IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75009 of 2022

(Arising out of Order-in-Appeal No. 23/Cus(A)/GHY/2021 dated 30.09.2021 passed by Commissioner of CGST & Central Excise & Customs, Guwahati.

Shri Gagan Deorah,
S/O (L) Ram Gopal Deorah, R/O Wahthabru Area, G.S. Road,
Shillong-793002.

..Appellant

VERSUS

Commissioner of CGST & Central Excise & Customs, Guwahati.
3rd Floor, Kedar, Machkhowa, Guwahati-781001.

.. ...**Respondent**

APPERANCE :

Shri Pranab Sikdar, Consultant for the Appellant
Shri S. Chakraborty, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. K. CHOUDHURY, MEMBER (JUDICIAL)

FINAL ORDER No……75231/2023

DATE OF HEARING : 24.02.2023

DATE OF PRONOUNCEMENT: 17th April, 2023

PER P. K. Choudhary :

This appeal is filed by the Appellant against the Order-in-Original No. COM/CUS/ADDL.COMMR/84/2020 dated 09.12.2020, whereby the Additional Commissioner of Customs (Preventive), N.E.R., Shillong, has confiscated 510 bags 25,500 kgs of Yellow Peas and 11 bags 550 kgs of Motor Dal Ld. Commissioner (Appeals) vide the impugned order has approved the order of confiscation.

2. Appellant is the wholesaler of rice, wheat, pulses etc., at Shillong. His firm's name is registered as M/s Megha Oils, situated at Jeep Stand, Shillong, and godown is located in the ground Floor of Sure Foundation Academy, Mawiong, G S Road, Shillong. On 26.07.2019, Hqrs Customs Preventive, Shillong, checked the godown and had seized 510 bags

containing yellow Peas and 11 bags of Motor Dal on finding foreign markings on some of the bags.

3. Original Authority has held that the bags bear foreign markings, therefore, goods were illegally imported, and hence, confiscated the goods. Ld. Commissioner (Appeals) has also approved the findings of the Original Authority.

4. Ld. Consultant appearing for the Appellant has submitted that the Appellant is the most reputed whole-seller of grocery items in Shillong without any record of wrong doing in the past, Seizure was made from the Godown of the Appellant at Shillong which is not connected to International Border. Goods were purchased under valid documents, which are mix of Indian and imported origin. Purchase documents produced were not proven to be fake. No evidence other than foreign markings on the bags was adduced by the Original Authority to prove that the goods were smuggled. No confiscation on the basis of mere markings is valid as under this analogy, all electronic goods having brand name Samsung, LG, Sony, etc., are to be seized. In the free economy, town seizure on the basis of marking is an impermissible act.

5. He further submits that he Appellant had purchased the seized pulses from stockist without verifying the origin of the goods, as the order was placed on the basis of quality and quantity such as Yellow Peas, Green Peas or Mug Dal, and Motor Dal etc. It was never examined whether same were imported or indigenous. It is humbly submitted that the seizure Inventory provides a generic description of markings without specifying which markings have how many bags. Moreover, it

finds no mention regarding number of bags seized which were without markings.

6. The Ld. Consultant have drawn the attention to Para 11 of the impugned order which would show that the Appellant have submitted the copies of the following documents before the investigation and also before the Adjudicating Authority and have explained that the goods under seizure were part of the lot, which contain both indigenous and foreign origin goods.

Sl No.	Name of Seller	Invoice No & date	Nature of goods	Quantity	Value
1.	M/s Manoj Kumar Baid & Brothers Silchar	23 dated 06.04.2019	Peas 50 Kg. Pckt.	440 Pckts 20.000 Qtis	10,89,000.00
2.	Hanuman Stores, Orai. U.P.	157 dt 25.03.2019	Peas 50Kg Pckt	600 pkts	13,01,815.00
3.	ETCAGRO (Processing) Pvt. Ltd., Guwahati	SI/AM/FG-90-0047 10.04.2019	Yellow Dal	270 bags of 50 Kg each	68,8500.00

7. He has further submitted that the Yellow Peas and Motor Dal are imported largely in India. Following case laws would show large scale import of Yellow Peas and Motor Dal on quantitative restrictions.

(i) Royal Impex 2019 (366) E.L.T. 820 (Mad.).
(ii) Shri Lakshmi Dhall Mill 2019 (367) E.L.T. 769 (Mad.).
(iii) Adma Agro India Pvt. Ltd., 2019 (368) E.L.T. 810. (Guj.).
(iv) Siddhi Vinayak 2019 (367) E.L.T. 928 (Bom.).
(v) Adma Agro India Pvt. Ltd., 2019 (368) E.L.T. 810 (Guj.).

8. The Ld. Consultant also submits that Peas are grown hugely in Meghalaya. Peas of varieties named Krishnanagar, Bonneville, Early Wonder, Green Pearls, Azad, Creeper, Arkel, Cherrapunjee grown locally are having huge demand in the local as well outside market. Appellant has also purchases local peas, which are brought by the villagers.

9. Ld. Departmental Representative the impugned order wherein it is held that the bags bear foreign markings, therefore, illegally imported.

10. Heard both sides and perused the appeal records.

11. I find that the seizure was made from the Godown of the Appellant at Shillong city, which is not connected to the International Border. Goods were purchased under valued documents, which are mix of Indian and imported origin and the purchase documents were not proven to be false or fake. No evidence other than foreign markings on the bags was adduced to prove that the goods were smuggled.

12. Foreign markings or foreign origin of goods by itself does not render the goods as smuggled. Burden to prove the smuggled nature of goods is on the Revenue. Such burden was not discharged by adducing any positive tangible evidence. Thus, foreign origin of the goods even proved, smuggled nature thereof is not proven.

13. Purchase bills submitted by the Appellant were not verified at source to find whether the goods under seizure were actually covered by the documents or not. Mere fact that foreign origin of goods does not ipso facto lead to inevitable conclusion that the same are of smuggled character, as held in the following case laws:

(i) Commissioner of Customs Vs. Monoranjan Bainik- 2004 (165) ELT. 237.

(ii) Godari Rai Vs. Commissioner of Customs – 2003 (160) ELT 1027.

(iii) Dipak Deb- 2003 (157) ELT 237

(iv) Jitendra Pawar Vs. Commissioner of Customs – 2003 (156) ELT 622

(v) Naveed Ahmed Khan – 2005 (182) ELT 494 (Tri.-Bang.).

In the liberalized economy, foreign goods have free entry and found in the shops in abundance for almost each and every commodity. Foreign markings ipso facto does not prove smuggled nature of the goods. It needs corroborative evidence which is totally absent in the case. Therefore, Order of confiscation of the goods deserves to be set aside and quashed with consequential relief to the Appellant.

14. I, therefore, set aside the Order-in-Original No. Com/Cus/Addl.Commr/84/2020 dated 09.12.2020 and the Order-in-Appeal No. 23/Cus(A)/GHY/2021 dated 30.09.2021 and allow the appeal with consequential relief as per law.

(Pronounced in the open court on…17th April, 2023…)

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

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