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

Customs Appeal No. 76574 of 2019

Arising out of Order-in-Appeal No. 14/CUS/(A)/GHY/2019 dated 27.03.2019 passed by the Commissioner of Customs (Prev.) Guwahati.

Commissioner of Customs (Prev.) Shillong.
North Eastern Region,
110, M.G. Road, Shillong.

….Appellant (s)

Vs.
Md. Monjurul Haque Laskar,
S/o Md. Siraj Uddin Laskar, Vill.-Joykrishnapur,
P.O.- Rongpur South, Dist.-Hailakandi,
Assam-788163.

….Respondent (s)

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

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

Final Order No. 75038/2020

Date of Hearing:- 01.08.2019

Date of Pronouncement:-08th January, 2020

PER SHRI P.K.CHOUDHARY:

Being aggrieved with the order passed by the Learned Commissioner (Appeals), Revenue has filed the present appeal alongwith stay petition. As per facts on record, acting on intelligence, the Officers of DRI, Silchar accompanied by personnel of BSF Masimpur intercepted a truck bearing Regn. No. AS-01-DC-8598 loaded with 15825 kgs of betel nuts near Dhaleswar in the intervening night of 23rd and 24th September, 2017.

2. The driver of the truck produced one invoice of M/s Monjurul Haque Laskar consigned to Raj Laxmi Agency, Nagpur Maharastra against the said goods. The invoice was IGST paid.

3. During investigation, the owner of the goods produced documents supporting payment of cess against the consignment to the Marketing

Inspector Hailakandi, Assam. Examination of Bank Statements of the consignor revealed that an amount of Rs.15,00,000/- on 27.07.2017 and Rs.7,26,000/- on 11.09.2017 were credited to the account of Manjurul Haque Laskar through RTGS from M/s Raj Laxmi Agency, the consignee. Records submitted by the consignee corroborated with the current account statement of Manjurul Haque Laskar.

4. On the basis of report of Arecanut Research and Development Foundation, Mangalore, the officers seized the betel nuts on the view that they were of foreign origin and illegally imported into India. The truck carrying the goods was also seized.

5. Proceedings were initiated against the respondents for confiscation of the goods on the allegations that the same were of smuggled nature. The notice also proposed confiscation of the truck as also imposition of penaties on various noticees. The same was confirmed by the original adjudicating authority.

6. However, on appeal, the Ld. Commissioner (Appeals) set aside the Adjudication order by observing that the goods under seizure are not notified under Section 123 of the Customs Act, 1962 and the Department has failed to establish that the goods are smuggled goods. He has also observed that the representative samples were not drawn properly. He has relied upon the identical case of Maa Karni Traders Vs. Commissioner of Customs, Patna reported in 2005 (187) ELT 385 (Tri.-Kol.). He has also relied upon some other cases. He has also ordered that the betel nuts may be released for the purpose other than for human consumption with prior information to FSSAI, Plant Quarantine or any other agencies who enforce the food laws.

7. Heard Shri S. Guha, (AR) for the Appellant and Smt. Poulami Sikdar, Advocate for the respondent.

8. It is observed that the Revenue's entire reliance is on the basis of ARDF Certificate. As it is reported that the ARDF is not an accredited Laboratory, no legal liability can flow from the report of such institution. The Revenue could not prove that the goods were smuggled or produce any corroborative evidence in support of their case. In one identical case of Commissioner of Customs (Prev.) Lucknow Vs. M/s Bramhaputra Cargo Carriers Pvt. Ltd. Appeal No. C/70250/2019 vide Final Order No. 71180-71184/2019 (Tri-Allahabad). The Tribunal has observed:-

> ***"Revenue's entire reliance is upon the basis of ARDF Certificate which have held the goods to be of foreign origin. However, there is no opinion in the said certificate that the goods in question were smuggled. According to the well-established law, the onus to prove that the goods were smuggled lies heavily upon the Revenue. There is no evidence to that effect. As such we find no infirmity in the impugned order of Commissioner (Appeals) All the appeals filed by the Revenue alongwith Stay Petitions are accordingly rejected".***

9. In view of the above discussion, the order of Commissioner (Appeals) is sustained. The appeal filed by the Revenue is rejected.

(Pronounced in the Open Court on.08th January, 2020…)

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

T.K