

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75237 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/137-138/2023 dated 17.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Priyanka Devi Mourya

Proprietress of M/s. Kumar Traders & Company,
Chairman Road, Inside Bhiwania Mill Compound,
Dubri – 783 301

: Appellant

VERSUS

Commissioner of Customs (Preventive)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

AND

Customs Appeal No. 75238 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/137-138/2023 dated 17.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Bobita Devi Mourya

Proprietress of M/s. Kumar Enterprise,
Chairman Road, Inside Bhiwania Mill Compound,
Dubri – 783 301

: Appellant

VERSUS

Commissioner of Customs (Preventive)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri Nilotpal Chowdhury and Shri Prabir Bera, both Advocates,
For the Appellant(s)

Shri Tariq Sulaiman, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NOs. 77743-77744 / 2025

DATE OF HEARING: 07.11.2025

DATE OF DECISION: 21.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Both these appeals have been filed against the Order-in-Appeal No. KOL/CUS/CCP/KS/137-138/2023 dated 17.02.2023 passed by the Ld. Commissioner of Customs (Appeals), Kolkata, challenging the confiscation of the goods, the imposition of redemption fine as well as the imposition of penalties on them.

2. The facts of the case are that officers of DRI initiated an investigation against the supply of Betel Nuts brought in 54 containers. The officers were of the view that the said goods were of foreign origin and smuggled into the country without payment of appropriate duty of customs. Accordingly, samples were drawn from 51 containers before two independent witnesses and sent to "Arecanut Research & Development Foundation (ARDF)". As per the container-wise Test report received from ARDF, 05 containers containing the Betel Nuts of Indian Origin were released on 30.08.2014. DRI Kolkata seized the 46 other containers of Betel Nuts of foreign origin on 02.09.2014 and other 03 containers of Betel Nuts of foreign origin were subsequently seized on 26.09.2014. Out of the total quantity of seized goods, 94.28 MT Betel Nuts were consigned by M/s. Kumar Enterprise and 98.39 MT of Betel Nuts were consigned by M/s Kumar Traders & Company, firms owned by the present appellants herein, amongst others.

2.1. Shri Ramakanta Mourya, on behalf of M/s. Kumar Traders & Company and M/s. Kumar Enterprises in his statement recorded under section 108 of Customs Act, 1962, inter alia stated that both the said firms, namely, M/s. Kumar Traders & Company and M/s. Kumar Enterprises, have

purchased the said goods from the market, where the value of the goods are within the range of Rs 275/- to Rs 305/- per Kg. They used to sell the said goods in a price ranging to between Rs 290/- to 315/-; however, all the consignors had declared a value of Rs 90/-Kg for the purpose of transportation. Thus, if at all there is a violation, it is only undervaluation of the goods for the purpose of payment of VAT or non-payment of VAT and there is no violation under the Customs Act, 1962.

3. On completion of investigation, Show Cause Notices were issued to all consignors including, Smt. Babita Devi Mourya Proprietress of M/s Kumar Enterprise and Smt. Priyanka Mourya, Proprietress of M/s Kumar Traders & Company, proposing confiscation of the seized Betel Nuts and imposition of penalty upon the consignors, under the provisions of the Customs Act, 1962.

3.1. Later, the case was adjudicated by the Id. adjudicating authority vide Order-in-Original No. 30/ADC(P)/CUS/WB/21-22 dated 30.06.2021 wherein he ordered for absolute confiscation of the seized Betel Nuts, including 94.28 MT Betel Nuts consigned by of M/s. Kumar Enterprise and 98.39 MT of Betel Nuts consigned by M/s. Kumar Traders & Company. However, he allowed redemption of the seized Betel Nuts on payment of redemption fines, as mentioned in the Order-in-Original. He further imposed penalty upon all consignors including penalty of Rs.40 Lakhs upon Smt. Babita Devi Mourya, Proprietress of M/s. Kumar Enterprise and penalty of Rs. 40 Lakhs upon Smt. Priyanka Mourya, Proprietress of M/s Kumar Traders & Company, under Section 112(b) of Customs Act, 1962.

3.2. Smt. Priyanka Devi Mourya, Proprietress of M/s. Kumar Traders & Company (the appellant no. 1) submitted that they are the owners of 98.39 MT of Betel Nuts valued at Rs. 2,70,57,250/- and they have purchased the goods from domestic sources. Smt. Babita Devi Mourya, Proprietress of M/s. Kumar Enterprise (herein after referred as the appellant no. 2), submitted that she is the owner of 94.28 MT of Betel Nuts valued at Rs. 2,59,27,000/- and they have purchased the goods from domestic sources.

