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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76123 of 2017

[Arising out of Order-in-Appeal No.909/Pat/Cus/Appeal/2016-17 dated 28.03.2017 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax,Patna]

Shri Tarun Kumar Poddar
(78, Nagar Palika, Jogbani Anchal, PO-Jogbani, Dist-Araria, Pin-854318)

Appellant

VERSUS

Commissioner of Customs, Patna
(C.R.Building, 2nd Floor, Birchand Patel Path, Patna-800001)

Respondent

APPERANCE :

Mr.N.K.Chowdhury, Advocate for the Appellant
Mr.Faiz Ahmed, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76535/2025

DATE OF HEARING : 12 JUNE 2025
DATE OF DECISION : 12 JUNE 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order for confiscation of goods in question allowed to be redeemed on payment of redemption fine and imposition of penalty on the appellant.

2. The facts of the case are that the proceedings were initiated against the appellant by interception of Cut Betel Nuts, which were alleged to be of third country origin and smuggled from Nepal into India. Hence, the impugned goods along with vehicle used for illegal transportation of the impugned goods, which were subsequently seized.

2.1 Consequently, a show-cause notice was issued to the appellant wherein it has been proposed to confiscate the goods in question under the provisions of Section 111(b) and 111 (d) of the Customs Act, 1962 and to impose penalty under the Customs Act.

2.2 The Adjudicating Authority held that the goods question were to be released as the cash security deposit @ Rs.60/- per Kg. was paid by the appellant. Such cash security deposit @ Rs.60/- per Kg was appropriated towards redemption fine and it was also ordered to pay Customs duty as applicable and a redemption fine of Rs.1,00,000/- along with a penalty of Rs.2,00,000/- was also imposed on the appellant.

2.3 The said order was also challenged before the ld.Commissioner (Appeals), who affirmed the order of the Adjudicating Authority. Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the appellant has purchased the said quantity from the Release Order issued by the Assistant Commissioner of Customs (P) Division, Muzuffarpur on 30.10.2014 wherein Cut Betal Nut were e-auctioned and the appellant purchased the Cut Betal Nut quantity of 14734 kgs. and 1160 Kgs. Out of the said quantity, 6900 Kgs. of Cut Betal Nut was sold by the appellant to M/s Kumar Sales, Mukundpur, Delhi and invoice to that effect was also generated. Therefore, the appellant is the owner of the said goods, which was purchased by the appellant under e-auction by the Assistant Commissioner of Customs (P) Division, Muzuffarpur. He further submits that the goods in question are neither prohibited nor restricted goods and also not notified items in terms of Section 123 of the Customs Act, 1962. Therefore, the onus lies on the respondent to prove that the goods in question are of foreign origin, which the respondent failed to do so. In that circumstances, no proceedings were sustainable against the appellant.

4. On the other hand, the ld.A.R. for the Revenue, has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the appellant has produced the Release Order, which shows that the appellant has purchased the Cut Betel Nut weighing

