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

MA (COD)-76714/14
AND
Customs Appeal Nos. C/76519/14, 75883/2014

(Arising out of Order-in-Original No.55/CUS/CC (P)/WB/2014 dated -28/03/2014 (Balaji Multiplex (P) Ltd.), and Order-in-Appeal No.56/CUS/CC (P)/WB/2014 dated -31/03/2014 (Bajrang Exports) passed by the Commissioner of Customs (Prev.),W.B., Kolkata)

1) Balaji Multiplex (P) Ltd.
2) M/s. Bajrang Exports

Applicant (s)/Appellant (s)

Vs.

CC (Prev.) Kolkata

Respondent (s)

<u>Appearance:</u>

Shri Arijit Chakraborty, Advocate for the Appellant (s)
Shri S.N. Mitra, A.C. (A.R.) for the Respondent (s)

CORAM:

HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision :- 03/05/2018

ORDER NO: FO/75897-75898/2018

Per Justice (Dr.) Satish Chandra

Both the appeals have been filed against Order-in-Original No.55/CUS/CC (P)/WB/2014 dated -28/03/2014 and Order-in-Appeal No.56/CUS/CC (P)/WB/2014 dated -31/03/2014.

2. The issue involved in both the appeals are identical hence, taken up together for disposal for the sake of convenience.

3. The delay is condoned for the reasons mentioned in the (COD) application. The appeals are admitted. With the consent of both the parties, we hear the appeals on merit. The issue is common so the appeals are disposed of by this consolidated order for the sake of convenience.

3. Briefly stated the facts of the case are that the assessee had imported betel nuts from Bangladesh. In terms of Notification No. 12(RE-2013)/2009-2014 dated 13.05.2013 issued by the DGFT, New Delhi that "the importation of Betel Nut is permitted freely provided the CIF Value should be Rs.110/- and above per Kg." The authorities below entertained a view that in as much as the value of the betel nuts in question was below Rs.110/- per kg., their import was hit by the Notification in question. However, the authorities allowed the betel nuts to be cleared on payment of duty but confiscated the same in terms of the provisions of section 111 (d) of the Customs Act, 1962 with an option to the appellant to redeem the same on payment of redemption fine.

4. Being aggrieved the appellants have filed the present appeals.

5. With this background, we heard Shri Arijit Chakraborty, Advocate and Shri S.N. Mitra, A.C. (A.R.) for the Department.

6. After hearing both the parties, it appears that identical issue has come up before the Tribunal in the case of M/s. Gold International and others and vide final order No. MO/75413-75414/FO/78114-78148/2017 dated-28.11.2017, the Tribunal observed that the question whether the betel nuts are liable for confiscation by declaring value which were lesser than the price fixed by the DGFT in the Notification, came up before the

Hyderabad Bench of this Tribunal in the case of International Seaport Dredging Ltd. Vs. C.C.&S.T., Vishakapatnam [2016 (342) E.L.T. 123 (Tri.-Hyd.)]. The Tribunal took the view that inasmuch as the goods were cleared after collecting duty on the basis of the tariff value, it cannot be held that the goods are prohibited. The Tribunal observed that:

> "6.*In the instant case there is no prohibition in force against import of the vehicles. There is only restriction in Import Licensing Notes of Chapter 87 of Import Export Policy, 2004-2009, that importation of new vehicles shall be permitted only through specified Customs Port at Nhava Sheva, Kolkata, Chennai, ICD-Tuglakhabad, Delhi Air Cargo and Mumbai Port. Other conditions of import are also specified in the said licensing notes. However, there is no prohibition on their importation. By any stretch of imagination, the word 'restriction' cannot be equated or read as 'prohibition'. This being so, invocation of Section 111 (d) is not in order. Possibly one or more of the situations attracting confiscation as listed out in Section 111 (a) to (p) may well have been applicable to the facts of the case, but definitely not section 111 (d). In the event the goods are not liable for confiscation under Section 111(d) and by implication the invocation of Section 112 (a) and Section 125 are also not sustainable.. We, therefore, have no hesitation in setting aside the impugned order to the extent of confiscation of the goods under Section 111(d) , imposition of redemption fine under Section 125 and imposition of penalty under Section 112(a) of the Act ibid."*

7. By following our earlier decision, we set aside the impugned orders and dispose both the appeals in the terms (supra). CODs are also allowed.

(Dictated and pronounced in the open court)

Sd/-	Sd/-
(V.Padmanabhan)	**(Justice Dr. Satish Chandra)**
Member(Technical)	**President**

k.b/-