

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76100 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/300/2024 dated 08.05.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Newby Teas Overseas Private Limited : Appellant

Diamond Harbour Road, Bhasa, Bhishnupur,
Kolkata – 743 053, West Bengal

VERSUS

Commissioner of Customs (Port) : Respondent

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

APPEARANCE:

Shri S.C. Ratho, Consultant, for the Appellant

Shri Sourabh Chakravorty, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 75417 / 2026

DATE OF HEARING / DECISION: 20.03.2026

ORDER:

M/s. Newby Teas Overseas Private Limited, Diamond Harbour Road, Bhasa, Bhishnupur, Kolkata – 743 053, West Bengal (hereinafter referred to as the “appellant”) has filed this appeal against the imposition of penalty of Rs.2,15,000/- under Section 112(a)(i) of the Customs Act, 1962 on them, which has been upheld by the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata vide the Order-in-Appeal No. KOL/CUS(PORT)/KS/300/2024 dated 08.05.2024.

2. The facts of the case are that the appellant filed a Bill of Entry No. 4667796 dated 16.02.2023 for importation of 10 varieties of tea, against Advance Authorization. The appellant is a manufacturer /

exporter and the tea so imported against Advance Authorization was to be re-exported after processing. On importation, sampling of the goods was done and thereafter, the Plant Quarantine Authorities reported that the goods were found to be infested / infected with a quarantine pest notified under Schedules-V and VI. The imported consignment of teas was also found to include viable seeds which are not listed in the Plant Quarantine (Regulation of Import into India) Order, 2003. Thus, 'No Objection Certificate' was not given to the appellant by the Plant Quarantine Authorities. The appeal filed by the appellant before the Plant Quarantine Appellate Authority also failed. Accordingly, the above proceedings were taken up for adjudication by the Customs authorities.

3. On adjudication, the Id. adjudicating authority confiscated the goods imported vide the Bill of Entry No. 4667796 dated 16.02.2023 under Section 111(d) of the Customs Act, 1962, thereby allowing re-export of the goods on payment of redemption fine of Rs.4,30,000/- under Section 125 of the Act and also imposed a penalty of Rs.2,15,000/- on the appellant-importer under Section 112(a)(i) of the Act.

3.1. On appeal, the Ld. Commissioner (Appeals) vide the impugned order has partly allowed the appeal by setting aside the redemption fine of Rs.4,30,000/-, allowing re-export of the goods without imposition of any fine. However, he has upheld the penalty imposed of Rs.2,15,000/- under Section 112(a)(i) *ibid*.

3.2. Aggrieved by the imposition of penalty, the appellant has filed this appeal.

4. The Ld. Consultant appearing on behalf of the appellant submits that 'tea' is not a prohibited item. He submits that at the time of its importation, the appellant was of the bona fide belief that the tea was fit for human consumption, as per the Health Certificate and Phytosanitary Certificate issued by the Government of China which mentioned the said fact; that China's plant quarantine categorically prohibits the export of seeds from China. It is also stated that the Plant Quarantine Authorities had drawn samples and only upon testing it was found that the teas contain seeds or are infected with quarantine pest under Schedules V & VI of the Plant Quarantine (Regulation of Import into India) Order, 2003, based on which the goods were not allowed for clearance. Therefore, in view of the above facts and circumstances, the Ld. Counsel for the appellant sought waiver of the penalty imposed under Section 112(a)(i) of the Act.

5. On the other hand, the Ld. Authorized Representative of the Revenue contends that the goods in question are 'prohibited goods' in the absence of a valid NOC and Phytosanitary Certificate issued by the Plant Quarantine Authorities. Accordingly, he justifies the imposition of penalty on the appellant, as upheld vide the impugned order.

6. Heard both sides and perused the records of the case.

7. I find that the appellant has imported the teas for the purpose of processing and re-export. They were under the bona fide belief that tea, not being a prohibited item, could be imported and exported after re-processing. However, the teas, which were infused with whole flowers, were also found to include viable

seeds in violation of the Plant Quarantine (Regulation of Import into India) Order, 2003. However, it is also a fact that the above said seeds were noticed by the Plant Quarantine authorities only during the test conducted by them. The appellant has pointed to the fact that as per the policy of the Government of China, export of tea seeds is prohibited and thus, the appellant has contended that they cannot be faulted for such violation noticed only after testing. Further, they have also referred to the Health Certificate and Phytosanitary Certificate issued by the Government of China, which clearly mention that such teas are fit for human consumption. Since the Plant Quarantine Authorities have noticed the seeds only upon testing and no mis-declaration as to the quantity and description of the goods have been found, I find force in the appellant's submission that they cannot be held responsible for importation for the tea with seeds, in violation of Plant Quarantine (Regulation of Import into India) Order, 2003 in this case. The goods were allowed for re-export, which has been accepted by the appellant. Further, I do not find any intent or *mens rea* on the part of the appellant for the wilful importation of such goods. Thus, in the facts and circumstances of the case, I agree with the submission of the appellant that they cannot be faulted for not noticing the said seeds at the time of importation of the consignment in question for the purpose of imposition of penalty under the Act. Consequently, I hold that the penalty of Rs.2,15,000/- imposed on the appellant under Section 112(a)(i) *ibid.* cannot be sustained.

8. In the result, I set aside the penalty imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962 and allow the appeal, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd