IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPLICATION No. C/EH/85363/2018
APPEAL No. C/85946/2018

(Arising out of Order-in-Original (Letter) F. No. S/26-MISC-1398/2017-18/GR I/IA/NS-I dated 16.2.2018 passed by Commissioner of Customs (NS-I), Nhava Sheva)

A.S. Spices **Appellant**

Vs.

Commissioner of Customs (Nhava Sheva-I) **Respondent**

Appearance:

Shri Taru Chawla, Advocate, for appellant
Shri Ahibaran, Additional Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 23.3.2018
Date of Decision: 10.4.2018

ORDER NO. **A/85957/2018**

Per: Ramesh Nair

This appeal is directed against a letter dated 16.2.2018 communicating the direction of the Commissioner to the appellant, wherein the Commissioner has asked for submission of bond for the equal value of the goods and bank guarantee equal to 100% to duty payable for provisional release of the imported goods namely areca nuts imported from Sri Lanka. The condition of NOC from PGAs (FSSAI and

PQ) is also a must for provisional release. The appellant filed appeal seeking unconditional release of the goods.

2. Shri Taru Chawla, learned counsel appearing on behalf of the appellant, submits that the learned Commissioner, without any basis, seized the goods and put a condition of bank guarantee for 100% of the duty amount. Therefore, the action of seizure of goods and putting condition of 100% of duty amount is in violation of the principles of natural justice. He submits that the department had doubt regarding the Sri Lankan origin of the goods and in this regard, all the documents were submitted. Moreover, after the doubt was raised by the Customs, a letter from the Department of Commerce of the Government of Sri Lanka was obtained wherein it was clearly confirmed that the goods imported by the appellant are of Sri Lankan origin and the Ministry of Industry and Commerce of Sri Lanka issued Certificate of Origin for the shipment exported. With this confirmation, there is no iota of doubt that the goods imported are of Sri Lankan origin. In such position, asking the appellant to give a bank guarantee of 100% of the duty amount is unwarranted and the same deserves to be quashed. He submits that the goods is perishable in nature. In that case, a lenient view should be taken for release of the perishable goods.

3. Shri Ahibaran, learned Additional Commissioner (AR) appearing on behalf of Revenue, reiterates the finding of the impugned letter. He submits that the appellant has imported

areca nuts showing it of Sri Lankan origin. The Customs authority has serious doubt about the country of origin. Therefore, an investigation is in progress. When such investigation is in process, the seizure of the goods is unavoidable. Therefore, the condition for release of 100% of the duty amount for bank guarantee is normal. Hence the same cannot be relaxed for the safeguard of Government revenue. He placed reliance on the judgment of this Tribunal in the identical case of import of areca nuts from Sri Lanka, in the case of *Shiv Ganga Polypet LLP* wherein the Tribunal vide order No. A/85007/2018 dated 12.1.2018 fixed the bank guarantee of 50% of the duty amount fixed by the Commissioner. Therefore, the unconditional provisional release is contrary to the view taken by the Tribunal in the order dated 12.1.2018.

4. We have carefully considered the submissions made by both the sides. We find that the Customs authority seized the consignment of areca nuts imported from Sri Lanka on the doubt that the consignment is not of Sri Lankan origin. However, the appellant has submitted all the documents such as certificate of origin issued by Ministry of Industry and Commerce, Government of Sri Lanka, under Indo-Sri Lanka Free Trade Agreement certificate issued by Department of Agriculture, Sri Lanka, (Fumigation Certificate). The most important aspect is that after the doubt raised by the Customs authority, the appellant obtained a verification certificate from the Department of Commerce, Government of

Sri Lanka. The certificate dated 31.10.2017 is scanned below:-

වාණිජ දෙපාර්තමේන්තුව
வர்த்தக திணைக்களம்
DEPARTMENT OF COMMERCE
"රක්ෂණ මන්දිරය", වොක්ෂෝල් වීදිය, කොළඹ 02, ශ්‍රී ලංකාව
"றக்ஸண மந்திரய" 21 வொக்சோல் வீதி, கொழும்பு 02, ஸ்ரீ லங்கா
"Rakshana Mandiraya", 21, Vauxhall Street, Colombo 02, Sri Lanka

මගේ අංකය / எனது இல. / My No COM/ISFTA/ARECANUT 01/VOL/V
ඔබේ අංකය / உமது இல. / Your No
දිනය / திகதி / Date 31/10/2017

To whom it may concern,

Verification of Certificates of Origin (COO) issued to M/s Commodities Importers

This is to confirm that the Ministry of Industry & Commerce has issued the following (COO) for two shipments of Areca-Nuts (HS 0802.80.90) under Indo-Sri Lanka Free Trade Agreement (ISFTA) exported by M/s Commodities Importers.

1. CO/ISFTA/17/20453 dated 16th October 2017
2. CO/ISFTA/17/20454 dated 16th October 2017

The said COO have been certified by Mr. Jeevanandan, Director (Food & Co-operatives) of the Ministry of Industry & Commerce.

This letter is issued on a request of M/s Commodities Importers.

D.M. Ratnayake
Director of Commerce
for Director General of Commerce

D. M. Ratnayake
Director of Commerce
Department of Commerce

Copy: Ms. Upekkha Samaratunga
Minister (Commercial), Sri Lanka High Commission, New Delhi

දුරකථන අංකය 2329733 ෆැක්ස් 2430233 ඊ මේල් / மின்-கபால்

From the above certificate, it can be seen that the Ministry of Commerce has confirmed that two certificates of origin dated 16.10.2017 were issued. Therefore, the doubt raised by the Customs authority regarding the country of origin *prima facie* should not exist. As regards the reliance placed on the order of this Tribunal in the case of *Shiv Ganga Polypet*, on careful reading of the order, we find that in the said case the facts are different inasmuch as the doubt of the Customs authority regarding the country of origin could not be removed whereas in the present case, since after initiation of the enquiry, the Department of Commerce, Government of Sri Lanka, issued a verification certificate. Therefore, the facts of both the case are different. Hence the decision of this Tribunal in that case cannot be equally applicable in the present case.

5. Considering the overall facts and circumstances of the case and the observations made hereinabove, we are of the view that the condition of bank guarantee for an amount of 100% duty is very harsh. Therefore, we reduce the amount of bank guarantee to 20% of the duty amount and bond for 100% value of the goods. The learned Commissioner is directed to release the goods on the conditions stipulated by this Bench as above, within fifteen days of receipt of this order.

6. Appeal is disposed of in the above terms.

(Pronounced in court on 10.4.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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