3.3. The appellants challenged the above adjudication order before the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001, who, vide the impugned order dated 17.02.2023, has rejected their appeals.

3.4. Aggrieved, the appellants are before this Tribunal.

4. The Ld. Counsel appearing on behalf of appellants submitted that the investigation has drawn samples of the Betel Nuts from the seized containers and sent the same for testing to the Arecanut Research & Development Foundation (ARDF); as per the container-wise Test report received from ARDF, the Betel Nuts seized from 46 containers were of foreign origin. In this regard, the appellants' submission is that the ARDF is not the proper authority to decide the foreign origin nature of the goods. Thus, they contend that the Test Report received from ARDF cannot be relied upon to conclude that the goods seized were of foreign origin. The Ld. Counsel for the appellants also pointed out that it is trite law that in the case of Betel Nuts, the onus remains upon the Department to substantiate by way

of evidence that the goods were smuggled in nature; in fact, in terms of Section 123, the appellants herein are not at all required to discharge their burden unless the Department by way of cogent and independent evidence demonstrates that the goods impugned herein are smuggled in nature or the said goods are imported from outside of India. He states that in the present case, save and except, the report of ARDF, there is no other evidence on-record to conclusively come to a finding that the goods are smuggled in nature; the ARDF Report relied upon by the Department has no evidentiary value and more particularly the said Institution does not have the infrastructure to determine the foreign origination or character of the Betel Nuts. Thus, the appellants contend that the Department has miserably failed to discharge its onus; such onus cannot be discharged by the department on the basis of mere suspicion and that too relying on the ARDF Report. Thus, the Ld. Counsel for the appellants submits that the confiscation of the impugned goods on the basis of ARDF Report is legally not sustainable.

4.1. Reliance in this regard is placed by the appellants on the decisions in the following cases:-

i) CC (Prev.) v. Maa Gauri Traders [2019 (368) ELT 913 (All.)]

ii) CC (Lucknow) v. Maa Kali Traders [Order dated 23.09.2019 in Customs Appeal No. 2/2019]

iii) Ma Kamakhya Traders v. Commr. of Customs (Prev) – [2004 (389) ELT 185 (Allahabad.)]

iv) Final Order No. 77907 to 779081 of 2024 dated 18.12.2024 passed in Appeal No. 75329 to 75330 of 2021 by CESTAT, Kolkata.

v) CC(Prev), Shillong v. Laltanpuii [2022 (382) ELT 592 (Megha.)]

vi) CC(Prev), Shillong v. Nemluni [2023 (385) ELT 827(Guwahati)]

vii) Maqsood Alam v. Commr. of Customs, Lucknow [2015 (324) ELT 162(Tri- Del.)]

viii) CCE-ST, Siliguri v. Subodh Das [2023 (385) ELT 693 (Cal.)] as confirmed at 2024 (388) ELT 391(S.C).

4.2. In view of these submissions, the appellants have contended that the impugned goods are not liable for confiscation under the Customs Act, 1962. As they have not violated any of the provisions of customs Act, 1962, it is also their plea that no penalty be imposed on them under Section 112(b) of Customs Act, 1962.

5. The Ld. Authorized Representative representing the Revenue reiterated the findings in the impugned order. He submits that the Test Reports received from ARDF categorically gave the finding that the seized goods were of foreign origin; as the appellants did not have any proper documents for licit purchase of the said goods, the said goods have been confiscated. The Ld. Departmental Representative submits that penalties have been rightly imposed on the appellants herein. Thus, he justified the confiscation of the goods and the penalties imposed on the appellants.

6. Heard the parties and perused the records.

7. We find that the lower authorities have confiscated the Betel Nuts seized, on the basis of the Test Reports received from ADRF. In the present case, it is observed that except the report of ARDF, there is

no other evidence available on record to conclusively come to a finding that the goods are smuggled in nature. The ARDF Report, which has been relied upon by the Department, has no evidentiary value and more particularly, as pointed out by the appellants, the said Institution does not have the infrastructure to determine the foreign origination or character of the Betel Nuts. Thus, it is seen that the Department has failed to discharge its onus that the goods were of smuggled in nature in the present case. Such onus cannot be discharged by the Department on the basis of mere suspicions and that too, by relying on the ARDF Report. Thus, we are of the considered view that the confiscation of the impugned goods ordered on the basis of ADRF Report in the impugned order, is legally not sustainable.

7.1. The same view has also been taken by the Hon'ble Allahabad High Court in the case of *CC (Prev.) v. Maa Gauri Traders [2019 (368) ELT 913 (All.)]*. The relevant portion of the said decision is reproduced below: -

"9. By means of the impugned order the CESTAT agreed with the findings recorded by the Appellate Authority. It concurred with the opinion of the Commissioner (Appeals) to the extent that the onus to prove that the betel nuts were smuggled, lay on the Revenue, and the same burden was not discharge by them, inasmuch as, it was not possible to determine the place of origin of betel nuts, by testing in the laboratory and the report of the ARDF was, at best, an opinion and not conclusive proof with regard to the country of origin. It further held that even in case it is held that the betel nuts were of foreign origin, the same could have been confiscated only when it was proved that they were illegally smuggled into the country, and in absence of any evidence that the betel nuts in question were smuggled, the confiscation and penalty imposed on the respondents was not justified and therefore the appeal of the Revenue was rejected.

10. The Learned Counsel for the Revenue has canvassed mainly with regard to the fact that the betel nuts having been proved to be of foreign origin, relying on the report of the ADRF, the

Tribunal committed manifest error by not relying on the same, and thereby proceeded to dismiss the appeal preferred by the Revenue. He relied upon the judgment of the Collector of Customs v D. Bhoormall, [1983 \(13\) E.L.T. 1546](#) (S.C.), to show that the revenue is not required to prove its case with mathematical precision, but is only required to establish such a degree of probability that a prudent man may, on that basis, believe of existence of facts in issue, and therefore submitted that the RTI reply is general in nature while the specific report by the Arecanut Research and Development Foundation is that this report is given by specialized agency and therefore should have been relied upon by the authorities below.

11. The only question raised in the present appeal is with regard to the origin of the betel nuts, as to whether they are of foreign origin, or they have been purchased locally as asserted by the respondents before the authorities below. In our considered opinion the issue regarding to origin of the betel nuts, would be purely a question of fact.

12. In the case of Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 the Apex Court has considered as to what would be a "question of fact" as contra-distinguished from a "question of law". In paragraph 65, citing the judgment in the case of Suwalal Chhogalal v. CIT, [(1949) 17 ITR 269 (Nag.)], the Court has held as under :

"... A fact is a fact irrespective of evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material."

13. Further in Sewalal Chhogalal (supra) the Court also held in paragraphs 67 and 68 that :-

"67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the Court below are perverse. [Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647 : AIR 1992 S.C. 1604] , Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353] , Satya Gupta v. Brijesh Kumar [(1998) 6 SCC 423] , Ragavendra Kumar v. Firm Prem Machinery & Co. [(2000) 1 SCC 679 : AIR 2000 S.C. 534] , Molar Mal v. Kay Iron Works (P) Ltd. [(2000) 4 SCC 285 : AIR 2000 S.C. 1261] , Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483 : (2010) 4 SCC (Civ.) 498] and Dinesh Kumar v. Yusuf Ali [(2010) 12 SCC 740 : (2010) 4 SCC (Civ.) 738].]

68. *In Jai Singh v. Shakuntala*, [(2002) 3 SCC 634 : AIR 2002 S.C. 1428] this Court held that (SCC p. 638, para 6) it is permissible to interfere even on question of fact but it may be only in "very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection".

14. Similar view has been taken by the Hon'ble Apex Court in *Kashmir Singh v. Harnam Singh*, [(2008) 12 SCC 796 : AIR 2008 S.C. 1749].

15. Applying the principles enshrined in the aforesaid decisions to the facts of the case at hand, it is apparent that the CESTAT after considering all the material on record including the orders passed by the authorities below, have given a concurrent finding of fact that the Revenue could not establish the foreign origin of the betel nuts. The documents produced by the respondents indicated that the goods in question were purchased from local markets, and in support of the purchases they produced the market receipts which has not been doubted by the Revenue Authorities themselves at any stage of the proceedings. The report of the ARDF has also been held to be not reliable inasmuch as it could not be shown with any degree of certainty that the origin of the betel nuts could be established by testing in a laboratory, as is clear by the answer to the RTI query given by Directorate of Arecanut and Spice Development, Ministry of Agriculture and Farmers Welfare, Government of Kerala.

