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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 70842 of 2013

(Arising out of Order-in-Original No. 16/CUS/CC(P)/WB/2013 dated 31.03.2013 passed by Commissioner of Customs (Preventive), Kolkata)

Shree Deepak Kumar Agarwal
M/s. Om Prakash Deepak Kumar
(1074-75, Room No. 23, Jyoti Market, Gandhi Gali, Fatehpuri, Delhi-110006)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

With

Customs Appeal No. 70843 of 2013

(Arising out of Order-in-Original No. 16/CUS/CC(P)/WB/2013 dated 31.03.2013 passed by Commissioner of Customs (Preventive), Kolkata)

Shri Mahendra Kumar Kundalia
(Flat No. 34, Archana Building, Mardi Naka, Nagpur-440008)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

And

Customs Appeal No. 70844 of 2013

(Arising out of Order-in-Original No. 16/CUS/CC(P)/WB/2013 dated 31.03.2013 passed by Commissioner of Customs (Preventive), Kolkata)

Kaluram Jain
(G-50, 2nd Floor, Kirti Nagar, Delhi-110015)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

Shri B. K. Singh, Advocate for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76255-76257/2025

Date of Hearing : 3rd April 2025
Date of Pronouncement : 07.05.2025

Per Rajeev Tandon

The appellant Shre Deepak Kumar Agarwal is a proprietorship concern in the name of M/s. Om Prakash Deepak Kumar and is aggrieved vide orders of confiscation and penalty imposed upon him along with that on the co-appellants vide Order-in-Original No. 16/Cus/CC(P)/WB/2013 dated 31st March 2013. It is stated that the appellant, Shri Deepak Kumar Agarwal entered into an agreement with Bangladesh Agro Growers and Processors Ltd., Bagerhat, Bangladesh for purchase and import of 2000 Metric Ton of Betel Nuts claiming concessional rate of duty under Notification No. 105/99-Cus dated 08/08/1999 i.e. import under SAARC Preferential Trading Arrangement (SAPTA). It is their case that in terms of the said agreement 545.74 MT (gross)/545.73 MT (net) of Betel Nuts in six consignments were imported during the period June 15, 2009 to July 2, 2009. Payments for the six consignments were effected through banking channels and was also confirmed by the Axis Bank as per communication enclosed in the Paper Book.

2. The Learned Advocate for the appellants submits that instead of six sets of Bills of Entry, only three sets of IGM's were presented before the customs authorities at Petropole covering the entire quantity of the six consignments. In the course of examination, the Department extended benefit of the SAPTA Certificates so produced. Duty was assessed in respects of goods covered by two of the three Bills of Entry

and the goods loaded on 32 trucks were parked in the terminal of the Central Warehousing Corporation, Petrapole (under Customs control).

3. It is further submitted that upon weighment of the goods on July 22, 2009, excess of 30.301MT, 73.57 MT and 110.84 MT of the goods were ascertained and therefore the said goods were seized by the Directorate of Revenue Intelligence authorities. Vide orders dated November 23, 2009, January 6, 2010 and January 18, 2010, the Customs/DRI authorities allowed provisional release of the goods upon the appellant paying merit duty (without SAPTA benefit) and submitting PD Bond for the ascertained value of the goods along with bank guarantee of 25% of the ascertained value.

4. Investigations were undertaken by DRI, which culminated into the issuance of the Show Cause Notice dated March 13, 2012, which has been adjudicated vide impugned order-in-Original.

5. The Learned Counsel has presented before us the following chart to point out that there has been no intentional mis-declaration on the part of the importer:-

1. **There was no intentional mis-declaration on the part of the importer as is evident from the chart below:**

S. No.	Invoice No. & Date	BE No. & Date	SAPTA Date	Net Weight (kg)	Paperbook Vol -1 Page No.
	Bills of Entry presented initially				
1	178/2009 17.05.2009	03490 21.06.2009	EPB(K)SAPTA/CDC/203 11.06.2009	59,500	24 - 29
2	191/2009 28.06.2009	03862 08.07.2009	EPB(K)SAPTA/CDC/221 30.06.2009	1,06,800	16 - 19
3	179/2009 20.05.2009	03914 12.07.2009	EPB(K)SAPTA/CDC/02 01.07.2009	1,60,725	20 - 23
	Bills of Entry presented upon enquiry				
4	187/2009 07.06.2009	15.06.2009	EPB(K)SAPTA/CDC/204 11.06.2009	25,500	2 - 6
5	192/2009 28.06.2009	01.07.2009	EPB(K)SAPTA/CDC/222 30.06.2009	71,200	7 - 11
6	193/2009 29.06.2009	02.07.2009	EPB(K)SAPTA/CDC/01 01.07.2009	1,01,816	12 - 15
					Weight ascertained by Department (Para 8 Page 5 of SCN)
	Combined Weight of S. No. 1 & 4			85,000	90.595
	Combined Weight of S. No. 2 & 5			1,78,000	181.570
	Combined Weight of S. No. 3 & 6			2,62,541	273.565

6. The Learned Counsel therefore submits that the sum of the quantities for the Bills of Entry at Serial No. 1 & 4 (85 MT) are almost matching for the weight (90.595 MT) ascertained by the Department. Similarly, the sum of the quantities for the bills of entry at SI. No. 2 and 5 (178 MT) are almost matching for the weight (181.570MT) and the sum of the quantities for the bills of entry at SI. No. 3 and 6 (262.541 MT) are almost matching for the weight (273.565 MT). He therefore, submits that in case there is any intention to mis-declare the weight measurements, would not have approximated. He therefore, submitted that there was an inadvertent error while filing the Import General Manifest due to which the information contained in two different bills of entry was inadvertently clubbed, resulting in the alleged mis-declaration by the Department.

7. The appellant therefore submits that mis-declaration, if any ought to be limited to the goods found in excess of the declared quantity and certainly not the entire consignment of 541.735 MT of betel nuts be held liable for confiscation.

8. Inviting our attention to the definition of the term "importer" under Section 2(26) which reads as:

> *(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes 22[any owner, beneficial owner] or any personal holding himself out to be the importer:*
> *22. Substituted (w.e.f. 31-3-2017) by s. 89 of the Finance Act, 2017 (7 of 2017) for the words "any owner".*

The Learned Counsel submits that holding of Shri Kalu Ram as importer by the Revenue is not legally correct. The concept of 'beneficial owner' is brought in law only with effect from 31st March 2017 and therefore, would not be applicable for the said goods imported in the year 2009. It is therefore his case that all the provisions of the Customs Act fix the liability upon the importer and not on the beneficial importer prior to 2017. Furthermore, he submits that as the goods imported were not prohibited goods, confiscation at best should be limited only to the quantity of the goods not declared.

9. The Learned AR refers to the alleged falsity in the SAPTA's Certificate, as the quantity ascertained upon physical verification of the goods and that indicated in the documents do not match. It is the contention of the appellant that the said question would not arise and the said allegation of falsity, is not supported by way of any evidence, if the entire quantity imported is taken note of.

10. The Learned AR further submits that the appellant had not declared the entire consignment imported and only three Bills of Entry as stated in the Show Cause Notice were filed and therefore, the SAPTA Certificate's tendered by the appellant could not be considered to be with reference to the impugned consignments, as the appellant had submitted the Bill of Entry in respect of 327.025 MT (net weight) vide the three impugned Bills of Entry 03490 dated 21st June 2009, 03862 dated 08 July 2009 and 03914 dated 12 July 2009. There was a discrepacny of over 200 MT between the quantity declared and that actually ascertained by the department. He therefore submits that the Order-in-Original passed by the learned Commissioner was legal and calls for no interference.

11. We have heard the two sides and perused the case records.

12. We find that the said six SAPTA Certificates, as were issued by one A. K.M. Khasrul, Assistant Director, Export Promotion Bureau, Khulna for the betel nuts imported. It is the contention of the Revenue that the quantity shown in SAPTA Certificates vis-à-vis actual quantity found on physical weighment did not co-relate in accordance with the invoices submitted and therefore imported betel nuts were required to be assessed at merit rate as the particulars of the consignments did not tally with that indicated in the said six Country of Origin Certificates. The following table is extracted from the case records in this regard:-

quantity shown in SAPTA Certificates vis a vis actual quantity found on physical weighment relating to corresponding invoices is as below:-

Invoice No.	Quantity shown in SAPTA Certificate	Quantity actually found
178/2009 dated 17.05.09	60294 Kg. of Betel Nuts (Gross weight in 794 Bags)	90.595 M.T. (Gross)/ 89.801 M.T. (Net)
179/2009 dated 20.05.09	162725 Kgs. (Gross weight in 2000 Bags)	273.565 M.T. (Gross)/ 271.565 M.T. (Net)
191/2009 dated 28.06.09	1,08,000 Kgs. (Gross weight in 1200 Bags)	181.570 M.T. (Gross)/ 180.37 M.T. (Net)
TOTAL	**331.019 MT in 3994 bags**	**545.73 M.T. (Gross)/ 541.736 M.T (Net)**

Hence it appears that the SAPTA certificates so submitted are by no means

13. We note that the goods were taken for weighment and seizure affected subsequently when the goods were still within customs jurisdiction. The intention of the appellant, as alleged by the department, to clear excess quantity without payment of duty, has no

basis, as when the entire six SAPTA certificates are tabulated (refer table below). They approximately cover the entire quantity imported under cover of said six Bills of Entry. The department's contention of stating the SAPTA Certificate submitted by the officers of Bangladesh authorities as false is without any sound reason and lacks a justiciable basis.

Table I

SI No.	SAPTA Certificate Ref. No. & Date	Quantity	
		Gross Weight (MT)	No. of bags
1.	EPB(K)/SAPTA/CDC/204-11.6.2009	25.840	340 Gunny bags
2.	EPB(K)/SAPTA/CDC/222-30.6.2009	72.080	800 ''
3.	EPB(K)/SAPTA/CDC/01 -1.7.2009	102.960	1144 ''
4.	EPB(K)/SAPTA/CDC/221-30.6.2009	108.000	1200 ''
5.	EPB(K)/SAPTA/CDC/203-11.6.2009	60.294	794 ''
6.	EPB(K)/SAPTA/CDC.02-1.7.2009	162.725	2000 ''
	Total	531.819	6238

The appellant have submitted that there were six sets of Bills of Entry and others documents for the total quantity 541 MT (528 MT as per the appellant), and there has been only a minor difference between the quantity imported and ascertained. As pointed out before the lower authorities, the appellant have said to have submitted inadvertently three sets of documents, as perhaps the other three sets of import documents were mixed up/mis-placed. It can also be noted that the six sets of Bills of Entry, commercial invoice, SAPTA Certificate, Bank payment documents and truck challans, covered the entire quantity of the gross weight 528 MT of Betel Nuts and not 327 MT as per the three Bills of Entry filed.

14. These documents when tallied with one another with reference to the truck numbers, cannot be termed to have been prepared later on for covering the supposed shortfall/excess of imports. The three Bills of Entry filed i.e. 3490 dt. 21.6.2009, 3862 dt. 08.07.2009 and 3914 dt. 12.7.2009 covered 331.02 MT gross and 327.025 MT (net) quantity of betel nut. The department thus alleged an excess import of 214.71 MT of imported betel nuts. The set of documents produced by the appellant clearly indicates that 203 MT is accountable for which bill of entry along with supporting documents were submitted later. The commercial invoice number is mentioned in the truck challans, Bangladesh's Bill of Export and SAPTA certificate; proforma invoice number as indicated in commercial invoice matches with that indicated in the bank payment certificate. Quantity indicated in commercial invoice, truck challans, SAPTA certificates and Bangladesh's Bill of Export are largely same. The value indicated talles with that of the bank payment documents and commercial invoices. The fact of the import of this quantity of 203 MT is thereby fully established with this correlation. It is also noticed that the name of the noticee's firm is also mentioned in each of these documents. It cannot, therefore stand to scrutiny that some other imports were now being shown to cover up the excess. A detailed set of these documents have been enclosed with the paper book.

15. The only basis for the Revenue's charge is weighment results and some inculpatory statement of drivers and locals, who apparently were unaware of the matter. We find that while the appellant have been able to documentarily establish the co-relation with the quantity under import, the inculpatory statements were also retracted. The Revenue thereafter has not been able to provide any other corroborative evidence in support of its contention.

16. We do not find merit in the department's claim of the SAPTA Certificate being fake and non-corelatable as the particulars of the shipment tallies with its particulars contained in the SAPTA Certificates and for our findings mentioned in Paras 13 and 14.

17. In view of our findings supra, we are of the view that impugned shipment was covered under the SAPTA Certificates issued and therefore liable for assessment at concessional rate of duty as applicable. We also do not uphold the lower authorities order for confiscation of goods and imposition of penalty. The importer shall be liable to pay duty at merit rate along with interest on excess imports of approximately 11MT as noted during the course of import and not covered by the said SAPTA certificates. The order of the lower authority is set aside in view of the attending circumstances and factual evidence as placed on record and the discussions and findings aforesaid.

18. We therefore, direct the authority to re-assess the goods in accordance with our findings herein. The appeal filed is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 07/05/2025)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

pooja