IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal Nos.C/75422 – 75423/2016

(Arising out of Order-in-Appeal No.1011-12/Pat/Cus/Appeal/2016 dated 08.01.2016 passed Commissioner (Appeals) Customs, Central Excise & Service Tax, Patna)

Harishchandra Singh
Vinay Kumar Paswan

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Patna

Respondent (s)

Appearance:

Shri Debaditya Banerjee, Advocate for the Appellant (s)
Shri S.N.Mitra, AC(A.R.) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing:- 10.01.2018

Date of Pronouncement :27.03.2018

ORDER NO.FO/75690-691/2018

Per Shri P.K.Choudhary

1. Briefly stated the facts of the case are that on 25.11.2014 the Company Commander of SSB, Joynagar recovered 69 bags of Cut Betel-nuts as abandoned near Indo Nepal Border, Pillar No. 286 about 500 Mtrs inside India and handed over the same to the Officers of Land Customs Station, Joynagar for further legal action. Shri Harish Chandra Singh, resident of Mathbanbari, East Champaran, Bihar by application dated 26.12.2014 claimed the ownership of the seized goods. He said that the

goods were purchased vide proper Bills from M/s. Shree Sai System, Patna. The Proprietor of Shree Shai Systems authorized his Manager Shri Vinay Kumar Paswan to tender interrogatory Statement. Shri Vinay Kumar Paswan in his statement stated that they sold the goods to Shri Harish Chandra Singh under cover of bill dated 23.11.2014.

A Show Cause Notice dated 20.05.2015 was issued proposing to confiscate the goods and imposed penalty on the appellant amongst others. The Adjudicating authority confiscated the seized goods of third country origin betel-nuts and imposed redemption fine of Rs. 2,50,000.00 and also imposed penalty of Rs. 2,00,000.00 and Rs. 1,00,000.00 respectively on the appellant no. 1 and 2 herein. By the impugned Order the Commissioner (Appeals) upheld the Adjudication Order and rejected the appeals filed by the appellants.

2. Heard both sides and perused the appeal records.

3. The Learned Counsel appeared on behalf of the appellant and argued the matter at length. It is submitted that the appellant produced the documents which was brushed aside by the lower authorities without any verification. It is further submitted that the seized goods were covered under proper documents and therefore there is no reason to belief of smuggled nature of goods.

4. On perusal of the impugned Order I find that the Commissioner (Appeals) at Paragraph 4 of the Order reproduced the observation of the Adjudicating authority from Page 6 to 11. Thereafter, the submission of the appellant was recorded at paragraph 6 in so far as the goods were non notified items and the department did not discharge its responsibility of proving the goods as smuggled. At the end of the said Paragraph the

Commissioner (Appeals) merely made an observation that there was sufficient substantial evidence which has been discussed by the lower adjudicating authority that the seized goods have been smuggled goods.

5. In my considered view, such findings of the Commissioner (Appeals) without taking examination of the submission and documents of the appellant, is not tenable and it is also clear that the Order was passed without any application of mind and such Order cannot be sustained in the eye of law.

6. In my considered view, the impugned Order has been passed by the Commissioner (Appeals) without recording any reason. The recording of reason is a vital part for rendering the justice. The reasons are links between the materials on which certain conclusions are based which reached to actual conclusion. In the present case, the Commissioner (Appeals) had not given any reason and verbatim reproduced the findings of the Adjudicating authority. Since the Order passed by the Commissioner (Appeals) is without giving any proper reasons and therefore such Order is set aside.

7. In view of the above discussion, the matte is remanded to the Commissioner (Appeals) to decide afresh after considering the submission of the appellant and to pass Order in accordance with law.

8. The appeal is allowed by way of remand.

(Pronounced in the open court on 27.03.2018)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

Ss