16. Further it is relevant to observe that the Revenue did not argue or place any material to indicate that the betel nuts in question were smuggled into India, even if, for a moment, it is assumed that they were of foreign origin, in order to sustain the order of confiscation and penalty.

17. Considering the aforesaid factual matrix, the judgment of the Hon'ble Apex Court in the case of *Collector of Customs v. D. Bhoormull* (supra) would also not be of any assistance to the Revenue, inasmuch as, they have failed to establish with any degree of probability that a prudent man, on its basis, could believe that the betel nuts were of foreign origin.

18. No other question was pressed by the Counsel for the Revenue.

19. In light of the above, since we do not find any infirmity with the judgment of the CESTAT, and also for the reason that no substantial question of law arises for the determination in the present appeal, the appeal is dismissed."

7.2. We also find that a similar issue has been examined by the Hon'ble High Court of Meghalaya at Shillong in *Commissioner of Customs (Preventive), NER Region, Shillong v. Laltanpuii [2022 (382) E.L.T. 592 (Meghalaya)]*, wherein the Hon'ble High Court has rejected the appeal filed by the Revenue against the order passed by the Tribunal. The relevant observations of the Hon'ble High Court while arriving at the said decision are as follows: -

"4. The Division Bench of the Tribunal recorded the finding that the confiscated betel nut is non-notified goods and therefore, burden to prove the fact of smuggling lies on the department and same has not been discharged. In this regard, the department relied upon the certificate issued by the Arecanut Research and Development Foundation, Mangalore to show that the confiscated goods/betel nuts are of foreign origin. However, the Tribunal refused to consider this certificate on the ground that the said Institution is not accredited and hence the report was not relied on. The Tribunal in this regard relied on the decision of the Patna High Court reported in [2020 \(371\) E.L.T. 353 \(Patna\)](#).

5. After hearing the Learned Counsel appearing for the respective parties and after going through the impugned judgment and order, we find no error in the findings given by the Tribunal. The said findings, in our opinion are supported by reasons and therefore, we are not inclined to interfere in this appeal. Appeal has no merit and is accordingly dismissed."

7.3. We find that the ratio of the above decisions is squarely applicable to the facts and circumstances of the present case. Thus, by applying the above ratio, we hold that the Test Report received from ARDF cannot be relied upon to conclude that the goods seized were of foreign origin.

8. Further, we also find force in the submission advanced by the appellants that 'Betel Nuts', not being notified under Section 123 of the Customs Act, 1962, the onus is cast on the Revenue to establish by way of tangible and/or cogent evidence as to the smuggled character of the impugned goods. The Revenue having failed to discharge the above onus in the instant case, the allegation as to the goods in question being smuggled in nature is found to be unsubstantiated. A similar issue has been dealt with by the Hon'ble Calcutta High Court in the case *Commissioner of Cus., C.Ex. and S.T., Siliguri v. Subodh Das* [2023 (385) E.L.T. 693 (Cal.)], which has been affirmed by the Hon'ble Apex Court as reported at 2024 (388) E.L.T. 391 (S.C). The relevant paragraphs from the said decision rendered by the Hon'ble High Court, are reproduced below for ready reference: -

"4. The first question which was considered by the Learned Tribunal is as to on whom the burden of proof lies in establishing that the goods in question are smuggled goods. The Tribunal, in our view, rightly took into consideration the fact that betel nuts are not goods notified under Section 123 of the Customs Act. Hence, no adverse presumption against the respondents should be made about the said goods being smuggled or being of foreign origin. Therefore, the Tribunal rightly held that the burden is on the department to prove that the goods were of foreign origin.

5. In support of its conclusion, the Tribunal placed reliance on the judgment of this Court in the case of *Commissioner of Customs (Preventive), WB, Kolkata v. Sudhir Saha*, reported in [2004 \(172\) E.L.T. 26 \(Cal.\)](#) = 2004 taxmann.com 1512 (Cal.). In the said decision, the Court held that betel nuts which were seized are not notified goods under Section 123 of the Customs Act and the said provision applies only in respect of goods which are smuggled and smuggled goods means something suggesting that they are of foreign origin and their recent importation from abroad. In this regard, reliance was placed on the decision in the case of *Shantilal*

Mehta v. Union of India, reported in [1983 \(14\) E.L.T. 1715](#).

6. *The Tribunal noted that the facts of the case on hand were identical to that of the facts in the case of Sudhir Saha and that the burden of proof to establish the smuggled nature of the seized goods was on the department and taking note of the factual position, the Tribunal held that the department miserably failed to discharge the burden cast upon them. Further, the Tribunal took note of the finding recorded by the Commissioner in the adjudication order wherein it has been stated that there may be a possibility that the subject betel nuts too are of foreign origin and were smuggled to India. Commenting upon the said finding, the Learned Tribunal, in our view, rightly held that this finding is based entirely on presumption for which there is no legal or factual basis disclosed. That apart, the Tribunal has also examined the other facts, namely, the statements which were recorded from the respondents at the first instance, which were subsequently retracted before the Learned Magistrate. The Tribunal found that the statements initially recorded from the respondents who are semi-literate persons were identical and one was mirror image of the other and, therefore, the Tribunal rightly disbelieved those statements and in any event the same having been retracted at the earliest point of time, held that the statements could not have been the basis of the adjudication. Further, on facts, the Tribunal found that the goods were seized far away from the international border in the interior of North Bengal from trucks/warehouses and also it is an undisputed fact that betel nuts are sold in the adjoining States of Assam and Manipur as well as north districts of West Bengal and their adjacent area. Therefore, the Tribunal came to the conclusion that in the absence of evidence on the contrary disclosed, it has to be concluded that the Revenue has been unable to establish the smuggled nature of the seized goods and, thus, discharge the burden of proof cast upon the revenue in this respect.*

7. *Further, the Tribunal examined the other factual aspects and found that the documents on record show that the goods were purchased from local markets and/or from Mandi located in Jalpaiguri district of West Bengal. The said purchases of agricultural produce such as betel nuts are regulated by the respective District Regulated Market Committees and the Sub-divisional Officers in terms of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Further, the Tribunal noted that copies of the receipts issued by the Market Committees were on record evidencing that the market fee was paid by the respondents and, therefore, concluded that the seized consignment had been purchased on payment of such cess under*

the Regulation Act of 1972. Furthermore, the bag containing the seized goods did not contain any foreign markings. Furthermore, the Tribunal noted that during the course of investigation undertaken by the DRI, no other incriminatory material was obtained either from the raids conducted or in course of interrogating witnesses that would indicate that the said goods were sourced from outside India.

8. Thus, based on presumptions and assumptions, it cannot be held that the goods were smuggled goods and in the absence of any evidence produced by the Revenue to discharge the burden cast upon them, in our view, the Tribunal noting the facts of the case had rightly granted the relief in favour of the respondents. Furthermore, there was no testing of the seized goods through any accredited Agency for determining any constituent property or characteristic that would indicate or establish foreign origin of the said goods. The Tribunal noted that the only evidence on the basis of which the proceedings were initiated and the order of adjudication was passed against the nine respondents is based on a statement recorded from the respondent in CUSTA 22 of 2022. All the respondents were arrested and produced before the Learned Chief Judicial Magistrate, Siliguri before whom the so-called voluntary statements were retracted. The Tribunal noted that it is on record that the respondent in CUSTA 22 of 2022 had retracted the statements on 16th March, 2016 before the Learned Additional Chief Judicial Magistrate, Siliguri before whom he was produced after arrest. Thus, in the absence of any independent evidence to bring home a charge of smuggling, the Tribunal set aside the adjudication order. Furthermore, the Tribunal noted that there was no discussion on the retraction of statements made on oath by the respondents and the witnesses who implicated the respondents were not produced for cross-examination in spite of a specific request made by the concerned respondent and this request was rejected on the ground that the occupants of the trucks had allegedly described the true facts in course of the statements recorded under Section 108 of the Act which were affirmed by the respondent in CUSTA 22 of 2022."

9. In view of the above discussion and by relying on the decisions cited supra, we hold that the impugned goods are not liable for confiscation under the Customs Act, 1962.

9.1. As there is no violation to the provisions of Customs Act, 1962, we hold that no penalty can be imposed on the appellants under Section 112(b) of Customs Act, 1962 and hence, we set aside the same.

10. In the result, we pass the following order: -

- (1) The order of confiscation of the goods in question *qua* 94.28 MT Betel Nuts consigned by M/s. Kumar Enterprise and 98.39 MT of Betel Nuts consigned by M/s. Kumar Traders & Company, vide the impugned order, stands set aside.
- (2) The penalties imposed on both the appellants under Section 112(b) of Customs Act, 1962 vide the impugned order are also set aside.

11. The appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **21.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)