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

REGIONAL BENCH – COURT NO. 1

Custom Appeal No. 75813 of 2014

(Arising out of Order-in-Original No. 61/Cus/CC(P)/WB/2014 dated 10.04.2014 passed by the Commissioner Customs (Preventive) West Bengal, Kolkata Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-01)

M/s. Shree Jaganath Trading, **: Appellant**
Nandlal Changoiwala Road,
Naya Bazar, Siliguri-734 005

VERSUS

Commissioner of Customs(Prev) **: Respondent**
WB, Kolkata Custom House, 3rd Floor,
15/1, Strand Road, Kolkata-01

WITH

Custom Appeal No. 76341 of 2016

(Arising out of Order-in-Original No. 05/Cus/CC(P)/WB/2016 dated 09.05.2016 passed by the Commissioner Customs (Preventive) West Bengal, Kolkata Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-01)

M/s. Gold International, Pratapgarh, **: Appellant**
P.O. + P.S.-Bongaon, Dist.-North 24 Parganas
West Bengal, Pin 743235

VERSUS

Commissioner of Customs(Prev) **: Respondent**
WB, Kolkata Custom House, 3rd Floor,
15/1, Strand Road, Kolkata-01

AND

Custom Appeal No. 76342 of 2016

(Arising out of Order-in-Original No. 07/Cus/CC(P)/WB/2016 dated 20.05.2016 passed by the Commissioner Customs (Preventive) West Bengal, Kolkata Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-01)

M/s. Palaatakaa Trading Company, **: Appellant**
11, Rabindrapally, 1st Lane, Ward No. 26,
Durganagar, Kolkata-700 065

VERSUS

Commissioner of Customs(Prev) **: Respondent**
WB, Kolkata Custom House, 3rd Floor,
15/1, Strand Road, Kolkata-01

APPEARANCE:

None (C/75813/2014)
Shri N. K. Chowdhury, Advocate (C/76341-76342/2016) for the Appellant

Shri Ashwini Kr. Choudhary, (C/75813/2014)
Shri S. Debnath, (C/76341-76342/2016)
Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs.76394-76396/2025

DATE OF HEARING / DECISION: 25.04.2025

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeals against the impugned order.

2. The facts of the case are as under: -

> The appellant imported betel nut from Bangladesh when DGFT Notification provides for minimum import price as Rs.110/- and above as mentioned in the Notification dated 13.05.2013 (P/21). The value of the imported goods was below the said price as declared by the supplier in their invoice. Notification No. 85/2013-CUS(NT) dated 21.08.2013 was issued by the Government of India fixing the tariff value of betel nuts as US $ 1870. The imported goods of the appellant were against 3 Bills of Entry Nos. 4696 dated 03.09.2013, 4702 dated 04.09.2013 and 4766 dated 07.09.2013. Since the import was made after the introduction of the tariff value the goods were assessed against the tariff value and duty was paid accordingly.

3. Proceedings were initiated against the appellant wherein redemption fine and penalty has

been imposed on them. Aggrieved from the imposition of redemption fine, the appellant came before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that in the case of the appellant, for other import, this Tribunal, vide Final Order No. 78114-78148 dated 28.112017 has set aside the redemption fine and penalty imposed on the appellant. Therefore, he prays that in this case, no redemption fine and penalty be imposed on the appellant.

5. Heard the parties and considered their submissions.

6. We find that in an identical situation, this Tribunal, vide the Final Order stated hereinabove, has observed as under: -

> 6. After hearing both sides and on perusal of record, It appears that the question whether the betel nuts are liable for confiscation by declaring value which were lesser than the price fixed by the DGFT In the Notification, came up before the Hyderabad Bench of this Tribunal In the case of *International Seaport Dredging Ltd. v. C.C. & S.T., Visakhapatnam [2016 (342) E.L.T. 123 (Trl.-Hyd.))*. The Tribunal took the view that Inasmuch as the goods were cleared after collecting duty on the basis of the tariff value, it cannot be held that the goods are prohibited. The Tribunal observed that:-
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> > "6. In the Instant case there is no prohibition in force against Import of the vehicles. There is only restriction In Import Licensing Notes of Chapter 87 of Import Export Policy, 2004-2009, that Importation of new vehicles shall be permitted only through specified

Customs Port at Nhava Sheva. Kolkata, Chennai, ICD-Tuglakhabad, Delhi Air Cargo and Mumbai Port. Other conditions of import are also specified in the said licensing notes. However, there is no prohibition on their Importation. By any stretch of imagination, the word restriction cannot be equated or read as 'prohibition'. This being so, Invocation of Section 111(d) is not in order. Possibly one or more of the situations attracting confiscation as listed out in Section 111(a) to (p) may well have been applicable to the facts of this case, but definitely not Section 111(d). In the event the goods are not liable for confiscation under Section 111(d) and by Implication the Invocation of Section 12(a) and Section 125 are also not sustainable. We, therefore, have no hesitation in setting aside the Impugned order to the extent of confiscation of the goods under Section 111(0) Imposition of redemption fine Under Section 125 and imposition of penalty under Section 112(a) of the Act ibid."

7. By following the above order of the Tribunal we find that even In the present batch of cases before us, the betel nuts which were Imported by declaring prices which were lesser than the minimum Import price specified by the DGFT cannot be held as Import of prohibited goods. Consequently, the confiscation of the goods is set aside along with the order for payment of redemption fine and penalty. However, the duty paid as per the tariff value is upheld. All the appeals and Cross Objections are disposed of in the above terms.

7. We observe that the said order was challenged by the Revenue before the Hon'ble High Court at Calcutta in Customs Appeal No. 53/2018. And the Hon'ble High Court has held that the said Hon'ble High Court has no jurisdiction in the matter and

therefore, has given liberty to the Revenue to take appropriate action before the appropriate forum. Then, the Revenue challenged the Order of this Tribunal before the Hon'ble Apex Court in Civil Appeal Diary No. 8705 of 2021

8. The same has been disposed of by the Hon'ble Apex Court vide Order dated 12th December, 2024, under the National Litigation Policy.

9. In these circumstances, the above order passed by this Tribunal has attained finality.

10. Therefore, as this Tribunal has already held that in such circumstances no redemption fine and penalty is imposable on the appellant, we set aside the order of imposition of redemption fine and penalty on the appellant. Accordingly, redemption fine and penalty imposed on the appellant are set aside.

11. In the result, the appeals are 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)

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