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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75874 of 2019

(Arising out of Order-in-Appeal No. 232/Pat/Cus/Appeal/2018-2019 dated 04.01.2019 passed by the Commissioner (Appeals) of Central GST & CX Patna 2nd Floor, C.R. Building(Annexe),Bir Chand Patel Path, Patna)

Sri Dheeraj Kumar, **: Appellant**
S/o Sri Prakash Narayan,
At: Beganpur Bahari, P.O.Begampur,
P.S. Bypass Police Station, Dist. Patna

VERSUS

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

APPEARANCE:

Shri Dheeraj Kumar, Advocate for the Appellant
Shri T. Sulaiman, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER No.76013/ 2025

DATE OF HEARING/DECISION: 22.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein a penalty or Rs.1,00,000/-

Under Section 112 of the Customs Act, 1962 has been imposed on the appellant.

2. The facts of the case are that on 31.08.2017, in the course of follow-of-action, the Commissioner

of Customs, Patna recalled five empty bags of foreign origin black pepper 44 bags of cardamom, 1 piece of sewing machine and 157 pieces of foreign origin empty bags from the rented godown situated at Sahara Lane, Khairaniya Bagicha, Agamkuan Patna without any documents. After enquiry, it was found that the name of the owner of the said godown is Mr. Amrendra Kumar, S/o Ramchandar Prasad, At Sahara Godown Road, Khairania Bagicha, Chhoti Pahari, P.S. By Pass Police Station, P.O. Bari Pahari Dist. Patna godown has been hired on rent by Mr. Dheeraj Kumar and provided a copy of the "Kirayanama agreement". The Preventive Unit made their best efforts to contact Mr. Dheeraj Kumar (appellant) but it went in vain.

3. After completion of necessary formalities, the goods of foreign origin were recovered, brought to the Customs Headquarters and thereafter seized as 'unclaimed', on the reasonable belief that the goods in question were smuggled from Nepal and the same were liable for confiscation.

4. In the meantime, the Statement of Mr. Amrendra Kumar was recorded wherein he inter alia stated that he had executed an agreement with the appellant for renting the said godown premises; before renting the above said godown, he did not get verification from the local police station regarding the tenant's authentication. It was also stated that he did not keep watch on the day-to-day activities in his premises, loading and unloading. He also disclosed that during sub-letting executed between Mr. Sunil Kumar and Mr. Dheeraj Kumar (appellant) his consent was not taken.

5. Despite several summons, the appellant failed to appear before the investigating authority. While conducting the follow-up action, no incriminating documents/goods were recovered. The appellant was also not available. Summons issued to the appellant were handed over to his mother.

6. The appellant replied, wherein he informed that he was in the business of running an auto-rickshaw. He stated that he took the said godown premises on rental basis for the purpose of selling of auto spare parts, but the said godown premises were sub-let to one Mr. Sunil Kumar of Patna and produced the "Kirayanama agreement".

7. On the basis of the investigation, a Show Cause Notice was issued and, after adjudication, a penalty of Rs.1,00,000/- has been imposed on the appellant under Section 112 of the Customs Act, 1962. For storage of smuggled goods, by way of the impugned order.

8. Against the imposition of penalty of Rs.1,00,000/- on him, the appellant is before us.

9. During the course of hearing, the appellant produced copy of the "Kirayanama agreement" for sub-letting of the said premises to one Mr. Sunil Kumar.

10. It was submitted that the appellant was not found in the said premises at the time of investigation nor was he in the business of importation or exportation. It is further submitted that only on the basis of the above "Kirayanama agreement" executed by the owner in favour of the appellant, the penalty has been imposed. Therefore, the appellant prays that the impugned order qua

imposing penalty on the appellant herein be set aside.

11. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

12. Heard the parties.

13. On going through the records placed before us, we find that in this case, it has been alleged that the goods in question are of foreign origin. We find that the said goods had been intercepted at the godown and the same are not 'prohibited goods' or 'notified goods' under Section 123 of the Customs Act, 1962. Therefore, onus in this case lies on the Revenue to prove that the goods in question are of foreign origin, which the Revenue has failed to do.

14. In these circumstances, we hold that no penalty can be imposed on the appellant. Accordingly, we set aside the penalty imposed on the appellant.

15. Consequently, the impugned order qua imposition of penalty on the appellant is set aside.

16. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP