

**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 Commissioner of Customs (Preventive), North Eastern Region, Shillong.)

Shri Manik Ranjan Paul,

M/s Paul Traders Meherpur,
Silchar-788015 (Assam)

...Appellant (s)

VERSUS

Commissioner of Customs (Preventive), Shillong.

Unit, N.E.R. Customs House, 110 M.G. Road, Shillong-793001.

..Respondent(s)

APPEARANCE :

Shri Pranab Sikdar, Consultant, for the Appellant

Shri M. P. Toppo, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75838/2023

DATE OF HEARING : 25.04.2023

DATE OF PRONOUNCEMENT: 26th June, 2023

PER K. Anpazhakan :

This Tribunal vide Final Order No. 77023/2019 dated 23rd December, 2019 had set aside the Order-in-Original No. CCP/NER/04/2017 dated 29.03.2017, passed by the Commissioner of Customs (Preventive), N.E.R., Shillong, confiscating the Betel nuts under seizure, but the Tribunal had allowed the appeal of Shri Manik Ranjan Paul with consequential relief.

2. Department had filed an appeal before the Hon'ble High Court of Meghalaya under reference. Hon'ble High Court allow the departmental appeal vide order dated 09.12.2021 and have remanded the matter back to the Tribunal for de novo decision uninfluenced by the previous order, hence the present order.

H.Qrs. Customs (Preventive) Unit, Shillong detained 4 (Four) trucks carrying Betel nuts at Manderdisa Weighbridge, Manderdisa, P.S. Langting, North Cachar Hills, Assam and formally seized at Changchari Railgate,

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Gouripur, North Guwahati on 07.03.2016 on a reasonable belief that the goods were smuggled into India from Myanmar. Road Challans with the trucks indicate that the goods were consigned by M/s Paul Traders, Silchar, Assam to Shri Bimalendu Roy, Lumbing, Assam.

Shri Manik Ranjan Paul, Proprietor of M/s Paul Traders, Meherpur, Silchar, Assam-788015 (Appellant No. had claimed the ownership of the seized Betel Nuts weighing 5440 Kgs. Packed in 794 bags. It is stated by him that the goods were originally on signed to Shri Bimalendu Roy, Lumding, Assam, but due to unfavoured price there, he had directed the trucks over phone to proceed to Guwahati and to deliver at M/s Digi Hub, Guwahati.

Goods and trucks were subsequently released provisionally by the Commissioner of Customs, Shillong Order-In-Original No. CCP/NER/04/2017 dated 29.03.2017, CCP confiscated the goods along with the vehicles, hence the present appeal for a de novo decision.

Goods Shri Manik Ranjan Paul have submitted the following documents in support of the claim that the goods were legally imported under Indo-Myanmar Trade Agreement at a concessional rate of Customs duty at 5% by the suppliers- importers of Champai, Mizoram, who have sold the goods on credit to him.

- (a) Bill of Entry 033/14-15 dated 20.10.2014 & 027/15-16 dated 04.11.2015 by M/s J.H. family Enterprise (Lalduha) Champhai, Mizoram-importer.
- (b) 150/14-15 dated 27.10.2014 M/s. Khuangluaia & Sons, Champhai, Mizoram.
- (c) 13/15-16 dated 03.11.2015 & 14/15-16 dated 03.11.2015 M/s ZOTHAAMAWII Champhai, Mizoram and
- (d) 19/15-16 dated 03.11.2015 & 20/15-16 dated 03.11.2015 M/s Thahleikhuaia Champhai, Mozoram.
- (e) Photo copies of Credit Memos dated 27.02.2016 indicating sale of betel nuts on credit to M/s Paul Traders, Meherpur, Silchar by the four importers.
- (f) Photo copies of certificates given by the four importers.
- (g) Photo copies of bill dated 1.3.2016 of M/s Paul Traders indicating sale of betel nuts on credit to M/s Digi Hub, Kalapahar, Guwahati.
- (h) Photo copies of IEC Certificates of the four importers.
- (i) Photo copies of reports of the Food Analyst in respect of the goods imported under the respective bills of entry.

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- (j) Photo copies of TR-6 Challans showing particulars of duty paid for the respective consignments imported under the said bills of entry.
- (k) Photo copies of invoice, packing list, bill of landing, import report, sale contract, phyto-sanitary certificate and certificate of origin.

Para 15 of the Order-in-Original read:

“ In the course of follow-up investigation, the four importers submitted the copies of the certificates issued by the Assistant Commissioner of taxes, Champhai, Zone, Champhai dated 05.08.2016 stating that importation of Betel Nuts (Areca Nuts) through Land Customs Station (LCS) Zokhawthat, Champhai, District takes place and there is movement of imported Betel Nuts from Mizoram to other states. The importers also subscribed that:-

- (i) They sold betel nuts to Shri Manik Ranjan Paul.
- (ii) No credit/ cash sale was made earlier to Shri Manik Ranjan Paul.
- (iii) No stock register was maintained by them.
- (iv) Mode of transport of betel nuts was by truck. The local trucks transported the said goods up to Sonai, Silchar, Sales tax applicable on the goods sold was included in the bills issued by them. However, there was no Sales Tax in respect of the goods sold / transported through Bairabi.
- (v) Their go downs were located at Champhai.
- (vi) That, whole and split betel nuts were imported.
- (vii) That, import was done under Indo- Myanmar Trade Agreement as per barter mechanism.

Ld. Consultant that the Para 7 (3) of the Show Cause Notice would show that four sellers/ importers, namely, (i) M/s Zothanmawii (Exporter & Importer, Venglai, Champhai, Mizoram-796321, (ii) M/s Khuangluais & Sons, Champhai, Mizoram, (iii) M/s J H family Enterprise (Lalduha) Champhai, Mizoram and M/s Thahleikhuaia Champhai, Mizoram have submitted the sale confirmation letters to the investigation. They have submitted replies dated 14.10.2016 to the Show Cause Notice confirming sale of imported betel nuts on credit to Shri Manik Ranjan Paul. Four sellers/importers have filed affidavits before the Hon'ble High Court of Meghalaya in the Cus. Appeal No. 01 of 2018, confirming credit sale of the imported betel nuts of Shri Manik Ranjan Paul which is a question of fact merits consideration herein.

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Ld. D. R. submitted that as per suppliers invoices, Betel nuts weight is 55.5 MT in 564 bags whereas dispatch by the appellant was 54.440 MT in 794 bags, therefore, discrepancy show documents and goods under seizure were different.

Consignor of the goods as indicated in the dispatch challan to be Shri Bimal Roy, Lumding and later to M/s Digi Humb Guwahati. Both the person/firm are either nonexistent or have denied any responsibility for the goods. This shows fictitious transaction.

4. Findings

We find that the Ld. Adjudicating Authority has considered the case of the Order-in-Original, which are summarized as below:-

4.1 It is held that all the sellers have sold the goods for first time on credit to Shri Manik Ranjan Paul, which is doubtful.

We find that the para 15(i) of the Order-in-Original finds record that the supplier/importer have stated before the investigation U/s 108 of the Act, as below.

They sold betel nuts to Shri Manik Ranjan Paul of Silchar on credit for the first time.

Moreover, sellers/ Importer have reiterated the same fact in reply to the Show Cause Notice and have also affirmed the same fact by filing affidavits before the Hon'ble High Court of Meghalaya, which is a question of fact not disputed by the revenue.

4.2. It is held that no document was produced evidencing inter-state movement (Mizoram to Assam) of the goods which led to conclusion that the goods were not legally imported or legally transported.

In this regard, we find the record in Para 15 (iv) of the Order-in-Original, as below.

iv. Mode of transport of betel nuts was by truck. The local trucks transported the said goods up to Sonai, Silchar. Sales Tax applicable on the goods sold was included in the bills issued by them. However, there was no Sales Tax (gaye)(in respect of goods sold/ transported through Bairabi.

Other way also, If the goods had not crossed the Assam Mizoram border, then same are to be Assam origin, as Assam has no international border with Myanmar.

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4.3 It is held that quantity purchased, Quantity dispatched and quantity in the seizure inventory were mismatched, therefore, not connected to the Bill of Entry produced.

With regard to number of bags, it is submitted by the Ld. Consultant that the imported Myanmar Supari had less local demand, which were normally sold at a lesser price in the market. In order to camouflage the foreign origin, Appellant had changed the bags to avoid foreign markings and standard weightment of imported betel nuts at 100 KG bag were repacked to lesser weightment bags to achieve better price as local products. Change of bags was done during transshipment at Silchar, which has resulted increase of number of bags in dispatch than the receipt. We agree to the plausible explanation, as it is not unnatural in business practice

We find that the seizure inventory has less of 908 KG than the dispatch Challan which work out to be less in 1.6 %. This was possible due to dry up of storage moisture due to change of bags and exposure to sunlight in transportation. It may also be due to manual weightment by the Customs seizing authority, more importantly, weightment was not done in presence of the appellant or his authorized representative, as contended by the Ld. Consultant. We find that explanation is reasonable, moreover, had there been manipulation, Appellant could have issued matching invoices which was under his control.

4.4 Betel nuts seized were not same as were imported pursuant to 7 Bills of Entry in view of the fact that Betel nuts seized from two trucks were split whereas in the Bills of Entry all the Betel nuts were whole.

In this regard, we find that Para 15(vi), of the Order-in-Original finds record that the importers-suppliers have stated that both whole and split Betel nuts were imported by them. Moreover, there is no classification issues for import of betel nuts under the Indo Myanmar Trade Agreement on a concessional rate of duty at 5% as the concession apply to betel nuts, be it whole or split.

4.5. Dry Betel Nuts could not be preserved for more than a year (in the Bill of Entry, Betel nuts were imported on October, 2014 and October, 2015 and the seizure was made on 05.03.2016.

We find that whether dry betel nuts could be preserved for more than one year or not, no finding to that effect has been recorded in the Order-in-Original except by showing that there is a gap of one year between import and

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sale, when according to learned consultant of the appellant dry betel nuts can be preserved after proper treatment for a longer period.

Ld. Consultant have drawn our attention that the Tribunal have released the betel nuts after 2-3 years of seizure in the case of Monjurul Haque Laskar, Order No. 75498/2020, dated 08.01.2020. and Samsuddin Barbhuiya, Tribunal's Order No. 75498/2017 dated 28.03.2017 and the parties have taken release of the goods without demour.

4. "In the course of follow-up investigation, the four importers submitted the copies of the certificates issued by the Assistant Commissioner of taxes, Champhai, Zone, Champhai dated 05.08.2016 stating that importation of Betel Nuts (Areca Nuts) through Land Customs Station (LCS) Zokhawthar, Champhai District takes place and there is movement of imported Betel Nuts from Mizoram to other states. The importers also subscribed that:-

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(iv). Mode of transport of betel nuts was by truck. The local trucks transported the said goods upo to Sonal, Silchar, Sales Tax applicable on the goods sold was included in the bills issued by them. However, there was no Sales Tax in respect of the goods sold transported through Bairabi.

5.4. Seal and signature of M/s Khuangluaia & sons (Importer & Exporter), M/s Thahleikhuaia (Importer & Exporter) and Zothanmaw did not match in different documents.

We find that it is normal trade practice that the different authorized signatories of the same importer have signed different documents at different times, which is not impermissible. Moreover, it is possible to hve different seals maintained by importer.

5.5 Same IEC Code in the sale invoice M/s J.H. Family Enterprise & M/s Thahleikhuaia,

We find that the respective Bill of Entry have correct entry of the IEC Code. For the above stated importers. Invoice has inadvertent copy paste error, as submitted by the appellant is plausible, moreover, it has no bearing on post import activities.)

6.1. The issue for consideration in the instant case is to see whether Revenue has established the allegation that the seized betel nuts are of foreign origin and are smuggled. Ongoing through the records of the case, it is seen that

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Appellant has submitted documents that the goods were imported from Myanmar under Indo Myanmar Trade Agreement at a concessional 5% Customs duty. We find that the investigation has not adduced any evidence with regard to proving smuggled character of the goods, other than finding some contradictions in the documents produced by the Appellant.

6.2 That from the circumstances leading to seizure, we find that the place of loading being Silchar, Assam, place of detection being mainstream Assam and both the places are far away from Indo Myanmar Border in Mizoram. Betel nuts are produced hugely in Mizoram & Assam. Directorate of Areca Nut and Spices Development (DANSD,), Ministry of Agriculture, Govt. of India, has published report regarding areca nut production in all the states of India including Mizoram and Assam. Report shows Assam is the second highest grower of Betel nuts and the Mizoram is the 8th highest grower in India. No prudent person on visual examination can ascertain as to whether the Betel nuts under seizure were of Myanmar origin and that too smuggled, when place of seizure is mainland of the country, far away from border. Perusal of the inventory (Seizure List) made it absolutely clear that the Customs Officer had taken an imaginary view to effect the seizure of the betel nuts. There existed no `reasonable belief which is a pre-condition for making seizure under Section 110 of the Customs Act, 1962.

6.3. We find that the betel nut is not notified under Section 123 of the Customs Act, 1962 and therefore, the burden of proof lies with the department to prove the same. It's not just enough to prove by negative inference of the documents produced by the appellant on microscopic analysis to find fault. Allegation requires to be proved by cogent and positive evidence. Find that no such positive evidence has been put forth by the department. There is not even a reference or narration as to how and wherefrom the impugned goods are smuggled. We find that the Tribunal in the case of Dharmendra Kumar Jha 2016(344) ELT 264 (Tri.-Kol) held that betel nut is not a notified commodity under Section 123 of the Customs Act, Act 1962 and the onus is on the department that seized goods were in fact smuggled in to India. We find that the department has not discharged its burden.

6.4 We find that the Tribunal KOLKATA in the case of LALTANPUJII. 2022 (382) ELT. 716 (Tri.-Kolkata, wherein seizure of 32 MT Betel nuts was set aside.

Operative portion of the Hon'ble Tribunal's Order, read:

12 In view of the above, we find the betel nut being non notified goods; burden to prove the fact of smuggling lies on the department and the same

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has not been discharged; the report of ADRF, Mangalore cannot be relied upon.

In view of the above discussions, seizure of impugned betel nut is not justified and needs to be set aside. Therefore, nothing survives in the case and appeal is liable to be allowed. We allow the same with consequential relief, if any, as per law.

HON'BLE HIGH COURT OF MEGHALAYA AT SHILLONG in the case of LALTANPUII 2022 (382) ELT 592 (Meghalaya) has dismissed the Customs Appeal against the aforesaid Tribunal's Order.

HON'BLE SUPREME COURT OF INDIA VIDE Order dated 28.10.2021 in SLP no. 27003/2022, has dismissed the Customs SLP filed against the said Hon'ble High Court of Meghalaya's Order.

Ratio of the decision squarely applies to the case on similar set of fact and enactments.

7. Order; In view of the above discussions and applying the ratio of the Judgment in LALTANPUII (Supra) as affirmed by the Hon'ble Supreme Court, seizure of impugned betel nut with the Appellant's truck are not justified and needs to be set aside. Therefore, nothing survives in the case appeal is liable to be allowed. Accordingly, I set aside the seizure of the impugned betel nuts and the trucks Appellant. We allow the appeal of the appellant with consequential relief, if any, as per law.

(Pronounced in the open court on.26th June, 2023.....)

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

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar