CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51144 of 2018 with
Customs Misc. Application No. 50443 of 2018

(Arising out of Order-in-Original No. 01/NKU(01)/ADG(Adj.)DRI/New Delhi dated 09.04.2018 passed by the Additional Director General (Adj.) New Delhi)

DATE OF HEARING : 21.05.2018
DATE OF DECISION : 21.05.2018

M/s Doves International …. Appellants
(Rep by S/Sh. Subhankar Jha, Akhil Krishan Maggu & A. Srivastava, Adv.)

VERSUS

CC, New Delhi …. Respondent
(Rep. by Sh. G.R. Singh, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51933/2018

PER JUSTICE (DR.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 01/NKU(01)/ADG(Adj.)DRI/New Delhi/2018-19 dated 09.04.2018 passed by the Additional Director General (Adj.), New Delhi.

2. The brief facts of the case are that, the assessee-Appellants had imported areca nuts, commonly known as betel

nuts from Sri Lankan origin. The DRI opined that the assessee-Appellants have misdeclared the country of origin in the instant case, so they are not entitled for the concessional rate of duty under Notification No. 26/2000-Cus dated 01.03.2000 under India Sri Lanka Free Trade Agreement (ISFTA).

3. Further, a search was conducted at the business premises/godown of the assessee-Appellants on 22.01.2015 where 2176 gunny bags containing Areca Nuts were found having marks 'Produce of Indonesia'. So, the Department has denied the benefit of the Notification and demanded duty along with penalty and interest. Being aggrieved, the assessee-Appellants have filed the present appeal.

4. With this background, we have heard Shri Subhankar Jha, learned counsel for the assessee-Appellants, duly assisted by Shri Akhil Krishan Maggu and Shri A. Srivastava, advocates, and Shri G.R. Singh, learned DR for the Department.

5. After hearing the lengthy arguments and on perusal of the material available on record, it appears that the main allegation of the Department is that, a few gunny bags were found having the marks 'Produce of Indonesia', but the fact remains that in para 5.4 of the impugned order, the adjudicating authority has observed that :

> "**5.4 …… I agree with the argument of the Noticee that merely markings on packing material cannot be**

> **the clinching evidence for determining the country of origin of the goods contained therein especially when laboratory tests are inconclusive……"**

We also agree with the arguments advanced by the learned counsel for the assessee-Appellants that for packing of the material, old gunny bags can be reused and it is not a ground to deny the benefit of country of origin. The Hon'ble High Court of Kerala vide order dated 28.01.2015 (Writ Petition (C) No. 2275/2015) directed that the seized goods be released provisionally within three days, so the goods were released as per the terms and conditions of the High Court decision.

6. Another charge of the DRI is that, there is a misdeclaration by filing the wrong documentation.

7. After hearing the lengthy arguments, it is evident that Shri Peter Fernandez, Branch Manager, Trans Asian Shipping Services Pvt. Ltd., Cochin, the line agent for the vessel, stated in his statement that the documents were genuine pertaining to the bills of lading as per his record. Further, all import documents were routed through the supplier's bank at Colombo and his bank, UCO Bank, Parliament Street Branch (Mid Corporate Branch), New Delhi.

8. Further, it may be mentioned that samples of the seized areca nuts were forwarded to :

(1) M/s National Bureau of Plant Genetic Resources, New Delhi;

(2) M/s Central Plantation Crops Research Institute, Kasargod;

(3) The Customs Laboratory, Cochin; and

(4) M/s Central Areca Nut and Coco Marketing and Processing Cooperative Limited, Mangalore (Karnataka)

M/s National Bureau of Plant Genetic Resources, New Delhi, vide their report dated 20.03.2015 stated that there was no evidence to prove that the samples were of Indonesian origin. Similarly, the other institutions have not verified the place of origin of Indonesia. However, High Commission of Democratic Socialist Republic of Sri Lanka made a clarification and certified the country of origin vide letter dated 24th February, 2015 and 23rd March, 2015 addressed to the Commissioner of Customs, Cochin.

9. Similarly, the Worldmark Commodities Pvt. Ltd. has certified that the goods loaded were of Sri Lanka origin and clarified the norms of rules for certificate of origin under 'India – Sri Lanka Free Trade Agreement' that the same were loaded from Colombo Port to final destination. Further, the Department of Commerce of Sri Lanka has also certified the genuineness of the country of origin.

10. It may be mentioned that CESTAT, Chennai, in the case of **Commissioner of Customs, Trichy vs New Bombay Exports,** 2009 (236) ELT 540 (Tri-Chennai), has observed that

the country of origin had been certified by the authority designated for the purpose is a conclusive evidence.

11. In view of the above circumstances, we are of the view that in the instant case the country of origin is Sri Lanka and there is no misdeclaration filed by the assessee-Appellants, especially when all the transactions were held through the banking channel.

12. It may also be mentioned that out of 44 containers, only 12 containers were detained at different ports of India, though for all documentation were almost similar. For discrimination, no reason has been given in the impugned order.

13. In view of the above, we find no reason to sustain with the impugned order and the same is hereby set aside.

14. In the result, the appeal filed by the assessee-Appellants is allowed. Misc. Application also stands disposed of accordingly.

(Dictated & pronounced in the open court on 21.05.2018)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay