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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75846 of 2014

(Arising out of Order-in-Appeal No.655-656/Pat/Cus/Appeal/2014 dated 28.03.2014 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax, Patna)

Commissioner of Customs (Port), Patna
C.R.Building, Birchand Patel Path, Patna-800001

Appellant

VERSUS

(1) Shri Pankaj Kumar Sharma
Zero Mile, Shahbazpur, P.S.-Ahiyapur, Dist.-Muzaffarpur

Respondent

WITH

Customs Appeal No.75847 of 2014

(Arising out of Order-in-Appeal No.655-656/Pat/Cus/Appeal/2014 dated 28.03.2014 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax, Patna)

Commissioner of Customs (Port), Patna
C.R.Building, Birchand Patel Path, Patna-800001

Appellant

VERSUS

(2) Yashwant Kumar Sharma
Vill. + P.O.- Bharthua, P.S.-Aurai, Dist.-Muzaffarpur

Respondent

APPERANCE :
Shri Fiaz Ahmed, Authorised Representative for the Appellant
None for the Respondent

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

FINAL ORDER NO......76402-76403/2023

DATE OF HEARING : 03 .08.2023
DATE OF DECISION : 03 .08.2023

Per Ashok Jindal :

Revenue are in appeals against the common impugned order wherein the proceedings were dropped by the ld.Commissioner (Appeals) against the respondents.

2. The facts of the case are that On 25.12.2012, acting on specific information that third country origin betel-nuts which had been illegally brought into India and was being transported by truck No. BR-01GC-0721 to Kanpur concealed under maize, a team of offices of Customs Hqrs Preventive, Patna led by Assistant Commissioner, Customs(P) Headquarters, Patna went in search of said vehicle and located it parked adjacent to a petrol pump namely Akharaghat Service Station, Kolhan Dadar before Zero Mile on Muzaffarpur-SItamarhi Road. No one was found inside the cabin of the said truck, which was found unlocked and the key was found in the ignition. The officers called for the driver and waited for him but no one came forward. Two persons among the onlooker were requested to witness the search process and in the presence of those two independent witnesses, the "tripal" covering the goods on the truck was removed. The truck was found loaded on the top with the bags containing maize. On examination of the bags lying below the maize bags, it was found that they contained betel nuts. The dalla of the said truck was opened from the backside and the bags containing maize were removed, behind which the bags of betel nuts were found concealed. A delivery challan, bearing Bill No. 38 dated 25.12.2012, of M/s Pankaj Trading Co. , Zero mile, Sahbazpur issued in the name of M/s Satyam Overseas Impex, 8/4 Nukul Gali, Vishwasnagar, Kanpur, and Uttar Pradesh was recovered from the cabin of the said truck. The said delivery challan was regarding transportation of 9,000 Kg (150 bags X 60 Kg) from Muzaffarpur to Kanpur. The documents to the truck were recovered from the cabin of the

truck which had the name of Shri Shamim Akhtar Khan, S/o Abdul Halim Khan, PO- Lavapur Narayan, PS- Mahanar, and Dist- Vaishali (Noticee No.4) as the owner of the vehicle. The goods were examined in detail at Customs Hqrs. Office, Patna in the presence of independence witnesses. Total 119 bags of betel-nuts weighing 8,092 Kg and 43 bags of maize weighing 1,505 Kg were found loaded on the said truck. Accordingly, 119 bags of betel nuts, weighing 8,092 Kg and 43 bags of maize weighing 1,505 Kg valued at Rs. 7,28,280/- and Rs. 22,575/- respectively and the truck No. BR 01GC-0721 valued at Rs. 10,76,765/- totally valued at Rs. 18,27,620/- seized under Section 110 of the Customs Act, 1962 on 28.12.2012.

3. One Shri Pankaj Sharma claiming to be the owner presented a tax invoice No. 13/10-12 dated 16.02.2012 of M/s Roy Traders, Sareng Patty, Alipurdwar alongwith copy of money receipt No. G067791 dated 16.02.2013 of Regulated Market Committee, West Bengal and form D-IX dated 10.02.2013 issued in the name of M/s Pankaj Traders Muzaffarpur. The goods were detained for further investigation.

4. During follow up action Shri Yashwant Kumar Sharma, (Respondent No.2) father of Shri Pankaj Sharma (owner of Pankaj Trading Company) tendered his statement under Section 108 of Customs Act 1962 on 26.12.2012. he stated that Pankaj Trading Company was licensed for trading in Supari, Laung, Elaichi etc, that they procured betel nuts from Alipurdwar, West Bengal and were carrying the goods to their village home to vacate shop because agreement period was to expire on 31.12.2012, that he was the owner of the truck No. BR-01GC-0721 purchased through bank-loan, that the

truck was handed over to Shri Shamim Akhtar under an agreement and that the said betel nuts were purchased on genuine documents. However he could not explain satisfactorily as to why he was transporting betel nuts in December 2012 on the strength of invoice dated Feb' 2012. He also could not produce documents for remaining 8MT of betel nuts weighing 8092 Kg and 43 bags of maize weighing 1505 Kg and the truck bearing No. BR-01GC-0721 totally valued at Rs. 18,27,620/- was converted into seizure under Section 110 of Customs Act 1962 on 28.12.2012.

5. Vide adjudication order the impugned goods were confiscated alongwith Truck in question. A penalty of Rs. 5 lakh & 2 lakh was imposed on Respondent No. (1) and (2) respectively on the finding that "it is also observed from the SCN that it has explained in detail as to how the seized goods of third country origin were contraband in nature. The fact that the delivery challan was found to be fake, 119 bags of betel nuts of third country origin were not declared in challan, making attempts to give the consignment a bonafide look by hiding contraband goods behind the consignment of maize and by deliberately avoiding summons, all these go on the establish that the noticees nos.1 and 2 have consciously involved themselves in the acts of possession and transportation of illegally smuggle betel nuts of third country origin."

6. The respondents challenged the order before the ld. Commissioner (Appeals), who dropped the proceedings against them. Therefore, the Revenue is before us.

7. Heard the ld.A.R. for the Revenue and perused the records.

8. It is case booked by the revenue against the respondents that they have smuggled betel nut through truck which was intercepted and was found parked adjacent to a petrol pump, namely, Akharaghat Service Station, Kolhan Dadar, before Zero Mile on Muzaffarpur-Sitamarhi Road and the same is smuggled one, but we find that the betel nut in question is neither notified items under Section 123 of the Customs Act, 1962. Therefore, the onus lies on the Revenue to prove that the impugned goods are smuggled one from where and which is the country of origin and how they were transported into India. The Revenue has failed to produce any evidence to that effect and in this regard.

9. The ld.Commissioner (Appeals) has recorded his findings, which are as under :

> *"7. The contention of the appellants are that there is no evidence that goods are of third country origin. It is the responsibility of the department to prove the contraband nature of goods as the impugned goods are not the notified goods. They further contended that they had purchased 16 metric tons of Betel Nuts from M/s Roy Traders in the District of Jalpaiguri (West Bengal) on 16.02.2012 vide Tax invoice No. 13/10.12. That the appellant also deposited the levy fee to the Regulated Market Committee of West Bengal Agricultural produce marketing (Regulation) at 1912 vide Receipt No. 067791 dated 16.02.2012, that the aforesaid betel nuts was stored under the Godown of the' appellant situated near Zero Mile at Muzaffarpur for local sale, that during the course of its local transportation for shifting the seized goods to another godown the aforesaid consignment was intercepted by the officers of customs Hqrs. Patna on 25.12.2012 at Akharaghat, Muzaffarpur and subsequently seized by them on 26.12.2012. That the appellant humbly submits that his goods*

has been seized by the Respondent authorities in flagrant violation of the provisions of the Customs Act and it is a sheer abuse of the discretion vested with the officers.

8. I find that there is not a iota of evidence to prove the third country origin of the impugned goods i.e. Betel Nuts. The whole proceedings started on the presumption that the impugned goods were of third county origin and have been smuggled into India. This is despite the fact that these are neither notified, prohibited nor specified goods. The burden of proof in such situation is on the department and cannot be shifted. Further appellant did produce the documents including market regulatory fees at, jalpaiguri, which was never rejected or investigated by the deptt. Ld. Adjudicator has completely disregarded the legal and factual position of the case and went on confiscating the goods & trucks and penalizing the appellants. Since there is no evidence of doing so, the impugned order is set aside completely."

10. We do agree with the fact that the Revenue has failed to discharge their obligation to prove that the impugned goods are of smuggled in nature with any cogent evidence.

11. In that circumstances, we do not find any infirmity in the impugned order and the same is upheld and the appeals filed by the Revenue are dismissed.

(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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