

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1**

Customs Appeal No. 76560 of 2024

(Arising out of Order-in-Appeal No. 178/GHY(A)/COM/ST/DIB/2023 dated 28.03.2023 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Shri Omprakash Tholiya

: Appellant

S/o. Nanu Ram Tholiya,
M/s. Kamakhya Trading,
7th Mile Model Village, Near Gupta Petrol Pump,
Dimapur Chumouke Dima, Nagaland – 797 103

VERSUS

Commissioner of C.G.S.T. and Central Excise

: Respondent

Guwahati Commissionerate

APPEARANCE:

Shri Pranab Sikdar, Consultant for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75723 / 2025

DATE OF HEARING / DECISION: 06.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Brief facts of the case are that on July 12, 2020, Customs officers from Dimapur, accompanied by Assam Rifles, conducted a search at the go down of Shri Omprakash Tholiya (the appellant herein) at 5th Mile, opposite, Dimapur, Nagaland and seized 430 bags of areca nuts (supari) weighing 34,400 Kgs. The department was of the view that the said goods were of foreign origin and smuggled into the country without payment of customs duties. On the basis of these allegations, a Show Cause Notice was issued to the appellant proposing for confiscation of the said goods. After due process, the said notice was adjudicated vide Order-in-Original dated April 22, 2022, issued by the Additional Commissioner of

Customs, Shillong, wherein the Ld. Additional Commissioner has ordered for confiscation of the said 34,400 kgs. of betel nuts, valued at ₹32,68,000, along with imposition of equivalent penalty under Sections 112(a) and 112(b) of the Customs Act, 1962.

1.1. On appeal, the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, Guwahati, upheld the demands confirmed vide Order-in-Appeal dated March 28, 2023. The present appeal has been filed by the appellant against the impugned Order-in-Appeal dated March 28, 2023.

2. The appellant submits that the goods were lawfully purchased from local markets in Nagaland and Assam, and the confiscation was done solely on the basis of suspicions without any substantive proof to indicate that the goods were of foreign origin. It is submitted by the appellant that 'Areca Nut' is not a notified item under Section 123 of the Customs Act, 1962 and hence, the responsibility is on the Department to prove that the said goods are smuggled in nature; however, the Department has not brought in any evidence to substantiate the allegation that the impugned goods are smuggled in nature. Hence, the appellant submits that the confiscation of the goods is legally not sustainable. In support of their argument, the appellant relied on the following decisions:

- i. (i) *COMMISSIONER OF CUS., C. EX. & S.T., SILIGURI Versus SUBODH DAS [2024 (388) E.L.T. 391 (S.C.)], Special Leave Petition (Civil) Diary No. 51085 of 2023, decided on 16-2-2024*
- ii. (ii) *LALTANPUII Versus COMMISSIONER OF CUS. (PREVENTIVE), NER, SHILLONG [2022*

(382) E.L.T. 716 (Tri. - Kolkata)]. Said Order of the Tribunal is affirmed by the Hon'ble SUPREME COURT OF INDIA in COMMISSIONER OF CUSTOMS (PREVENTIVE) Versus LALTANPUII, 2022 (382) E.L.T. 588 (S.C.)

2.1. The appellant submits that the Customs officers are not authorized to draw samples or conduct food tests under the Food Safety and Standards Act, 2006, read with Section 144 of the Customs Act, 1962, except for designated officers at the Port of Import. In support of this, the appellant cites the Central Board of Indirect Taxes & Customs (CBIC)'s Instruction No. 1/2020-Customs, dated February 12, 2020. Further, the appellant submits that even if food tests were to be conducted, the procedural safeguards under Section 47 of the Food Safety and Standards Act, 2006, governing sampling and analysis, were to be followed, which have been completely disregarded in this case. Accordingly, the appellant submits that the claim of the Department that the goods were of foreign origin is based on unauthorised test reports received by the Department. Therefore, confiscation of the said goods on the basis of unauthorised test report is not sustainable.

2.2. Further, it is the appellant's submission that the seized goods were destroyed at the pre-trial stage, violating principles of natural justice. The appellant seeks refund of the seizure value (₹32,68,000) along with 12% interest per annum from the date of seizure (12.07.2020). In support of their claim, the appellant relied on the decision of the Hon'ble High Court of Meghalaya at Shillong, in WP(C) No. 192 of 2023 Date of Order: 24.04.2024, which has been followed in the

decision dated 27.06.2024 in WP(C) No. 192 of 2023 related to the case of Smt. Laltanpuui, D/o Zadawla Khiangte.

2.2.1. The appellant also relied on the decision of the Hon'ble Supreme court in the case of *Northern Plastics Ltd. Vs Collector Of Customs reported in 1999 (113) E.L.T .3 (S.C)*, wherein it was held that confiscated goods are disposed of pending appeal, the money value of the goods is liable to be returned.

2.3. Further, the appellant has also placed reliance on the judgement of The Hon'ble High Court Of Judicature At Bombay In Writ Petition No. 467 of 2023 - Leyla Mohmoodi, and Mojtaba Ebrahim Gholami in connection with seizure of petitioners' gold jewellery by Customs department, wherein it has been held that the disposal was patently illegal being in breach of the provisions of not only the Customs Act, but the rights guaranteed to the petitioners under Article 300A read with Article 14 of the Constitution of India.

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

4. Heard both sides and perused the appeal records.

5. We observe that on July 12, 2020, Customs officers from Dimapur, accompanied by personnel of Assam Rifles, conducted a search at the appellant's godown at 5th Mile, opposite, Dimapur, Nagaland and seized 430 bags weighing 34,400 kgs., of Areca Nuts (supari). 'Areca Nut' is not a notified item under Section 123 of the Customs Act, 1962. Thus, the responsibility is on the Department to prove that the

said goods are smuggled in nature. However, we find that the Department has not brought in any evidence to substantiate their allegation that the impugned goods are smuggled in nature. In this regard, the appellant has stated that the goods were lawfully purchased from local markets in Nagaland and Assam, and the confiscation was done solely on the basis of suspicion without any substantive proof to establish foreign origin of the goods in question. We observe that the appellant's claim of purchase of the Betel Nuts/Areca Nuts from local market/mandi on payment of Cess has not been negated by the department. We also find that the goods were seized from the godowns in Indian territory far away from an international border. Since the goods were not seized within the Customs area, we observe that as per the provisions of Section 123 of Customs Act, 1962, the burden to prove that the seized goods were of foreign origin or smuggled in nature lies on Department.

5.1. We find that a similar view was taken by this Tribunal in the case of *Laltanpuii v. Commissioner of Cus. (Preventive), NER, Shillong* [2022 (382) E.L.T. 716 (Tri. - Kolkata)] which has been upheld by the Hon'ble High Court of Meghalaya [2022 (382) E.L.T. 592 (Meghalaya High Court)] and further affirmed by the Hon'ble Supreme Court [2022 (382) E.L.T. 588 (S.C.)]. The relevant observations of this Bench in the said order are reproduced below: -

"10. The issue for consideration in the instant case is to see whether Revenue has established the allegation that the seized betel nuts are of foreign origin and are smuggled. Ongoing through the records of the case, it is seen that Revenue bases its case on the certificate issued by Arecanut Research and Development Foundation (ARDF), Mangalore and the fact that the owners could not establish the Indian origin of the arecanut. Regarding the

allegation against Smt. Laltanpulii, it is averred in the OIO that although she submitted a number of purported purchase vouchers, she could not tell the detailed address or contact numbers of the sellers; purchaser issued the vouchers and not the sellers; the signatures of sellers appear to be forged; Smt. laltanpulii has given contradictory statements and retracted them; Shri Shashi Chowdhury, who is alleged to have been involved in this case as a consignee, was a habitual offender and was involved in smuggling of arecanut seized in earlier cases; the drivers stated that after proceeding some distance on Guwahati Kolkata Road they were asked to come back to Guwahati. We find that the evidence collected by investigation could establish a reasonable doubt as to the origin of arecanut. But the same is not enough to prove the smuggled nature of the arecanut. We find that investigation was only in the direction to conclude that there was no proof for indigenous and licit procurement of betel nut seized and that the claim of the appellants cannot be verified in some cases. We find that the betel nut is not notified under Section 123 of the Customs Act, 1962 and therefore, the burden of proof lies with the department to prove the same. It's not just enough to prove by negative inference. Allegation requires to be proved by cogent and positive evidence. We find that no such positive evidence has been put forth by the department. There is not even a reference or narration as to how and wherefrom the impugned goods are smuggled. We find that the Tribunal in the case of Dharmendra Kumar Jha - [2016 \(344\) E.L.T. 264](#) (Tri. - Kol.) held that betel nut is not a notified commodity under Section 123 of the Customs Act, 1962 and the onus is on the department that seized goods were in fact smuggled in to India. We find that the department has not discharged its burden.

11. Revenue relies heavily on the certificate issued by Arecanut Research and Development Foundation (ARDF), Mangalore. We find that various fora have held that the institute is not accredited and hence, the report is not reliable. It was held by High Court of Patna [2020 \(371\) E.L.T. 353](#) (Pat.) that in absence of any material to show ARDF Mangalore is accredited laboratory by competent authority under Act and Rules, it's report cannot have consequence of fastening of any legal liability and 'No legal liability can flow from report of such an institution', hence authorities not justified in again relying thereon to

justify seizure in question. Tribunal, in the case of M/s. Maa Gauri Traders [2019 \(369\) E.L.T. 1024](#) (Tri - All.), held that since betel nuts are also produced in India, in absence of any evidence that confiscated goods were illegally smuggled into India, same cannot be confiscated merely based on test report of an organization which later on also admitted that country of origin cannot be determined through test in the laboratory. We also find that Learned Commissioner (Appeals) in the case of Monjurul Haque Laskar set aside the departments stand on the above ground and the order was upheld by the Tribunal vide Final Order 75038/2019 on an appeal filed by the department. Tribunal observed that (Para 8).

Revenue's entire reliance is on the basis of M/s. Arecanut Research & Development Foundation, Mangalore (ARDF) Certificate. As it is reported that the ARDF is not an accredited Laboratory, no legal liability can flow from the report of such institution. The Revenue could not prove that the goods were smuggled or produce any corroborative evidence in support of their case...

We also rely on [Dungarmal Mohata v. CC \(Preventive\), Calcutta, 2006 \(200\) E.L.T. 522](#) (Cal.).

12. In view of the above, we find the betel nut being non notified goods; burden to prove the fact of smuggling lies on the department and the same has not been discharged; the report of ADRF, Mangalore cannot be relied upon. On the issue of goods being held to be unfit for human consumption, we hold that as the goods are neither imported nor proved to be smuggled, no action by Customs is warranted."

5.2. Thus, by relying on the decision cited supra, we hold that the confiscation of the impugned goods is not sustainable and accordingly, we set aside the same. Since, the order of confiscation is not sustained, the demand of redemption fine in lieu of confiscation is not sustainable and accordingly the same is set aside. As the confiscation itself is not

sustained, there is no question of imposing penalty on the appellant and hence we set aside the same.

6. Further, it is observed that the seized goods were destroyed at the pre-trial stage. The appellant claims that he was not given an opportunity to explain his stand before destruction of the goods, which is in violation of the principles of natural justice. Thus, we find that the appellant has claimed refund of the seized value (₹32,68,000) of the goods along with 12% interest per annum from the date of seizure i.e., from 12.07.2020. The appellant has placed on record the reply furnished by the Assistant Commissioner of Customs (Prev.), NER, Shillong dated 23.06.2022 in response to the RTI Application of the appellant. The relevant part of the above reply of the Assistant Commissioner of Customs (Prev.), Shillong is reproduced below as ready reference: -

"In this regard, it is to inform you that 34,400 Kgs of betel nut (areca nut) seized vide Case No. 07/CL/CUS/IMP/DCPF/DMR/20-21 dated 12.07.2020 by the Dimapur Customs Division and subsequently ordered for confiscation vide Order-In-Original No.01/Addl.Commr/Customs/GST/Dimapur/2022-23 dated 22nd April, 2022 has been disposed of by way of destruction as per the prescribed procedure after approval by the competent authority. The seized areca nuts have been declared unfit for human consumption by the authorised two testing authorities, i.e. Plant Quarantine Station, Guwahati and State Public Health Laborator, Assam. The Plant Quarantine Station, Guwahati vide F.No.4-2/2020-21/TECH/PQS /GHY/47 dated 21.07.2020 has reported that the goods were decayed by saprophytic fungi and be destroyed or deported since phytosanitary risk is involved. Further, as per

test report dated 11.08.2020 received from State Public Health Laboratory, Assam, vide letter No.VI-8/CUS/19/4366 dated 12.08.2020, the seized goods were not suitable for human consumption as per Food Safety and Standards Regulations. Therefore, a notice dated 17.10.2020 was issued to you by the Assistant Commissioner of Customs, Dimapur Customs Divisional Office informing that as the goods were found 'not fit for human consumption in terms of Food Safety and Standards Regulation' and that as per the Plant Quarantine Report '....the samples were rejected and therefore, consignments may be destructed or deported', the goods would be destroyed in due course of time. Thereafter, the goods were destroyed on 06.11.2020 as per prescribed procedures."

6.1. From the letter above, it is observed that the goods were seized on 12.07.2020 and destroyed on 06.11.2020. The destruction of the goods was based on the Report of the Plant Quarantine Station, Guwahati dated 21.07.2020 wherein it was reported that the goods were decayed by saprophytic fungi and needed to be destroyed. The appellant was given a notice on 17.10.2020 and thereafter, the goods were destroyed on 06.11.2020. The appellant contends that the goods were in good condition at the time of seizure and that the goods had decayed under the custody of the Department. Accordingly, they have prayed for compensation for the goods destroyed. We observe that in support of this contention, the appellant has relied on the decision of the Hon'ble High Court of Meghalaya at Shillong, in WP(C) No. 192 of 2023 Date of Order: 24.04.2024, which has been followed in the decision dated 27.06.2024 in WP(C) No. 192 of 2023, related to the case of Smt. Laltanpuii, D/o Zadawla

Khiangte. In the decisions cited above, the Hon'ble Meghalaya High Court has allowed a part of the seizure value as refund when the goods seized from the appellant was destroyed. The relevant portion of the said decision is reproduced below:

"1. The only question to be decided in the present writ petition is with regard to the quantum of refund, that the respondents are liable to afford the writ petitioner. This is view of the fact that, the order of the Tribunal, wherein it was found that the goods were neither imported nor proved to be smuggled, though assailed before the Division Bench of this Court, and ultimately before the Hon'ble Supreme Court, the case of the respondents was dismissed.

2. In the course of hearing, on the quantum of refund, the learned DSGI has referred to the order of the Commissioner dated 06.06.2019, wherein he submits that the writ petitioner themselves in the said proceedings had prayed for reduction of price of the damaged betel nuts at Rs.96 per kilo, which however, were not released provisionally. He submits that if any refund is to be made to the writ petitioner, the condition of the goods which is stated to be not fit for human consumption, should be taken into account.

3. However, Mr. N. Dasgupta, learned counsel for the petitioner in reply has submitted that the same is not up for consideration any longer, in view of the findings of the Tribunal, which had been upheld both by the Division Bench of this Court, as also the Hon'ble Supreme Court, and at the most, the refund should be at the rate of the value at the time of seizure and as recorded in the Tribunal order, at Rs.88 Lakhs.

4. Having heard the learned counsel for the parties, and as observed earlier that the hearing is only on the quantum of the refund, Mr. N. Dasgupta, learned counsel at this stage and at the suggestion of the Court

concedes that considering the long time period taken for the refund, that the writ petitioner will be willing to settle for an amount of Rs.60 Lakhs, which is Rs.28 Lakhs, less than the value of the 32 thousand kilos of betel nuts, at the time of the seizure.

....

5. Accordingly, in terms of the order dated 24.04.2024, the respondent No. 2 is directed to refund the amount of Rs. 60 Lakhs to the writ petitioner on sufficient proof of identity being provided, within a period of 8(eight) weeks from the date this order is presented before the respondent No. 2, and if the respondent No. 2, fails to comply, interest on the expiry of the said 8(eight) weeks shall be payable on the refund amount at the rate of 12% per annum."

6.2. Thus, in view of the decision cited *supra*, we hold that the appellant needs to be compensated for the destruction of the impugned goods. Further, from the decision cited above, we observe that when goods valued Rs.88 lakhs was seized and destroyed at the pre-trial stage, the Hon'ble High Court has allowed the refund of Rs.60 lakhs. By adopting the same ratio, we are of the view that the appellant is liable to be refunded Rs.20 lakhs in lieu of the seizure value of Rs.32.68 lakhs. The refund is to be paid within a period of three months from the date of communication of this order and if the Department fails to comply, interest on the expiry of the said three months shall be payable on the refund amount at the rate of 12% per annum.

7. In view of the above discussions, we pass the following order:

- (i) The impugned goods are not liable for confiscation. Accordingly, the order of confiscation is set aside.
- (ii) The appellant is eligible for refund of Rs.20 lakhs in lieu of the seizure value of Rs.32.68 lakhs. The refund is to be paid within a period of three months from the date of communication of this order and if the Department fails to comply, interest shall be payable on the refund amount at the rate of 12% per annum on the expiry of the said three months.
- (iii) The penalty imposed on the appellant is set aside.

8. The appeal filed by the appellant is disposed on the above terms.

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

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd