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

Customs Appeal No. 75742 of 2017

Arising out of Order-in-Original No. CCP/NER/04/2017 dated 29.03.2017 passed by the Commissioner of Customs (Preventive), North Eastern Region, Shillong.

Shri Manik Ranjan Paul.
M/s Paul Traders, Meherpur,
Silchar-788015 (Assam)

….Appellant (s)

Vs.
Commissioner of Customs (Preventive), Shillong.
Unit, N.E.R. Custom House,
110 M.G. Road, Shillong-793001.

….Respondent (s)

Appearance:
Shri Poulami Sikdar, Advocate for the Appellant (s)
Shri S. Guha, A. R. for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No…77023/2019

Date of Hearing:- 07.08.2019

Date of Pronouncement:-23 December, 2019

PER SHRI P.K.CHOUDHARY:

Appellant Shri Manik Ranjan Paul, M/s Paul Traders, Silchar, (Assam) has filed the Misc. Application for denovo decision of the Appeal No. C/75742/2017/CU(DB) of 2017, which was rejected by the Tribunal vide order No. FO/A/75563-75564/2018 dated 23.03.2018.

2. Denovo decision has occasioned as the Hon'ble High Court of Meghalaya in the order dated 06.05.2019, allowing the Appellant's appeal Under Section 130 of the Customs Act, 1962 in Cus. Appeal No. 1 of 2018 has set aside Tribunal's order dated 23.03.2018.

Hon'ble High Court has made the following observations and direction:-

"(a) Appellant aggrieved by the order dated 23.03.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal hereinafter referred to as

Tribunal have filed this appeal before this Court under Section 130 of the Customs Act, 1962 hereinafter referred to as Act of 1962.

(b). Background of the case. On an information of the officer of the Customs Headquarter Preventive Unit, Shillong, four trucks bearing registration No. MZ-05-3857, MZ-05-3867, As-11BC-9147 and AS-24C-2275 carrying dry betel nuts (Supari) of various origin allegedly smuggled from Myanmar, were intercepted at Manderdisa District, P. S. Langting, North Cachar Hills, Assam on 05.03.2016. the truck drivers did not produce any documents except the road challans issued by M/s Paul Traders owned by Shri Manik Ranjan Paul (Appellant herein). The drivers, on questioning, had divulged that they had brought those dry betel nuts from Mizoram. The Custom Officer believed that the betel nuts had been illegally smuggled, seized all four trucks alongwith the betel nuts. Investigation was carried out, finally order in original dated 29.03.2017 was passed by Commissioner of Customs (Preventive) NER, Shillong, in terms whereof four vehicles as seized were confiscated and were valued at Rs.19,35,000/-. Option was given to the respective owners of the said vehicles to pay a fine of Rs. 2,00,000/- each in lieu of confiscation under Section 115 (2) of the Customs Act, 1962. Penalty of Rs. 1,00,000/- was imposed on Shri. Bimalendu Roy under Section 112 (b)(ii) of the Customs Act, 1962, penalty of Rs.50,000/- was also imposed on Shri Sujit Roy under Section 112 (b) (ii) of the Customs Act, 1962. Furthermore, adjustment/appropriation, of Rs.2,58,750/-, Rs.2,25,000/-, Rs.2,58,750/-, Rs.2,25,000/- paid vide TR-6 Challan Nos. 10/2016-17, 09/2016-17, 11/2016-2017, 12/2016-17 all dated 23.05.2016 as security deposit by the concerned owners of the said vehicles towards fine/penalty was made. A penalty of Rs.2,00,000/- each was imposed on Shri Lalduha, Shri Khuangluaia, Shri Zothanmawii, Shri Thahleikhuaia under Section 112 (b) (ii) of the Customs Act, 1962. In addition thereof, a penalty of Rs.50,000/- each on Shri Faizul Mia, Shri Abidur Rahman Laksar, Shri Nurul and Shri Abdul Kalam Laksar under Section 112 (b) (ii) of the Customs Act, 1962 was imposed. As against the order in original, appeal before the Tribunal was filed only by Shri. Manik Ranjan Paul. Joint appeal was also filed by Shri Bimalendu Roy and Shri Manik Ranjan Paul unsuccessful as the same have been dismissed on 23.03.2018.

(c) We have heard the Learned Counsel for the parties. Admittedly, four trucks of betel nuts, two carrying whole betel nuts and two carrying spilt betel nuts were seized. The appellant has claimed to be the owner of the same, it is his case that he had purchased the betel nuts from four persons namely,

> *(i) M/s Zothanmawii (Exporter & Importer), Venglai Champhai, Mizoram-796321,*

(ii) M/s Khuangluaia & Sons, Champhai, Mizoram,

(iii) M/s J H family Enterprise (Lalduha) Champhai, Mizoram and

(iv) M/s Thahleikhuaia Champhai, Mizoram.

(d) The appellant had also produced, in support of his case, four credit memos issued by the said persons all dated 27.02.2016, the quantity of dry betel nut in the said memos are shown as 9000kgs, 15000kgs, 16500 kgs, 15000kgs, in total 55500 kgs. In addition, he had produced seven bills of entry, duly signed by Inspector and Superintendent Land Customs Station, Zokhawthar.

(e) In effect, the appellant has admitted that the betel nuts were of foreign origin i.e., were imported from Myanmar.

(f) In the order in original, the Commissioner of Customs (Preventive) has recorded various findings which include finding to the effect that the variety of the goods recovered/ seized were of whole and split whereas the description of the goods imported were whole and differ from one another in the matter of description, based on which has recorded an opinion that Shri, Manik Ranjan Paul (appellant) has not been able to prove that the goods were of the same description as given in the bills of entry. Accordingly to him, papers have been manipulated.

(g) As against the findings recorded, various contentions were raised in the memo of appeal filed before the Tribunal. Tribunal in the order has mentioned that the appellant (Shri Manik Ranjan Paul) has furnished four bills of entry when as a matter of fact he had produced seven bills of entry. Further, it has been opined that the documentary evidence furnished by the appellant is not acceptable. Betel nuts were imported in October 2014 and October 2015, whereas goods were seized in the month of March, 2016. The investigation has also established that the consignments were fictitious and also observed that the goods were purchased on credit from a person apparently not known to the owner of the goods. Finally, the Tribunal has concluded as under:-

(i) Admittedly, seized goods are of Myanmar origin, illegally imported.

(ii) Betel nuts are not notified in terms of Section 123 of the Customs Act, 1962, the onus was on the Customs to prove that the seized goods were smuggled goods.

(iii) The gap between purported import of goods and the purchase thereof cast doubts on the linkage between the two. It is questionable that the owner of the goods would have procured the betel nuts on credit without knowing the suppliers beforehand.

(h) The first question for consideration is as to whether the betel nuts seized were the same as were imported pursuant to seven bills of entry duly signed by the Inspector and Superintendent of Customs Land Station. The finding recorded by the adjudicating authority is that there was a gap of one year and secondly, betel nuts in two trucks were whole whereas in two other were split where as in the bills of entry, the betel nuts were whole. The issue of trade practice converting betel nuts from whole into spilt has not been looked into.

(i) The observation that the appellant could not purchase on credit from four unknown persons is misplaced, when four persons are admitting that they have sold the betel nuts on credit to the appellant, how can that be denied. That apart, four persons referred herein above have filed four affidavits before us admitting that they have sold the betel nuts to the appellant. If any person has to sell his product to anyone and admits to have sold even abruptly creating buyer, that cannot be questioned.

(j) Whether dry betel nuts could be preserved for more than one year or not, no finding to that effect has been recorded except by showing that there is a gap of one year between import and sale, when according to the learned counsel for the appellant, dry betel nuts can be preserved after proper treatment for a longer period.

(k) It will be appropriate to remand the case back to the learned Tribunal for deciding appeal filed by the appellant afresh. Order of the Tribunal dated 23.03.2018 is set aside and matter remanded to the learned Tribunal for deciding the appeal filed by the appellant afresh after giving reasonable opportunity of hearing to the parties. Learned counsel for the parties to appeal before the learned Tribunal on 06.06.2019.

(l) Instant appeal succeeds as above."

3. Heard both sides and perused the appeal records.

4. We find that the purchase documents of goods finds record in Para 7 of the Show Cause Notice.

Verification at supplier's end by the department showing genuine transaction find mention in Para 15 of the Order-in-Original Statements of the Appellant dated 04.05.2016 and 26.07.2016 respectively, are in Para 10 and Para 13 of the order-in-Original, stating that he had purchased the goods from Champai, Mizoram, which were legally imported from Myanmar under Indo Myanmar Trade Agreement.

Furthermore, we find from the Order-in-Original that the suppliers have in their reply to the Show Cause Notice have confirmed the sale of the goods under seizure to Shri Manik Ranjan Paul. They filed Affidavit before the Hon'ble High Court and confirmed the supply of the Betel nuts to Shri Manik Ranjan Paul the appellant herein.

5. We find that Betel nuts are not notified items under Section 123 of Customs Act, 1962, hence the onus to prove that the same was of foreign origin and too smuggled lies solely on the Revenue. Foreign origin have been admitted by the Appellant and have produced the supporting documents, which are found to be correct.

6. We find that the Hon'ble High Court has elaborately discussed the issue while allowing the appeal of the Appellant.

Betel nuts are not notified goods, and the onus was discharged by Appellant by producing the supporting documents.

We further observe that there could be no mens rea for smuggling as the duty payable was only 5% under Indo Myanmar Trade under Notification 09/1995-Customs. Betel nut was also importable at NIL rate of duty Notification 96/08-Customs and 09/2009-Customs, under Scheme of Duty Free, Quota Free Import from Least Developed Country to which Myanmar belong.

7. Hon'ble High Court of Meghalaya has set aside the Tribunal's common Order No. FO/75563-75564/2018, dated 23.03.2018 involving owner of the seized goods and seized trucks, directing for denovo decision.

8. In view of the above discussions, we pass the following order.

(i) We set aside Order-in-Original No. CCP/NER/04/2017, dated 20.03.2017, passed by the Commissioner of Customs (Preventive), N.E.R., Shillong.

(ii) We allow the appeal of Shri Manik Ranjan Paul with consequential relief.

(Pronounced in the Open Court on…23 December, 2019.)

Sd/
(P.K. Choudhary)
Member (Judicial)

Sd/-
(Bijay Kumar)
Member (Technical

T.K.