

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
KOLKATA**

REGIONAL BENCH

CUSTOMS APPEAL NO. 75234 of 2021

[Arising out of Order-in-Appeal No. 35-41/CUS (A)/GHY/2020 dated 31/12/2020 passed by the Commissioner(Appeals), CGST, Central Excise & Customs, Guwahati]

**Shri Subir Modak,
S/o Raman Modak,**
Ward No. 4, Lala Town,
P.O. Lala, Dist. Hailakandi,
Assam – 788 163.

...Appellant

Versus

Commissioner of Customs (Preventive)
N.E.R., 110, M.G. Road,
Shillong – 793 001.

...Respondent

WITH

CUSTOMS APPEAL NO. 75235 of 2021

[Arising out of Order-in-Appeal No. 35-41/CUS (A)/GHY/2020 dated 31/12/2020 passed by the Commissioner(Appeals), CGST, Central Excise & Customs, Guwahati]

**Smt. Nemluni,
D/o Suangkhangkapa,**
R/o H. No. 228, Bethel Veng, Champai,
Mizoram – 796 321.

...Appellant

Versus

Commissioner of Customs (Preventive)
N.E.R., 110, M.G. Road,
Shillong – 793 001.

...Respondent

AND

CUSTOMS APPEAL NO. 75236 of 2021

[Arising out of Order-in-Appeal No. 35-41/CUS (A)/GHY/2020 dated 31/12/2020 passed by the Commissioner(Appeals), CGST, Central Excise & Customs, Guwahati]

**Shri Ronnie Zolianngura,
S/o Zosangliana Chhakchhuak,
Prop. RZ Traders,**
House No. C-2/3, Section – IV,
Tawnluia Building, ChawnpuiAizwal,
Mizoram – 796 009.

...Appellant

Versus

Commissioner of Customs (Preventive)
N.E.R., 110, M.G. Road,
Shillong – 793 001.

...Respondent

APPEARANCE:

Shri Nihar Dasgupta, Advocate and Mrs. Poulami Sikdar, Advocate for the appellants.

Shri M.P. Toppo, Authorised Representative for the Department

CORAM:

HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 75680-75682/2021

DATE OF HEARING: 15.09.2021

DATE OF DECISION: 10.11.2021

P.V. SUBBA RAO

All these three appeals have been filed assailing the same order-in-appeal dated 31.12.2020¹ passed by Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati. In the impugned order, the learned Commissioner(Appeals) has disposed appeals by seven appellants including the three appellants before us.

2. The brief facts of the case are that the Directorate of Revenue Intelligence² received information and intercepted seven trucks with Betel nuts near Bairabi railway crossing area in Mizoram at Assam – Mizoram border on 01.07.2018 on the suspicion that they were of foreign origin. During investigation, the appellants produced GST invoices and E-way bills to assert that the goods were indeed of domestic origin. Not satisfied with the documents which were provided, DRI seized the consignments along with the trucks and issued a show cause notice “since none

¹ Impugned order

² DRI

of the occupants (drivers/helpers of the trucks and caretaker/owners of the godown) produced any documents in support of the legal importation of the recovered Betel nuts. The show cause notice was adjudicated by the Additional Commissioner of Customs who held as follows :-

- “(i) That none of the notices could produce any licit document or could explain anything satisfactory in support of acquisition/importation/transportation/possession of seized betel nuts.
- (ii) That expert opinion obtained from the Arecanut Research and Development Foundation, Mangalore testified the seized betel nuts as seemed to be of Myanmar origin.
- (iii) That one of the noticees, Smt. Nemluni, the proprietor of M/s ZDS Store, clearly accepted the fact that the betel nuts were smuggled into India and the modus operandi involved in movement of the seized betel nuts.
- (iv) That there is a trend of smuggling of contrabands, especially betel nuts, from the neighbouring countries into India.
- (v) That, the betel nut under seizure were of foreign origin and illegally smuggled into the country in violation of the relevant provisions of the Customs Act, 1962 and thus liable to confiscation under Section 111 (b) and (d) of the Act, *ibid*.
- (vi) That all the 7 (seven) trucks under seizure were exclusively used for carrying/transportation of the smuggled betel nut under seizure and thus liable to confiscation under Section 115 (2) of the Customs Act, 1962.
- (vii) That all the appellants in this case were liable for penal action under Section 112 (b) (i) of the Customs Act, 1962”.

3. Being aggrieved, the appellants appealed to the first appellate authority who passed the impugned order rejecting their appeals. Hence, the appellants are before us. We have considered

the submissions in the appeals as well as the submissions made by both sides.

4. We find that the goods were undisputedly seized within India at Assam-Mizoram border. The ground for seizure and subsequent confiscation is that the owners/occupants were not able to prove the licit import of the Betel nuts which DRI suspected to be of foreign origin. The GST invoices, E-way bills etc. produced by the appellants were found to be not satisfactory. In respect of some goods, the Customs Act, 1962 reverses the burden of proof and makes it the responsibility of the person from whom the goods are seized or the owner of the goods to prove that they are not smuggled under Section 123. It reads as follows:-

"SECTION 123. Burden of proof in certain cases. — (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify".

5. This shows the burden gets shifted if: (1) the seizure was under the reasonable belief that the goods are smuggled goods ; and (2) the goods, in question, are gold or manufactures thereof or watches or any other class of goods which are notified by the

Central Government in the official gazette. There is nothing on record to show that the betel nuts were notified under Section 123. Therefore, the appellants had no responsibility whatsoever to prove that the seized betel nuts were not smuggled even if they were of foreign origin. It is for the Revenue to establish that the goods, in question, were smuggled. Smuggling is defined in Section 2 (39) as follows :-

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113";

'Imported goods' and 'importer' are defined in Section 2(25) and 2(26) as follows :-

"(25) **"imported goods"** means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption**;

(26) **"importer"**, in relation to any goods **at any time between their importation and the time when they are cleared for home consumption**, includes any owner, beneficial owner or any person holding himself out to be the importer";

6. From the above definitions, it is clear that even if the goods are of foreign origin, if they have been imported and cleared for home consumption, they cease to be imported goods thereafter and the importer ceases to be the importer. Therefore, no duty can be assessed on such goods under Section 17 of the Customs Act. There is also no responsibility on the importer or on any other person from whom the goods are seized to keep or produce the import documents to establish their legal import once they have been cleared for home consumption. The goods can be used, sold, re-sold, etc. without any duty either on the importer or any subsequent buyer of such goods to keep or produce the import

documents. Of course, if the goods have been smuggled into India not through the designated Customs Ports, Airports or Land Customs Stations, they will be liable for confiscation but it must be established that the goods have been smuggled so. In this case, the goods were clearly seized within India. The burden of proof shifts to the importer or the owner of the goods only when such goods are notified under Section 123 and betel nuts were not notified. The Department has not proved in this case that the goods were smuggled goods. Unless Revenue can establish that the betel nuts have been imported illegally into India, they cannot be confiscated. Therefore, the impugned order upholding the impugned order of the Adjudicating Authority confiscating the goods on the ground that the appellants were not able to establish that they were not smuggled goods cannot be sustained as the appellants have no such responsibility. The Revenue, on which the burden of proof rests, has not established that the seized betel nuts were smuggled. It is immaterial whether the betel nuts were of foreign origin or not.

7. In view of above, the appeals are allowed and the impugned order is set aside with consequential relief, to the appellants, if any.

(Order pronounced in open court on 10/11/2021.)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)