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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76165 of 2017

(Arising out of Order-in-Original No. CCP/NER/06/2017 dated 31.03.2017 passed by the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong, Meghalaya – 793 001)

Shri Debesh Dey : Appellant
S/o. (L) Suresh Dey
Kalibari CHipagali, Panigaon, Nagaon, Assam – 782 001

VERSUS

Commissioner of Customs (Preventive) : Respondent
North Eastern Region (NER),
Custom House, 110, M.G. Road, Shillong, Meghalaya – 793 001

WITH

Customs Appeal No. 76166 of 2017

(Arising out of Order-in-Original No. CCP/NER/06/2017 dated 31.03.2017 passed by the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong, Meghalaya – 793 001)

Shri Sanjay Kumar Das : Appellant
S/o. Sh. Sudhir Das
"OM NIWAS", 1st Floor, Shreenagar Path, Lalganesh, Guwahati, Assam – 781 034

VERSUS

Commissioner of Customs (Preventive) : Respondent
North Eastern Region (NER),
Custom House, 110, M.G. Road, Shillong, Meghalaya – 793 001

AND

Customs Appeal No. 76167 of 2017

(Arising out of Order-in-Original No. CCP/NER/06/2017 dated 31.03.2017 passed by the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong, Meghalaya – 793 001)

Shri Jahar Das : Appellant
S/o. Sh. Sudhir Das
"OM NIWAS", 1st Floor, Shreenagar Path, Lalganesh, Guwahati, Assam – 781 034

VERSUS

Commissioner of Customs (Preventive) : Respondent
North Eastern Region (NER),
Custom House, 110, M.G. Road, Shillong, Meghalaya – 793 001

APPEARANCE:

None for the Appellant(s)

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75634-75636 / 2024

DATE OF HEARING / DECISION: 02.04.2024

Order : [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order ordering absolute confiscation of the goods in question and imposition of penalties thereon.

2. The facts of the case are that on 29.03.2016, the Officers of the Customs (Preventive) Commissionerate, Guwahati searched a godown premises located at Dimoguri, A.T. Road, Panigaon, Nagaon, Assam and recovered 2060 numbers of green coloured refrigerant gas cylinders believed to be containing HCFC Gas, 5280 packets of Mosquito Repellents and 4800 pieces of Ladies garments, along with two old and used TATA Trucks, which were allegedly used for transportation of the said goods.

3. The appellant viz. Shri Debesh Dey was the in-charge of the godown, who stated that the owner of the said goods is one Shri Jahar Das (one of the other appellants herein), who had brought the said goods in the said two vehicles from one Janab of Manipur; he received the goods in the said godown without supporting documents; he knew that the said goods were of foreign origin and illegally imported from Myanmar. The said goods were already unloaded from the said vehicles and he was not the owner of the said goods; the said godown was taken on rent by Shri

Jahar Das from the owner of a Chevrolet vehicle dealer of Nagaon.

4. The statement of the driver, Md. Sukur Khan was also recorded, wherein he deposed that he left Manipur on 28.03.2016 for Nagaon with the said vehicle loaded with the said goods as directed by the owner of the said vehicle; that the said goods were loaded from the godown of one Md. Ataou Rahman (alias Janab), resident of Lilong Tairen Makhong, Thoubal District, Manipur; on earlier occasions also, he has carried similar goods from the godown of Janab.

4.1 Another driver, Md. Mustakim, also stated that he has transported the said goods from Manipur to Nagaon on the instruction of Janab.

5. Further investigations were conducted and it was alleged that the green coloured refrigerant gas cylinders containing HCFC gas were of Chinese origin and the same were manufactured in China. Therefore, the Revenue was of the view that the said goods being restricted items could not be imported in India and it was alleged that the goods found in the said godown were smuggled into India. Accordingly, proceedings were initiated for absolute confiscation of the goods recovered from the godown and to impose penalties on the appellants.

6. The matter was adjudicated and the goods found in the godown, including the green coloured refrigerant gas cylinders containing HCFC gas, mosquito repellents and ladies garments, were ordered to be absolutely confiscated vide the impugned order alleging that the same were of foreign

origin; penalties on the appellants were also imposed. Against the said order, the appellants are before us.

7. None appeared on behalf of the appellants nor was any request for adjournment received from them. On perusal of the records, we find that the appeals itself can be disposed of at this stage and thus, the appeals are taken up for consideration.

8. The Ld. Authorized Representative appearing on behalf of the respondent supported the impugned order.

9. We find that the fact that the mosquito repellents and ladies garments in question are of foreign origin or smuggled one has to be proved by the Revenue. However, the Revenue has failed to prove that the same are smuggled in nature. From the investigation conducted, it is not forthcoming as to how the Revenue has alleged that the impugned mosquito repellents and ladies garments are smuggled ones. Further, the above said items are not notified items under Section 123 of the Customs Act, 1962.

9.1 In these circumstances, as the Revenue has failed to establish the 'smuggled' nature of the goods in question, the impugned mosquito repellents and ladies garments cannot be confiscated.

10. With regard to the HCFC gas confiscated from the godown of the appellant, it is the allegation of the Revenue that the same is a restricted item and was manufactured only in China. We find that the goods in question are 'restricted' items, but not 'prohibited' items. In these circumstances, the onus lies on the Revenue to prove that the said goods were smuggled

in nature, which the Revenue has failed to prove. Merely saying that the goods in question can only be manufactured in China cannot form the basis for absolute confiscation of the said goods recovered during the course of investigation. Therefore, we hold that the said HCFC gas cannot be confiscated.

11. Accordingly, the order of confiscation of the goods in question is set aside. As we hold that the goods in question are not liable for confiscation, therefore, no penalty can be imposed on the appellants.

12. In view of that, we set aside the impugned order qua the appellants herein and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sdd