Commissioner of Customs (Prev.)

Lucknow **.....Appellant**

(5th Floor Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

VERSUS

Smt. Pinki Agarwal **....Respondent**

(W/o Shri Binod Kumar Agarwal, Bindu Bazar, Gorubathan

Jhalong, Darjeeling, W.B.-734503)

WITH

Customs Stay Application No.70151 of 2019
(On behalf of Appellant)
in
Customs Appeal No.70213 of 2019-Division Bench

(Arising out of Order-in-Appeal No.21-23-CUS/APPL/LKO/2019 dated 23/01/2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Commissioner of Customs (Prev.)

Lucknow **.....Appellant**

(5th Floor Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

VERSUS

Shri Binod Kumar Agrawal **....Respondent**

(S/o Shri Kashmiri Lal, Bindu Bazar, Gorubathan

Jhalong, Darjeeling, W.P.-734503)

AND

Customs Stay Application No.70152 of 2019
(On behalf of Appellant)
in
Customs Appeal No.70214 of 2019-Division Bench

(Arising out of Order-in-Appeal No.21-23-CUS/APPL/LKO/2019 dated 23/01/2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Commissioner of Customs (Prev.)

Lucknow .....Appellant

(5th Floor Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

VERSUS

Shri Prithvi Raj Goyal ....Respondent

(Chaudhary Compound, 3rd Mile, Sevoke Road,

Silliguri W.B.-734001)

APPEARANCE:

Shri Sandeep Kumar Singh, Authorised Representative for the Appellant
Shri S.A. Khan, Consultant for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

STAY ORDER NOS.- 70195-70197 / 2019

FINAL ORDER NOS.- 71221-71223 / 2019

Date of Hearing : 25 June, 2019
Date of Decision : 25 June, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) Revenue has filed the present appeals. As all the appeals arise from the same impugned order of Commissioner (Appeals), they are being disposed of by a common order.

2. As per facts on record, Commercial Tax Department, U.P. found a truck loaded with large Cardamom and handed over the same to the Assistant Commissioner of Central Excise for further action. Three trade opinions were obtained on 18/11/2016 from the local traders of spices who stated that the impugned goods

appeared to be of foreign origin. However the driver of the vehicle in his statement recorded under Section 108 of the Customs Act deposed that said consignment was loaded from Silliguri for delivery to Ghaziabad. The appellant Smt. Pinki Agarwal proprietor of M/s Khushboo Kirana Store as her husband and the caretaker, in their statement recorded on 03/12/2016 claimed that the impugned Cardamom was purchased from local farmers and purchase ledger account showing the purchase of the same were also produced. The transporter in his statement dated 09/02/2017 stated that the consignment was brought to his Silliguri office by the proprietor Smt. Pinki Agarwal.

3. However, the Customs Authorities initiated proceedings against the appellant for confiscation of the said goods on the ground that the same have been illegally smuggled into India as also for imposition of penalties. Show cause notice stands culminated into an order passed by the Original Adjudicating Authority confiscating the goods and imposing penalties.

4. On appeal, Commissioner (Appeals) observed that the Lower Authorities have concluded about the smuggled nature of the goods only on the basis of trade opinion sought from the local traders. However, he observed that there is no evidence on record that the goods in question were illegally smuggled into the Country. For the above proposition, he relied upon the Tribunal decision in the case of Krishna Das vs. Commissioner of Customs, Lucknow reported at 2014 (303) E.L.T. 548 (Tri.-Del.). The said order of the Commissioner (Appeals) is impugned before us.

5. Admittedly, large Cardamom is not a notified item in terms of Section 123 of the Customs Act. As such the onus to prove that the same have been smuggled lies upon the Revenue and is required to be discharged by production of sufficient and positive evidence. Merely based upon the trade opinion indicating the goods to be a foreign origin is not sufficient especially when the

appellants have produced the purchase ledger showing the purchase of the same from local person located in India. Even if the trade opinion is accepted, which in any case cannot be considered to be an expert opinion, the fact that the Cardamom may be of foreign origin by itself is not sufficient to hold the same as of smuggled nature. For holding the goods as smuggled, Revenue is expected to produce the evidence to that effect. Revenue in their present appeal has not advanced any evidence to show that the Cardamom in question was smuggled. In the absence of the same, we find no justification to interfere in the impugned order of Commissioner (Appeals). Accordingly all the appeals filed by the Revenue are rejected. Stay Petition also gets disposed of.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks