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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76312 of 2019

(Arising out of Order-in-Appeal No. 223-224/Pat/Cus/Appeal/2018 dated 13.12.2018 passed by the Commissioner (Appeals) of Central G.S.T. & C.X., Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna – 800 001)

Shri Vinay Kumar Paswan **: Appellant**
S/o. Shri Adalat Paswan,
Vill.: Kasipur Chakbibi, P.S.: Rajapakar, P.O.: Bidupur,
District: Vaishali (Bihar)

VERSUS

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

AND

Customs Appeal No. 76313 of 2019

(Arising out of Order-in-Appeal No. 223-224/Pat/Cus/Appeal/2018 dated 13.12.2018 passed by the Commissioner (Appeals) of Central G.S.T. & C.X., Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna – 800 001)

Shri Harischandra Singh **: Appellant**
S/o. Late Babu Lal Singh,
Vill.: Mathbanbari, P.O.: Piprakothi, P.S.: Piprakothi Bathnaha,
District: East Champaran (Bihar)

VERSUS

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

APPEARANCE:

Shri Debaditya Banerjee, Advocate for the Appellant(s)

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs. 75065-75066 / 2025

DATE OF HEARING / DECISION: 10.01.2025

ORDER:

The appellants, namely, Shri Vinay Kumar Paswan and Shri Harishchandra Singh (hereinafter referred to as the "appellant no. 1" and "appellant no. 2" respectively), have filed these appeals against the imposition of Rs.1,00,000/- and Rs.2,00,000/- respectively on them under Section 112 of the Customs Act, 1962 vide the Order-in-Original No. 21-Cus/ADC/MUZ/2015 dated 17.09.2015 which has been upheld by the Ld. Commissioner (Appeals) in the impugned Order-in-Appeal No. 223-224/Pat/Cus/Appeal/2018.

1.1. Aggrieved by the imposition of penalties, the appellants have filed the present appeals.

2. The appellant no. 1, Shri Vinay Kumar Paswan, submits that he is the manager of the company, M/s. Shree Sai Systems located at D/C-23, P.C. Colony, Kankarbagh, Patna - 800 020; they have procured 69 bags of cut betel nuts weighing 3864 kgs. through auction and sold the same to Shri Harischandra Singh (appellant no. 2 herein), resident of East Champaran District, Bihar. In this regard, the appellant no. 1 submits that the same was recorded vide Bill No. 138 dated 23.11.2014; however, by mistake, the date in the bill was written as 23.12.2014. The authorities considered that the betel nuts in question were imported from Nepal through an unauthorized route without payment of duty and accordingly considered that the same are liable for confiscation. It is pointed out that in the Order-in-Original, the ld. adjudicating authority confiscated the betel nuts and allowed clearance of the same on payment of redemption fine of Rs.2,50,000/- under Section 125 of the Customs Act,

1962; as the goods would deteriorate and would not be of any use, they have taken delivery of the betel nuts on payment of redemption fine.

2.1. It is also contended that the investigating authorities have not brought in any evidence to substantiate the allegation that the betel nuts in question were of foreign origin and imported from Nepal. The appellant no. 1 submits that the allegation has been confirmed on the basis of assumptions and presumptions that the goods were imported in nature. Accordingly, the appellant no. 1 submits that the confiscation of the goods alleged to have been imported is not sustainable and consequently, the penalty imposed on him is also not sustainable.

2.2. The appellant no. 2, Shri Harischandra Singh, submitted that he had purchased 69 bags of cut betel nuts from M/s. Shree Sai Systems and it was sold through Bill No. 138 dated 23.11.2014. He has stated that he was not concerned with the importation of the betel nuts in question; he was informed that the betel nuts were procured through auction and thus, he got it from M/s. Shree Sai Systems through a legal sale vide Bill No. 138 dated 23.11.2014. Consequently, the appellant no. 2 has submitted that he has not played any role in the alleged offence and hence, the penalty imposed on him is not sustainable.

3. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

4. Heard both sides and perused the documents available on record.

5. I find that in the present case, 69 bags of cut betel nuts were seized from the godown by SSB personnel and handed over to the Customs. The Customs authorities seized the goods on the belief that the goods were smuggled in nature and accordingly would be liable for confiscation.

5.1. However, I find that the appellants have produced the Bill No. 138 dated 23.11.2014 (indicated by mistake as '23.12.2014') and claimed that the goods were procured by the appellant no. 1 viz. Shri Vinay Kumar Paswan, through auction and sold legally to the appellant no. 2 viz. Shri Harischandra Singh. Thus, I find that the alleged role of the appellant no. 1 has not been established in this case. Shri Harischandra Singh has also purchased the goods legally from M/s. Shree Sai Systems and hence, there is no role played by him in the alleged offence.

5.2. I find that there is no evidence available on record to substantiate the allegation that the goods were of foreign origin smuggled into the country without payment of duty. There is no evidence brought on record to show that the appellants were concerned with the alleged smuggling act. As the goods are not notified goods under Section 123 of the Customs Act, 1962, the onus lies on the Department to prove that the goods are smuggled in nature. As the Department has not fulfilled the obligation cast on them, I hold that the allegation of illegal importation of the betel nuts in question into the country is not sustainable. The appellants have submitted the Bill No. 138 dated 23.11.2014 in support of their claim, but on the other hand, there is no evidence produced by the Department to negate the claim of the appellants that the goods were legally procured through auction.

6. In view of the above, I find that there is no role played by the appellants in the alleged offence and therefore, the penalties imposed on the appellants are not sustainable.

7. Accordingly, I set aside the penalties imposed on both the appellants and allow the appeals filed by the appellants.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)

MEMBER (TECHNICAL)

Sdd