CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
ALLAHABAD BENCH
E-Hearing

Customs Appeal No. 70204/ 2020

(Arising out of Order-in-Appeals No. 75/Cus/APPL/LKO/2020 dated 18.03.2020 passed by the Commissioner (Appeals), Customs & GST and Central Excise, Lucknow)

Deenanath Maurya
Properitor of M/s Om Sai Trading Co.
House No. 25, Thana Road, Rupahi Nagaon,
Assam

APPELLANT

VS.

Commissioner of Customs
Lucknow.

RESPONDENT

Present for the Appellant : Shri A P Mathur, Advocate
Present for the Respondent **:** Shri B K Jain, AR

DATE OF HEARING/DECISION : 11/12/2020

FINAL ORDER NO. 70272 / 2020

PER ARCHANA WADHWA:

The present appeal lies against the orders passed by the authorities below vide which the betel nuts seized by the officers stand provisionally released to the appellants on the condition of furnishing of bond and cash security of 25% of the seized value.

2. After hearing the learned advocate Shri A P Mathur, appearing for the appellant and Shri B K Jain, learned Authorised Representative for the Revenue, I find that the Customs Officer Gorakhpur intercepted one truck near Tol Plaza, Gorakhpur loaded with betel nuts. The driver of the truck revealed that the supari was loaded from Assam and was being transported to Lucknow as also produced

the tax invoice dated 6.11.2019, e-way bill dated 6.11.2019 and other related papers. However, on a reasonable belief that the supari in question was of foreign origin and has been smuggled into India, the same was seized on 09.11.2019.

3. Thereafter, the appellant applied for provisional release of the seized betel nuts. The Additional Commissioner vide his order dated 30 December, 2019 released the seized betel nuts provisionally on furnishing of bond for the full value, which according to the appellant was enhanced from Rupees Thirty-two lakh approximately to Rupees Fifty-nine lakh. He also demanded bank guarantee /cash security of 25% of the seized value.

4. Being aggrieved with the said order, the appellant filed an appeal before Commissioner (Appeals) who upheld the order of the original Adjudicating Authority. Hence, the present appeal.

5. The appellants' contention is that betel nuts were duly covered with the invoice and the other relevant papers in which case, the seizure of the same was not justified. Learned Advocate also submits that there is no evidence of betel nuts being of foreign origin and as such, the allegations of their being smuggled is not correct. In such a scenario, he prays for releasing the betel nuts unconditionally.

6. Learned Advocate appearing for the Revenue submits that imposition of condition of 25% of seized value of goods is the normal norm and the impugned order be upheld.

7. In his rejoinder, learned advocate Shri Mathur submits that seizure was effected on 09.11.2019 and it is more than a year and no show cause notice has been issued to them. As such, they are entitled to release of the goods without any condition.

8. After going through the impugned order, I agree with the learned advocate. The seizure of betel nuts has taken place only on a belief that the same **appears to be** of foreign origin. On being questioned, Shri Jain, learned Authorised Representative has agreed

that there is no direct evidence of betel nuts being of foreign origin. In such a scenario, the allegation of the nuts being smuggled cannot, prima facie, be upheld. There are umpteen number of cases laying down that inasmuch as the betel nuts are also indigenously grown items and the foreign origin and smuggled nature of the same cannot be sustained on mere visual examination. It may not be out of place to mention here that betel nuts are not notified items in terms of section 123 of Customs Act and as such, the onus to prove that the same are of foreign origin and their smuggled character lies heavily on the Revenue. In the absence of the same, the provisional release subject to heavy condition of deposit of 25% of the seized value cannot be held to be justified. Learned Advocate submits that they have already entered the Bond for the full value of goods.

9. In terms of the foregoing discussions, I set aside the impugned order and direct the Revenue to release the betel nuts as soon as possible as the same are perishable item, and preferably within a period of two months from today.

The appeal is disposed of accordingly.

Sd/-

(Archana Wadhwa)
Member(Judicial)

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