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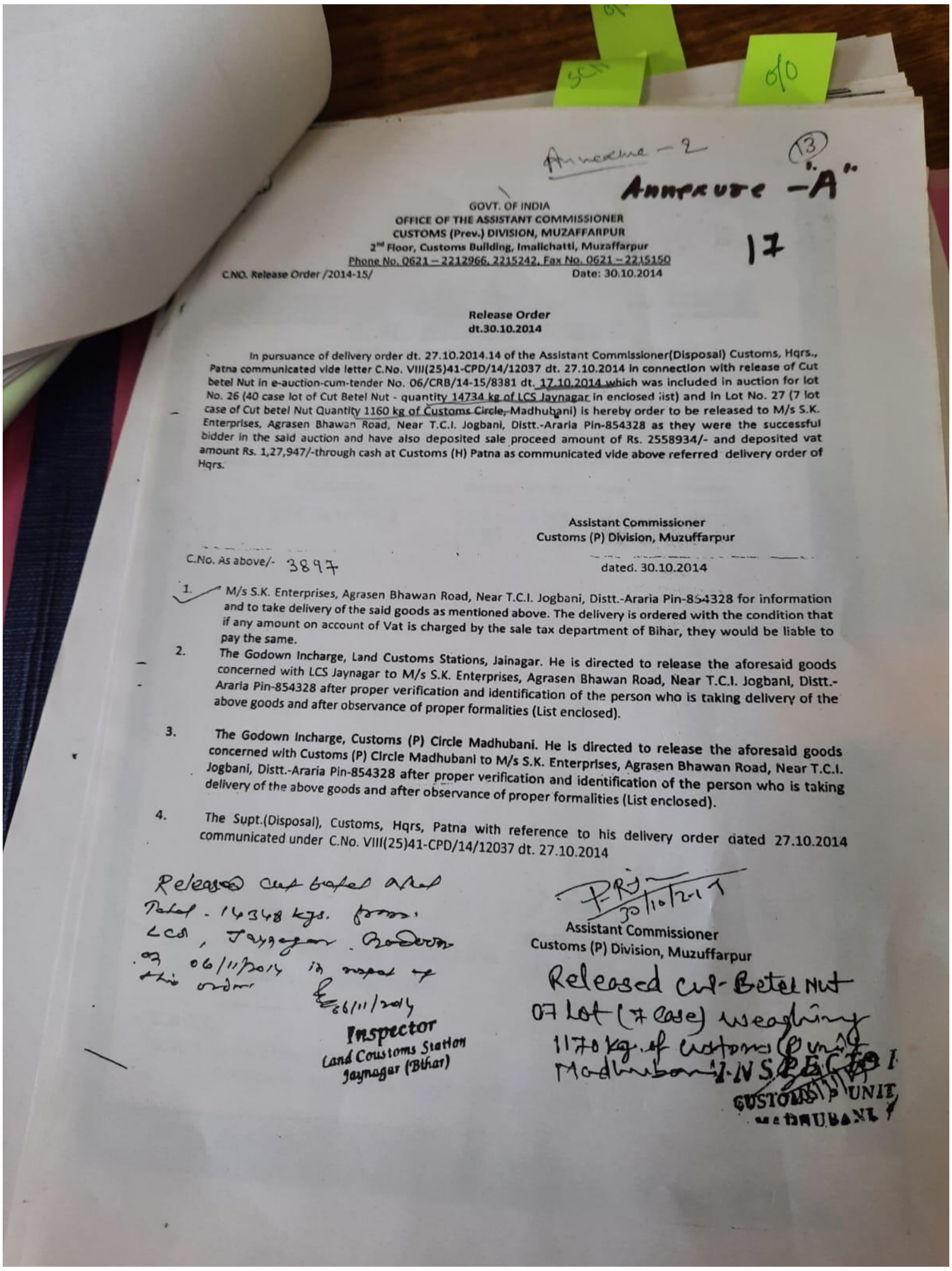
14734 kgs. and 1160 kgs through e-auction. For better appreciation of facts, the said Release Order is extracted herein below :



Annexure - 2

(13)

Annexure -"A"

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GOVT. OF INDIA
OFFICE OF THE ASSISTANT COMMISSIONER
CUSTOMS (Prev.) DIVISION, MUZAFFARPUR
2nd Floor, Customs Building, Imalichatti, Muzaffarpur
Phone No. 0621 – 2212966, 2215242, Fax No. 0621 – 2215150

C.NO. Release Order /2014-15/ Date: 30.10.2014

Release Order
dt.30.10.2014

In pursuance of delivery order dt. 27.10.2014.14 of the Assistant Commissioner(Disposal) Customs, Hqrs., Patna communicated vide letter C.No. VIII(25)41-CPD/14/12037 dt. 27.10.2014 in connection with release of Cut betel Nut in e-auction-cum-tender No. 06/CRB/14-15/8381 dt. 17.10.2014 which was included in auction for lot No. 26 (40 case lot of Cut Betel Nut - quantity 14734 kg of LCS Jaynagar in enclosed list) and in Lot No. 27 (7 lot case of Cut betel Nut Quantity 1160 kg of Customs Circle, Madhubani) is hereby order to be released to M/s S.K. Enterprises, Agrasen Bhawan Road, Near T.C.I. Jogbani, Distt.-Araria Pin-854328 as they were the successful bidder in the said auction and have also deposited sale proceed amount of Rs. 2558934/- and deposited vat amount Rs. 1,27,947/-through cash at Customs (H) Patna as communicated vide above referred delivery order of Hqrs.

Assistant Commissioner
Customs (P) Division, Muzuffarpur

C.No. As above/- 3897 dated. 30.10.2014

1. M/s S.K. Enterprises, Agrasen Bhawan Road, Near T.C.I. Jogbani, Distt.-Araria Pin-854328 for information and to take delivery of the said goods as mentioned above. The delivery is ordered with the condition that if any amount on account of Vat is charged by the sale tax department of Bihar, they would be liable to pay the same.
2. The Godown Incharge, Land Customs Stations, Jainagar. He is directed to release the aforesaid goods concerned with LCS Jaynagar to M/s S.K. Enterprises, Agrasen Bhawan Road, Near T.C.I. Jogbani, Distt.-Araria Pin-854328 after proper verification and identification of the person who is taking delivery of the above goods and after observance of proper formalities (List enclosed).
3. The Godown Incharge, Customs (P) Circle Madhubani. He is directed to release the aforesaid goods concerned with Customs (P) Circle Madhubani to M/s S.K. Enterprises, Agrasen Bhawan Road, Near T.C.I. Jogbani, Distt.-Araria Pin-854328 after proper verification and identification of the person who is taking delivery of the above goods and after observance of proper formalities (List enclosed).
4. The Supt.(Disposal), Customs, Hqrs, Patna with reference to his delivery order dated 27.10.2014 communicated under C.No. VIII(25)41-CPD/14/12037 dt. 27.10.2014

Released cut betel nut Total - 14348 kgs. from LCS, Jaynagar Godown on 06/11/2014 in respect of this order
06/11/2014
Inspector
Land Customs Station
Jaynagar (Bihar)

30/10/2014
Assistant Commissioner
Customs (P) Division, Muzaffarpur

Released Cut-Betel Nut 07 Lot (7 case) weighing 1170 kg of Customs (P) unit Madhubani
INSPECTOR
CUSTOMS (P) UNIT
MADHUBANI

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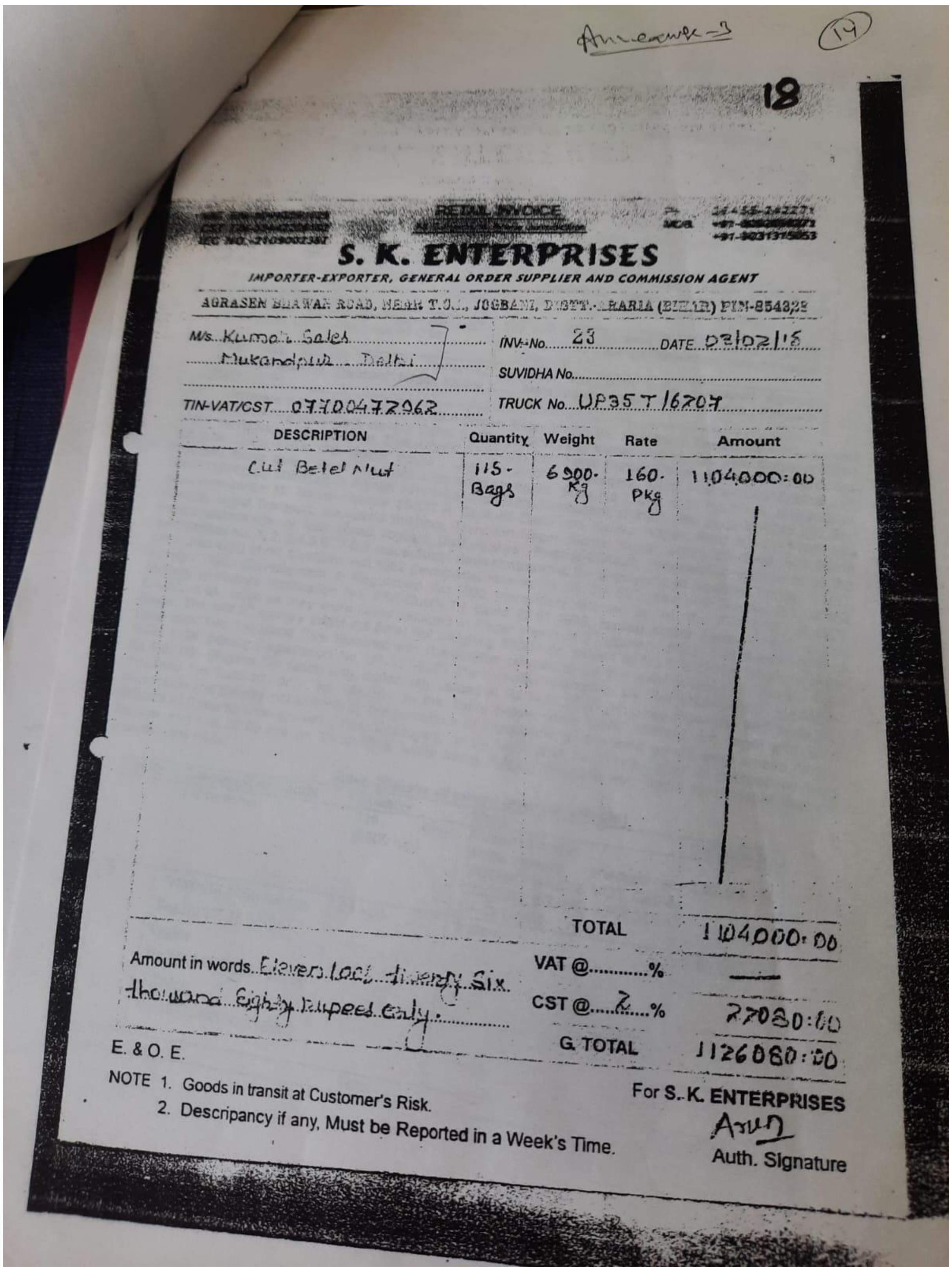
7. Out of the said quantity, 6900 kgs. of Cut Betel Nut was sold by the appellant on 03.02.2015 to M/s Kumar Sales, Mukundpur, Delhi. The said invoice is also extracted herein below :



Annexure-3

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RETAIL INVOICE

S. K. ENTERPRISES

IMPORTER-EXPORTER, GENERAL ORDER SUPPLIER AND COMMISSION AGENT

AGRASEN BHAWAN ROAD, NEAR T.O., JOGBANI, DISTT.-ARARIA (BIHAR) PIN-854328

M/s. Kumar Sales
Mukandpur Delhi

INV. No. 23 DATE 03/02/15

SUVIDHA No.

TIN-VAT/CST 07700472962

TRUCK No. UP35 T 16707

DESCRIPTION	Quantity	Weight	Rate	Amount
Cut Betel Nut	115-Bags	6900-Kg	160-PKg	11,04,000:00
			TOTAL	1104000.00
			VAT @.......%	—
			CST @ 2 %	22080:00
			G. TOTAL	1126080:00

Amount in words Eleven Lac twenty Six thousand Eighty Rupees only.

E. & O. E.

NOTE 1. Goods in transit at Customer's Risk.
2. Descripancy if any, Must be Reported in a Week's Time.

For S. K. ENTERPRISES

Arun

Auth. Signature

8. We find that the goods which was under transportation, were intercepted by the Revenue on the premises that the same is a smuggled one, but the item in question is neither prohibited nor restricted nor notified item in terms of Section 123 of the Customs Act, 1962. In that circumstances, onus lies upon the Revenue to prove that the goods in question are of foreign origin and smuggled by the appellant to illicit means, which the Revenue has failed to do so. Moverover, the appellant has been able to prove the procurement of the seized goods in question through licit means. Therefore, no proceedings are sustainable against the appellant.

9. In view of this, we hold that the Cut Betel Nut in question is not liable for confiscation. Consequently, no redemption fine is imposable on the appellant and as the Revenue has failed to prove that the goods in question are of smuggled in nature, in that circumstances, no Customs duty is payable by the appellant. Consequently, no penalty is imposable on the appellant.

10. In these terms, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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