CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Customs Appeal No.71171 of 2018

(Arising out of Order-in-Appeal No.359-CUS/APPL/LKO/2018 dated 09/07/2018 passed by Commissioner (Appeals), GST & Central Excise, Lucknow)

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

VERSUS

M/s Akash Trading, Prop. Shri Kalyan Saha .....Respondent

(Kamakhyaguri, Alipur Duar, W.B.-736121)

<u>APPEARANCE:</u>
Shri Anupam Kumar Tiwari, Authorized Representative for Appellant
Shri Tanmay Sadh, Advocate for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70060/2020

DATE OF HEARING: 27 November, 2019
DATE OF DECISION: 27 November, 2019

ARCHANA WADHWA

The Revenue is in appeal against the order of Commissioner (Appeals) vide which he has set aside the confiscation of the betel nuts on the ground that there is nothing on record to show that the same were not purchased from the local market and were of foreign origin. He has also observed that the report of Arecanut Research & Development Foundation, Mangalore indicating the goods were of Burma origin cannot be relied upon inasmuch as under an RTI quarry, the Director of the said Arecanut Research & Development Foundation, Mangalore has informed that it is not possible to determine the place of origin of betel nuts through a test in the lab. As such, he has concluded that ARDF's report can only be treated as information and not scientific test report regarding country of origin.

He has further observed that the respondents have provided the supplier's name through which the goods were purchased and as betel nuts are non-notified items under Section 123 of the Customs Act, the onus is on the Department to prove that the same are smuggled. For the above proposition he has relied upon many decisions of the Tribunal which also stands upheld by Hon'ble High Courts.

2. We find that the identical appeals of the Revenue were considered by the Tribunal in the case of :-

(a) Commissioner of Customs (Prev.), Lucknow V/s M/s Bramhaputra Cargo Carriers Private Ltd. vide Final Order No.71180-71184/2019 dated 20 June, 2019.

(b) Commissioner of Customs (Prev.), Lucknow V/s Harship Garg, Prop. Harshit Enterprises vide Final Order No.71081/2019 dated 04 June, 2019.

(c) Commissioner, Customs (Prev.) Lucknow V/s M/s Maa Kaali Traders vide Final Order No.72730/2018 dated 26 November, 2018

3. The identical report of M/s Arecanut Research & Development Foundation, Mangalore was considered and it was held as not applicable. It was further held that in the absence of any evidence of smuggling of goods their confiscation cannot be appreciated. As such by following the said decision, we find no merit in the Revenue's case. Accordingly, appeal is dismissed.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Nihal