

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.76200 of 2016

(Arising out of Order-in-Appeal No.Kol/CUS(CCP)/SS/50/2016 dated 08.04.2016 passed by Commissioner of Customs (Appeals), Kolkata.)

Shri Subhas Boral

(Vill: Rabindranagar, P.O. Chinsurah, Dist: Hooghly, West Bengal.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

APPEARANCE

NONE for the Appellant (s)

Shri S.Chakraborty, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75756/2023

DATE OF HEARING : 15 June 2023
DATE OF DECISION : 15 June 2023

Per : ASHOK JINDAL :

This Appeal has been filed by the Appellant against the impugned order absolutely confiscating the betel nuts and imposing penalty on the Appellant.

2. The facts of the case are that on the basis of intelligence of the officer of Petrapole Customs Preventive Unit moved out and intercepted

one truck bearing registration number WB 23C-4030 at about 1945 hrs on 07.10.2012 loaded with betel nut near Bibhuti Bhushan Halt P.S. Gaighata, Dist. 24 Pgs. (North), West Bengal. When the Customs officers arrived during the time of loading of betel nuts (believed to be foreign origin) in the said vehicle, the labourers and the driver of the vehicle noticed their arrival and fled taking advantage of darkness leaving the truck behind. Thereafter, the officers of Customs took possession of the truck and inquired with the local people but nobody came forward to claim the ownership of the goods and the truck. Considering the safety and security of the goods and truck, the Customers offices hired a driver to drive the truck loaded with betel nuts and returned to Petrapole Customs Preventive office. On thorough investigation, 149 bags of betel nuts were found loaded in the said vehicle without being accompanied by any documents like road challan, sale vouchers etc. along with documents related to the said vehicle. The goods were weighed at random in the office scale and weight of each bag was measured to be 70.5 kgs (approx) and total weight being 10,500 kgs. (approx.). The seizure value of the goods thereby amounted to Rs.10,50,000/- @ Rs.100/- per kg. The value of the vehicle was ascertained to be Rs.18,51,930/- as per the details of insurance policy certificate.

3. Accordingly, a seizure case was booked vide seizure case number 02/Imp/Un/Cus/PPU/12-13 dated 07.10.2012 in presence of two independent witnesses under section 110 of Customs Act, 1962 on reasonable belief that the betel nuts were smuggled into India from Bangladesh through unauthorized route in violation of section 7(1)(c) of Customs Act, 1962 read with Section 3(1) of Import/Export (Control) Act, 1947 as amended and Section 11 of Customs Act, 1962 and therefore liable for confiscation under the provisions of section 111(b) and 111(d) of the Customs Act, 1962 and the carrier vehicle used to carry such goods is liable for confiscation under 115(2) of the *ibid*.

4. Shri Subhas Boral, S/o Madhab Chandra Boral of Vill-Rabindranagar Kalipara, P.O. Rabindranagar, P.S.-Chinsurah, Dist-

Hooghly, West Bengal had submitted a letter dated 09.11.2012 wherein he had claimed/provisional release of the seized betel nuts along with truck bearing number WB 23C/4030. He also enclosed deed of rental agreement with Smt.Aloka Kundu, wife of Sri Bijoy Kundu of Vill. Subashpally Bongaon, North 24 Parganas. On going through the deed of rental agreement it was revealed that the deed was signed on 09.10.2012 whereas the seizure was affected on 07.10.2012.

5. Further investigation was conducted and it was alleged that on reasonable belief that the betel nuts were smuggled into India from Bangladesh through unauthorized route therefore the proceedings were initiated by issuing the show cause notice to the appellant for absolute confiscation of the goods in question and imposing penalty on the appellant. The matter was adjudicated and it was concluded that the goods in question are smuggled one and consequently absolutely confiscated and penalty was imposed. Against the said order, the appellant is before us.

6. None appeared on behalf of the appellant. Considering the appeal itself can be disposed of at this stage, we have taken up the matter.

7. The Ld.Authorized Authorized for the department supported the impugned order.

8. We have perused the records. We find that in this case there was a reasonable belief that the betel nuts in question is smuggled one, but no evidence has been brought by the Revenue to support the said allegation as onus to prove the goods in question are smuggled one lies on the Revenue as the goods in question are not notified goods in terms of Section 123 of the Customs Act, 1962. Merely alleging that the goods in question are smuggled one on reasonable belief is not sufficient.

9. As the Revenue has failed to prove with cogent evidence that the goods in question are smuggled one, in that circumstances, we hold that the goods are not liable for confiscation. Consequently, no penalty is imposable on the Appellant. In these terms the impugned order is set

aside and the Appeal is allowed with consequential relief to the appellant, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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