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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75228 of 2020
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.11-13/Pat/Cus/Appeal/2020-21 dated 14.05.2020 passed by Commissioner (Appeals) of CGST & Excise, Patna)

Shri Subodh Kumar
Kundwa-Chainpur, East Champaran, Bihar

Appellant

VERSUS

Commissioner of CGST & Excise, Patna
C.R.Building,2nd Floor, Bir Chand Patel Path, Patna

Respondent

WITH

Customs Appeal No.75417 of 2020
(On behalf of Appellant)

Arising out of Order-in-Appeal No.11-13/Pat/Cus/Appeal/2020-21 dated 14.05.2020 passed by Commissioner (Appeals) of CGST & Excise, Patna)

Md.Ansar Ali
Near Darbhanga Road, Sadatpur,Near Himalaya Hotel,NH-28,Muzaffarpur,Bihar

Appellant

VERSUS

Commissioner of CGST & Excise, Patna
C.R.Building,2nd Floor, Bir Chand Patel Path, Patna

Respondent

APPERANCE :

Shri H.K.Pandey, Advocate for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

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

FINAL ORDER NO.75344-75345/2024

DATE OF HEARING : 23.02.2024
DATE OF DECISION : 23.02.2024

Per Ashok Jindal :

The appellants are in appeals against the impugned order imposing penalties under Section 112 (b) of the Customs Act, 1962.

2. The facts of the case are that the truck No.UP17AT 5617 loaded with 6011 kgs of Black Pepper and 2832 kgs of maize, was intercepted by the Police Officers of Chiraiya Police Station in Purbi Champaran District of Bihar on 10.08.2018. The truck was handed over to Customs on 11.08.2018 after overnight detention of the driver and khalasi. The Customs proceeded with an assumption that the goods were illegally imported into India without ascertaining any country of origin of the goods and without ascertaining the route of import. Therefore, the goods were seized and proceedings were initiated against the appellants. The statements were also recorded. Later on, Shri Subodh Kumar claimed to be the owner of the said goods. He has purchased the said goods from M/s Vishal Trading Corporation and also produced the invoice dated 04.08.2018. But the authorities below held that these documents are fabricated and the appellants have failed to discharge that these goods are illegally procured, therefore, confiscated the goods holding that the same are smuggled goods and demanded duty on the said goods without ascertaining the same and also imposed the redemption fine and penalty both. Aggrieved from the said order, the appellants are before me.

3. The ld.Counsel for the appellant submits that the goods in question are not notified items under Section 123 of the Customs Act, 1962. Therefore, onus to prove that the goods are imported one or the smuggled element lies on the Revenue, which Revenue fails to discharge. In that circumstances, the penalties imposed on the appellants are to be set aside.

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and perused the records.

6. I find that in this case, it is a case of seizure and the goods in question are not notified items in terms of Section 123 of the Customs Act, 1962. In that circumstances, onus to prove that the goods are imported one or the smuggled element lies on the Revenue, which the Revenue has failed to discharge. In view of this, the penalties are not imposable on the appellants. Accordingly, the same are set aside.

7. In the result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

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