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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75646 of 2021

(Arising out of Order-in-Appeal No. 03/Pat/Cus/Appeal/2020-21 dated 29.04.2020 passed by the Commissioner (Appeals) of Customs, Central G.S.T. & Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna)

Md. Serajul **: Appellant**
S/o. Miran Miyan,
Vill.: Khamiya, P.O.: Inerwa,
District: West Champaran, Bihar
(Prop: Bismillah Trader)

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
C.R. Building (Annexe), Bir Chand Patel Path,
Patna – 800 001

APPEARANCE:

Smt. Atika Sumran Ahmed, Advocate for the Appellant

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77876 / 2024

DATE OF HEARING / DECISION: 16.12.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Appeal No. 03/Pat/Cus/Appeal/2020-21 dated 29.04.2020 passed by the Commissioner (Appeals) of Customs, Central G.S.T. & Central Excise, Patna.

2. Brief facts of the case are that on 04.04.2018, officers of SSB intercepted two Vehicles bearing Registration No.BR31G/8020 and BR22G/5147 and they were found to contain 8500 kg. of Rahar Dal and 8500 kg. of Urad, collectively valued at

Rs.7,65,000/-. The SSB officers handed over the same to Customs Circle, Bettiah on 05.04.2018 where the goods and the said Vehicles were seized by the Customs Officers on the reasonable belief that the said consignment of Rahar Dal and Urad were smuggled in from Nepal.

2.1. Md. Serajul, proprietor of M/s. Bismillah Traders, situated at Khamiya, P.O. Inerwa, District-West Champaran [hereinafter referred to as the "appellant"] having the GST as well as the PAN Number for the Firm, claimed ownership of the said goods. They submitted that they have transported the goods from Jaitiya Panchayat to Inerwa Bazar after purchasing the same from the farmers, but unfortunately, on the way, the said goods were intercepted by the SSB officers on 04.04.2018 . They submitted that the goods were of Indian origin and submitted cash receipts duly signed by the farmers in support of their claim that the goods were purchased in India. He further made claim over the seized goods and requested for release of the same . The seized goods were released to the appellant by the competent authority after deposition of cash security of Rs.1,14,750/- and execution of bond for seizure value.

3. A Show Cause Notice was issued to the appellant proposing confiscation of the seized goods valued Rs.7,65,000.00/- and seized vehicles under section 111(b) & (d) and 115(2) of the Customs Act, 1962 respectively . The Notice also proposed to impose penalty on the appellant and other co-noticees under section 112(b) of the said Act. The said notice was adjudicated by the adjudicating authority vide Order-in-Original No.15-

Cus/ADC/MTH/2019-20 dated 09.07.2019, wherein he has confiscated the seized goods under Sections 111(b) & (d) of the Customs Act, 1962 and allowed redemption of the same on payment of Redemption Fine of Rs.2,30,000/-. The ld. adjudicating authority also imposed a penalty of Rs.50,000/- upon the appellant under Section 112 of the said Act, in addition to the penalties imposed other co-noticees. On appeal, the Ld. Commissioner (Appeals) upheld the confiscation and penalty imposed on the appellant vide the impugned Order-in-Appeal No. 03/Pat/Cus/Appeal/2020-21 dated 29.04.2020. Aggrieved against the impugned order, the appellant has filed this appeal.

4. It is the contention of the appellant that the learned Commissioner has failed to consider the fact that the appellant had purchased the said goods from the farmers of Jaitiya Panchayat, which is located within the territory of India and transportation was made within the permissible limit in the country; further the appellant clearly stated the names of the farmers from whom he had purchased the goods, which are agricultural produce. It is submitted that there is nothing on the record to show that the goods are of foreign origin and illegally imported from Nepal to India. Accordingly, he prayed for setting aside the confiscation of the goods and penalty imposed on him.

5. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We observe that on 04.04.2018, the officers of SSB intercepted two Vehicles within the territory of India and handed over the vehicles carrying the goods to officers of the Customs Circle at Bettiah on 05.04.2018. The appellant has made the submission that the goods available in the two vehicles were of Indian origin and have also submitted cash receipts duly signed by the farmers evidencing purchase of the goods within the territory of India. We observe that the investigation has not brought in any evidence to counter the claims made by the appellant that the goods were of Indian origin. We also observe that the appellant has a shop in the name of M/s. Bismillah Traders having GST registration. The appellant claimed that the seized Dal was purchased from local farmers and transported within the territory of India during the normal course of their business. We observe that there is substantial merit in the claim of the appellant that the goods were of Indian origin and purchased from farmers in India. On the other hand, the Department could not produce any evidence to substantiate the allegation that the said goods were of foreign origin and smuggled into India.

7.1. We observe that these goods are not notified goods under Section 123 of the Customs Act, 1962, and hence the onus is on the Department to prove that the goods are smuggled in nature. The Department has failed to produce any evidence to establish the smuggled nature of the goods. Accordingly, we hold that the goods are not liable for confiscation under Sections 111(b) & (d) of the Customs Act, 1962. As the goods are not liable for confiscation, the penalty imposed on the appellant under section 112 of the Customs Act, 1962 is also not sustainable and hence we set aside the same.

8. In view of the above discussion, we set aside the confiscation of the goods viz. Rahar Dal (8500 kgs.) and Urad (8500 kgs.) collectively valued at Rs.7,65,000/- and the penalty imposed on the appellant and allow the appeal filed by the appellant.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd