

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 85739 OF 2021**

[Arising out of Order-in-Appeal No: MKR/123-129/CUS/NGP/2020-21 dated 17<sup>th</sup> March 2021 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

**Deepak Arjandas Sadhwani**

402 Gym View CHS Ltd, 16<sup>th</sup> Road, Khar (West)  
Mumbai - 400052

*...Appellant*

*versus*

**Commissioner of Customs**

GST Bhavan, Civil Lines, Telanghedi Road,  
Nagpur - 440 001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85740 OF 2021**

[Arising out of Order-in-Appeal No: MKR/123-129/CUS/NGP/2020-21 dated 17<sup>th</sup> March 2021 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

**Varun Deepak Sadhwani**

402 Gym View CHS Ltd, 16<sup>th</sup> Road, Khar (West)  
Mumbai - 400052

*...Appellant*

*versus*

**Commissioner of Customs**

GST Bhavan, Civil Lines, Telanghedi Road,  
Nagpur - 440 001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85741 OF 2021**

[Arising out of Order-in-Appeal No: MKR/123-129/CUS/NGP/2020-21 dated 17<sup>th</sup> March 2021 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

**S A Enterprises**

1 Sector, A-1 Lane, Room No. 29, Cheethacamp  
Trombay, Mumbai - 400088

*...Appellant*

*versus*

**Commissioner of Customs**

GST Bhavan, Civil Lines, Telanghedi Road,  
Nagpur – 440 001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85742 OF 2021**

[Arising out of Order-in-Appeal No: MKR/123-129/CUS/NGP/2020-21 dated 17<sup>th</sup> March 2021 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

**Ghulam Farooq Noorani**

602 Arihant Sparsh, Plot No. 13/14, Sector 26, Vashi  
Navi Mumbai – 400 705

*...Appellant*

*versus*

**Commissioner of Customs**

GST Bhavan, Civil Lines, Telanghedi Road,  
Nagpur – 440 001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85528 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Sayed Ahmed Shaikh**

A-32 Sagar Co-Op Housing Society, Sector – 10  
Koper Khairne, Navi Mumbai - 400709

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85529 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Mujeeb Begawala**

4/404 Veena Beena CHS, G Wing,  
Acharya Dhonde Marh, Sewree, Mumbai – 400 015

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85530 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Silver Export**

A-32 Sagar Co-Op Housing Society, Sector – 10  
Koper Khairne, Navi Mumbai - 400709

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 86094 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Deepak Arjandas Sadhwani**

402 Gym View CHS Ltd, 16<sup>th</sup> Road, Khar (West)  
Mumbai - 400052

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 86095 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Varun D Sadhwani**

402 Gym View CHS Ltd, 16<sup>th</sup> Road, Khar (West)  
Mumbai - 400052

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**AND**

**CUSTOMS APPEAL NO: 86096 OF 2020**

[Arising out of Order-in-Original No: 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

**Ghulam Farooq Noorani**

602 Arihant Sparsh, Plot No. 13 & 14, Sector 26  
Vashi, Navi Mumbai - 400705

*...Appellant*

*versus*

**Commissioner of Customs (NS-I)**

Nhava Sheva, Jawaharlal Nehru Customs House  
Tal: Uran, Dist: Raigad - 400707

*...Respondent*

**APPEARANCE:**

Mr Prakash Shah, Mr A K Jayaraj and Mr Mihir Mehta, Advocates for the appellant

Shri S B Hatangadi, Assistant Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINALORDER NO: A/85996-86005/2023**

DATE OF HEARING: 11/04/2023  
DATE OF DECISION: 27/06/2023

PER: C J MATHEW

There are stories of customs cases and there are stories in customs cases. In these ten appeals arising from import of 'betel nuts', the two conflate as a narrative in which this commonplace product obtains a fascinating twist. And that is not the only thread in the story; the fabric, as it were, is revealed as the tale unfolds with one seizure in the interiors of the country and the other at a leading port on the west coast involving the shadowy figure of an alleged kingpin whose long tentacles obscured his proximity till then. To top it all, the exchequer was allegedly defrauded by a conspiracy, with insinuations of international collusion, that the kingpin, whom the investigators stumbled upon, confessed to and, thus, led to the offending imports now impugned before us. One set of appeals stems from adjudication of Commissioner of Customs (NS-I), Nhava Sheva and the other from proceedings before Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.

2. The alleged offence is that the 'betel nuts' were from Indonesia, the third largest producer in the world after India and Myanmar; at stake, in the first of the stories, is entitlement to concessional rate of

duty afforded by notification no. 26/2000-Cus dated 1<sup>st</sup> March 2000 on import from Sri Lanka in pursuance of Indo-Sri Lanka Free Trade Agreement and denial thereof leading to differential duty liability by application of standard rate on tariff value notified for the said goods. Eight containers, for which bills of entry no. 2501632/18.07.2017, no. 2501663/18.07.2017, no. 2914587/ 19.08.2017 and no. 2914588/19.08.2017 were filed by M/s Silver Export, a partnership of S/Shri Sayeed Ahmed Sheikh and Mujeeb Mehmood Begawala, that Shri Ghulam Farooq Noorani had, during investigations into similar imports by M/s SA Enterprises, sole proprietorship of Shri Sayeed Ahmed Sheikh, admitted in October 2017 to having organized. The goods were, admittedly, packed in re-usable gunny bags with 'BUDIMAN-90' marking which, according to admission of Shri Ghulam Farooq Noorani, is the brand of M/s Swee Choon Co Pte Ltd, Indonesia. Bills of lading issued by M/s Garuda Container Line and found in the possession of M/s RR Shipping as provided through email by M/s Sun Ocean Logistics Pvt Ltd, Colombo were found to be not conforming to the physical copies of bills of lading and the suspicion that the bills issued for shipment from Singapore to Colombo were switched to cover further movement of the containers from Colombo to Nhava Sheva appeared to have been confirmed in communication dated 11<sup>th</sup> September 2018 of the Central Intelligence Directorate of Sri Lanka Customs. All these were assembled to set

out the charge that

*'28.....M/s Silver Export appears to have engaged in fraudulent availment of benefit of exemption of Customs duty under SAPTA notification No. 26/2000-Cus dated 01.03.2000 as amended, by misdeclared Country of Origin as Sri Lanka origin Areca Nut procured from Indonesia. The total 148.430 MT of betelnuts imported, stored at M/s Container Corporation of India Ltd CFS, Dronagii Rail Terminal (CONCOR DRT), Sector-2, Plot No. 33,234,35, Navi Mumbai – 400 707 & M/s CWC Impex Park, Sector-1, Dronagiri Node, Taluka Uran, District Raigad, Navi Mumbai – 400 707 appears to be Indonesian origin betel nuts which were seized vide Seizure Memorandum No. 07/2017 dated 25.10.2017 under section 110 of the Customs Act, 1962 appears to be liable for confiscation under Section 111(b), 111(d) and 111(h) of Customs Act, 1962.*

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in show cause notice dated 8<sup>th</sup> October 2018 that was confirmed, along with consequential confiscation, determination of fine in lieu thereof and imposition of penalties, in the impugned order<sup>1</sup> of Commissioner of Customs (NS-I), Nhava Sheva.

3. Yet another consignment of concern came under scrutiny when a warehouse of M/s Goyal Cold Storage at Bhandara Road, Nagpur was searched by officers of Directorate of Revenue Intelligence (DRI) on 10<sup>th</sup> September 2017 and found to have been used for storage of

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<sup>1</sup> [order-in-original no. 01/2020-21/Commr/NS-I/JNCH dated 7<sup>th</sup> April 2020]

236 MT of 'betel nuts' in gunny bags bearing markings, including that of "BUDIMAN 90", of which 106.11 MT were believed to be that of M/s SA Enterprises, sole proprietorship of Shri Sayeed Ahmed Sheikh. Through a series of statements recorded under section 108 of Customs Act, 1962, it was set out that the 'betel nuts' had been transported from Assam and had been stored in the warehouse at the instance of Mr Ghulam Farooq Noorani. On completion of investigations, it was charged that

*'80. The present show cause notice is being issued for confiscation of the 106.11 MT of betel nuts seized by the department and appears to be smuggled goods of Indonesian and Myanmar origin and further appears to be brought clandestinely via Myanmar – India border and for the penal action against the persons concerned with violating the provisions of Customs Act, 1962.'*

in show cause notice dated 28<sup>th</sup> July 2018 and was absolutely confiscated for being unfit for human consumption in adjudication that was upheld in order<sup>2</sup> of Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur now impugned before us .

4. Doubtlessly impugned before us is the detriment visited upon the goods, including absolute confiscation of 'betel nuts' seized at Nagpur, as well of the cavil of the several persons against penalties imposed on them. That is simple enough as far as investigation into

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<sup>2</sup> [order-in-appeal no. MKR/123-129/CUS/NGP/2020-21 dated 17<sup>th</sup> March 2021]

misuse of notification prescribing preferential rate contingent upon country of origin is concerned for it is settled by law that benefit of exemption notifications may be accorded only upon strict compliance of conditions for entitlement thereto. For that, clear evidence of goods having moved from a country other than Sri Lanka suffices which, however, is lacking and it is evidence claiming to corroborate that shipment had not originated in Sri Lanka or Myanmar that is before us.

5. Before proceeding to assesses the conclusiveness of that evidence, the complexity of the defence offered and the adjudicatory twists, belying the simplicity of yardstick that inheres in such notifications, is cause for pause over the no less significant contention of the appellants that not only is enforcement marked by disregard of law but that unconcealed prejudice was manifest in the unapologetic campaign mounted against the trade in 'betel nut' of foreign origin. And the picture that emerges, of institutional crusade, whether to 'protect domestic production already compromised by treaty concession to certain other producer-nations which, though to be tolerated by inevitability of binding obligation, has not only failed to evoke reciprocal appreciation of that munificence but has instead been prejudicially permitted to open doors to channelize produce of other countries' or against its continued availability in the country, does not bode well for rule of law.

6. Surprisingly, threat to domestic production, so vigorously repelled by them, fails to make its brooding presence evident; for there is no complaint, let alone public outcry, against the concession, and the intricacies of negotiation, including detriment to domestic production of goods that covered that surely informed the terms of the treaty, must have been handled by agencies of the State no less concerned; the policing of the concessions embodied in the scheme of preferential treatment, intended by such bilateral or multilateral trade agreements and built into the treaty itself, is made manifest in the statutory instruments birthed thereupon for implementation by the very same administration and, under the grab of acting only to deter imports from other countries. Loss of revenue by misuse of the preferential route is certainly repugnant to the objectives of the agreement and there can be no cavil on action initiated against such misuse subject to satisfaction that misuse has been credibly set out in the manner prescribed. Cavil about, and rejection of, detriments, there will be if such determination of misuse is a tale built only upon surmise and presumption. And that is the story in these customs cases.

7. It is contended by Learned Counsel that the explanation of the appellant before the investigators at Nagpur that the 'betel nuts' had been locally sourced, as evidenced by original bills issued by M/s CR Stores of Assam furnished on 10<sup>th</sup> September 2017 itself, had been imperiously discarded. Further, Learned Counsel bemoaned rubbing

salt on wounds by placing reliance on inculpatory statements recorded under threat and coercion that, at the first available opportunity, were retracted before court of law before being brought to the attention of the Human Rights Commission. Charging that every canon of law was violated by officers sworn to obey, and abide by, the Constitution, he contended that the adjudication process was vitiated no less by the refusal to allow cross-examination of witnesses and confirmed on the back of statements of co-noticees, both of which are contrary to law, as by breach in quasi-judicial determination. He argued that, non-application of mind was demonstrated by the adjudicating authority, in taking cognizance of Arecanut Research & Development Foundation (ARDF), Mangalore as possessing, and contrary to common wisdom, wherewithal to identify the country of origin of a produce such as 'betel nuts' without any corroborative evidence from transporters, and such others, bound to have participated in the logistical chain of cross-border delivery.

8. He submitted that the decision of the Hon'ble Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II*<sup>3</sup>, which disapproved of the reasoning of the Tribunal on rejection of plea for cross-examination, thus

*'...It was not for the Tribunal to have guess work as to for what purposes those dealers and what extraction the*

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<sup>3</sup>[order dated 2<sup>nd</sup> September 2015 in civil appeal no. 4228 of 2006]

*appellant wanted from them....it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above....'*

permits no latitude for flexibility to deny such requests. He pointed out that the decision of the Tribunal in *Commissioner of Customs (Prev), Lucknow v. Maa Gauri Traders [2019 (369) ELT 1024 (Tri-All)]*

5. *On going through the impugned order of Commissioner (Appeals), we note that he has primarily gone by the fact that betel nuts are not notified under Section 123 of the Customs Act and the onus to prove that the same are smuggled is on the Revenue as held by the Tribunal in the case of Baboo Banik v. Commissioner of Customs, Lucknow reported in 2004 (174) ELT 205 (Tri.-Kolkata). Further, the Tribunal in the case of Bijoy Kumar Lohia v. CC, Patna, reported in 2006 (196) ELT 215 (Tri.-Kolkata) has held that the local trade opinion cannot take the place of the legal evidence.*

also leaves no room for doubt that such reports, lacking obvious credibility and rationality, must be ignored.

9. That the Hon'ble High Court of Patna, based on the lack of credibility in the claim of that very institution to be able to identify source of 'betel nuts', was even more scathing in its criticism of action under Customs Act, 1962 thus

*'12. Having heard Learned Senior Counsel for the petitioner and Learned Additional Solicitor General of India,*

*this Court is of the considered opinion that once the Learned Coordinate Bench of this Court has held that in absence of there being any material to show that M/s. Arecanut Research & Development Foundation, Mangalore is an accredited laboratory by competent authority under the Act and Rules, it's report cannot have a consequence of fastening of any legal liability and 'No legal liability can flow from the report of such an institution' the respondent authorities were not justified in again relying upon the ARDF Mangalore's report to justify the seizure in question. In fact such an attempt of the respondent authorities would be contemptuous in nature as it is likely to cause harassment to the traders, by not following the judgment of the Court.*

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*15. This Court is of the opinion that in absence of there being a standardized laboratory test for tracing the country of origin, established under some statute and such Labs have been accredited by the competent authority and the Labs could have the scientific method to come to a conclusion that a Betel Nut is of a particular country's origin, it would not be in the interest of justice to direct the petitioner to pay the Customs duty.*

*16. At this stage, Learned Additional Solicitor General submits that in fact on the basis of materials which are available on the record, in his opinion now the time has come when the Government of India will have to think over either continuing with the treaty in question or to develop a scientific method to find out the country of origin to save the Government's revenue.*

*17. In the opinion of this Court, it is for the Government of India to think over it. So far as the present position is*

*concerned, this Court would have no hesitation in coming to a conclusion that the petitioner would be entitled for the reliefs prayed in the writ application.'*

in *Ayesha Exports v. Union of India [2020 (371) ELT 353 (Pat)]* should, according to Learned Counsel, set at rest any conviction among the officials of Directorate of Revenue Intelligence (DRI) that reports of Arecanut Research & Development Foundation (ARDF) should, especially in the light of the admission of legal representative of the Government of India in that proceeding, be cited as final authority. Another proceeding, in *Laltanpuui v. Commissioner of Customs (Preventive), NER, Shillong [2022 (382) ELT 716 (Tri-Kolkata)]*, before the Tribunal and having met with similar disapproval, was carried to the Hon'ble High Court of Meghalaya and to the Hon'ble Supreme Court by the Commissioner of Customs to no avail.

10. Learned Counsel drew our attention to

'21. *The issue to be decided in these appeals is*

- (i) *whether the betel nut of foreign origin of 106.11 MT valued at Rs. 2,65,68,246/- has been smuggled and brought to Nagpur and stored in Goyal Warehous, Umri Phata, Bhandara Road, Nagpur and liable to confiscation.*
- (ii) *Whether all the appellants are involved in smuggling of said betel nuts of foreign origin, and*

(iii) Accordingly whether they are liable to penalty under Customs Act, 1962.

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23.1 I further observed that samples of betel nut were drawn from 106.11 MT seized betel nut under panchnama and sent to local laboratory i.e. Regional Public Health Laboratory, Nagpur in order to ascertain its compliance to FSSAI norms reported that the samples do not confirm to the regulations No. 2.12 of proprietary food and is unsafe as per section 3(i)(22)(x) of food safety & standards Act, 2006 along with Rules & Regulations, 2011. The samples were also sent to ARDF, Mangaluru sent test report dt. 25.4.2018 and confirmed the country of origin of betel nut. As per report, the betel nut was of Indonesian & Myanmar origin.

23.3 Their further contention is that the cross-examination of the Officer/ Chemist from Arecanut Research Development Foundation (here-in-after referred to as 'ARDF'), Mangalore, who had reported the samples of Betel Nuts in question to be of Indonesian or Myanmar origin, was not allowed and thus, Principles of Natural Justice have been violated. 23.4.1. In this regard, I have gone through the above relied upon judgments and the appellant's submission. I find that the Lower Authority has correctly observed that ARDF is a well known Institute in the field of research of Betel Nuts. They are well equipped and had modern scientific techniques to identify the origin of goods. I agree with the observation of the lower authority that challenging the domain knowledge of expert of ARDF is baseless, and request of the appellants for cross-examination of the expert is worthless. Secondly, the technical expert of ARDF by conducting tests has only discharged his professional duty and he was not a witness to

*the proceedings. No statement has been recorded from him prior to issuance of Show Cause Notice or thereafter during adjudication proceedings. Since there is no examination-in-chief, cross-examination of such a technical expert of ARDF has been rightly rejected by the lower authority.’,*

in the order that was impugned before the first appellate authority, to point out the domain appropriated for adjudication as well as the overwhelming reliance placed on report of the laboratory contrary to judicial rulings.

11. Learned Authorized Representative pointed out to

*‘91.4 The Noticee further submitted that the Betel Nuts detained are of Indian Origin and been purchased in the domestic market from C.R.Stores, Assam and the same had already been furnished the Purchase Bills for the same to the Officers at the time of Investigation itself, Furthermore, even the original bills for the above purchase of Betel Nuts been detained by the Officers on 10.09.2017 been shown to the officers also. Hence, the allegation in the show cause notice that the Betel Nuts are of Foreign Origin and been smuggled through Indo-Myanmar Border is totally baseless and a false allegation. He further submitted that the above detained Betel Nuts were of only Indian Origin and were of Domestic Purchase only and are of Indian Origin goods only.*

*The contention of the Noticee is that goods were Indian Origin and purchased from the domestic market from C.R.Stores, Assam. I find that the Noticee have never submitted the any documentary evidence regarding purchase bills to the officers of the DRI. Even the copy of the purchase bills have never been shown / submitted before the*

*adjudicating authority during the course of personal hearing by the Adv. A.K. Jayraj, Authorised representative of the Noticee. Even he have not submitted any documentary evidence along with the reply dt, 09.09.2019 received in this office on 19.09.2019 to corroborate his statement that the betelnuts have been purchased from C.R.Stores, Assam. Further only bills are not sufficient for evidence. Also evidence of money transactions are required which were not produced before the Adjudicating Authority.*

*I find that the investigating agency has drawn out the samples from 106.11 MT seized goods and sent to the Arecanut Research & Development Foundation, Mangaluru, Karnataka. The Arecanut Research and Development Foundation, Mangaluru is a well known name in the research on Betel Nut and they have advanced technologies to identify the goods properly. Geographical Indicators are specific and based of morphology, physical appearance, and color characteristic, specific patterns and designs on products can indicate the geographical areas in plants also. That is why G.I. Patent (Geographical Indicators) is prevalent. In this case also The Arecanut Research and Development Foundation, Mangaluru has certified vide test report dated 25.4.2018 (RUD-88) of samples drawn out of 106.11 MT seized goods had confirmed the country of origin of betel nuts as Indonesian origin and Myanmar origin.*

*Further I find from the various statements of persons recorded and from the documents retrieved from the hard disks it confirms that smuggling of foreign origin betelnut without filing customs documents and without paying customs duty was going on since 2014-15. In the excel sheet (RUD-90) there have been details of consignments of betelnuts*

*which had been imported in the months of August 2017 which further indicates that stock of 106.11 MT of betelnut seized by DRI consignments imported from Indonesia.*

*Hence, I observed that the contentions of Noticee are baseless and same was raise for just diverting the adjudicating procedure in other directions.*

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*92.1 The Noticee submitted that the allegation in the Show Cause Notice that Betel Nuts of Foreign Origin been smuggled through Indo-Myanmar Border and thereafter, transporting it and storing at Nagpur is totally incorrect and baseless allegation.*

*I find that that the SCN is based on the thorough investigation by DRI and statements of the various persons, the whatsApp chats / images recovered from the mobile of various persons and emails, hence it has evidential value before the court of law. Hence I observed that, the contentions of Noticee are baseless and same was raise for just diverting the adjudicating procedure in other directions.'*

in support of his contention that no evidence of local procurement, as claimed by appellant, had been submitted.

12. The other proceedings decided the fate of 148.230 MT and 17.41 MT of 'betel nuts', valued at ₹ 3,46,70,640 and at ₹ 43,73,473, imported by M/s Silver Export at Nhava Sheva that had been intercepted at CFS, Nhava Sheva and that which came to attention after clearance; denial of benefit of exemption in notification 26/2000-Cus dated 1<sup>st</sup> March 2000 to both saddled the latter with duty liability

of ₹ 48,10,820 under section 28(4) of Customs Act, 1962, along with applicable interest, and the former, though confiscated under section 111 (h) and 111(o) of Customs Act, 1962, was allowed to be redeemed on payment of fine of ₹ 50,00,000 subject to discharge of duty liability thereon. Penalties of ₹ 50,00,000, ₹ 20,00,000 and ₹ 20,00,000 were imposed in addition, under section 112(a) of Customs Act, 1962 on the importer and on Shri Sayeed Ahmed Shaikh and Shri Mujeeb Begawala respectively and of ₹ 50,00,000, ₹ 20,00,000 and ₹ 30,00,000 on S/Shri Gulam Farooq Noorani, Deepak Arjandas Sadhwani and Varun Deepak Sadhwani besides penalties of ₹ 30,00,000 on Shri Gulam Farooq Noorani and ₹ 20,00,000 each on the other individuals under section 114AA of Customs Act, 1962. The adjudicating authority considered this scale of penalties to be warranted as Shri Sayeed Ahmed Shaikh and Shri Mujeeb Begawala, partners in M/s Silver Exports, permitted Shri Gulam Farooq Noorani to use the cover of their 'import export code (IEC)' for indulging in wrongful availment of exemption, extended to 'betel nuts' from Sri Lanka, on goods of Indonesian origin.

13. The goods, packed in 'loose form' in 'gunny bags' made of jute, marked with 'BUDIMAN-90', were found to tally with declared weight but substantially fewer than the declared number of bags. It was Shri Gulam Farooq Noorani who apparently confessed to the investigators that the marking on the bags were that of an Indonesian

entity, M/s Swee Choon Co Pte Ltd, that Shri Deepak Sadhwani was the financier of the consignment and that he had sourced and arranged documentation for enabling M/s Silver Export to file bills of entry. The two partners admitted that they were in receipt of payments for each such container. At the same time, an employee of M/s RR Shipping Pvt Ltd, the Indian arm of M/s Garuda Container Line which had issued bills of lading for its parent, M/s Sun Ocean Logistics Pvt Ltd, intimated receipt of mail about movement of containers from Singapore to Colombo. It is on record that Sri Lankan Customs, *vide* letter dated 11<sup>th</sup> September 2018, intimated that no imports had been effected against bill of lading purportedly covering shipment to Colombo and that the four containers. covered by bill of lading no. NSECMB 17050007-02/19.06.2017, had been transhipped to Nhava Sheva instead of being destuffed there. According to the adjudicating authority, all of these taken together was the jigsaw from which the picture of offence could be drawn.

14. The denial of exemption was based on the finding that the goods, being of Indonesian origin, were not entitled to the concessional rate of duty, intended for 'betel nuts' harvested in Sri Lanka and conforming to Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000. The impugned goods were confiscated under the authority of

section 111(h) and 111(o) of Customs Act, 1962 and Shri Gulam Farooq Noorani was proceeded with under the authority of section 2(26) and section 2(39) as well as section 11 of Customs Act, 1962, along with the two partners of M/s Silver Exports as also liable for the duty, fine and penalty recoverable from M/s Silver Exports. The findings on the origin of the goods are summarized thus

*'48. In view of the above, I find that the impugned show cause notice issued to the IEC holder and to Shri Gulam Farooq Noorani in so far as the import of the goods from Sri Lanka is concerned, is clearly sustainable on facts and also the evidences as discussed above and which are duly corroborated by statements of the IEC holder and Shri Shri Gulam Farooq Noorani, the actual importer and owner of the goods. The evidences in the form of the parallel sets of Bill of Lading and words scribed on the jute bag namely, 'Budhiman - 90', owner of the said brand being M/s SweeChoon Co. Pte. Ltd. Indonesia, is proof of the fact that the goods were never procured from Sri Lanka but originated from Indonesia, travelled to Colombo and took a circuitous route from Colombo to the Port of Nhava-Sheva. The evidence here is to the extent that there was no de-stuffing of the cargo at the Port of Colombo and the cargo came to the Port of Nhava Sheva as it is. I, therefore find adequate force in the allegations made in the show cause notice that the goods imported were not from Sri Lanka but originated from Indonesia for which there was no exemption notification applicable at the relevant time when the imports were made from Indonesia.*

in the adjudication order impugned before us. That statements recorded in other proceedings could be insinuated into this

proceedings was found thus

*'49.4. Thus, I find that these Statements recorded by the gazetted officer under the provisions of Section 108 of the Customs Act, 1962 is an evidence that can be used in any other proceedings whether or not such statements were recorded during the course of investigation of the impugned 4 Bills of Entry as long as the facts contained in these statements are relevant to the present proceedings and the same have been disclosed to the Noticees.'*

The adjudication is, thus, founded upon statements in another case, the markings on the bags and the two sets of bills of lading pertaining to containers that Sri Lankan Customs reported as not having been destuffed at Colombo before being deployed in carriage of 'betel nuts' from there even in the face of the documentation for clearance having been filed.

15. The authenticity of declaration of Sri Lankan origin is to be established by submission of 'certificate of origin' as provided for in rule 11 of Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000. That the declaration in the four bills of entry, covering the goods under seizure at Nhava Sheva, as well as that of goods already cleared was so supported is not in dispute. That the procedure laid down in Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka

and the Republic of India) Rules, 2000 for verification, in the event of doubts about authenticity, has been duly followed is not an assertion by customs authorities. The entire case rests upon the markings on the gunny bags which Shri Ghulam Farooq Irani has admitted as belonging to an Indonesian entity and the report of Sri Lankan Customs that the containers, purportedly carrying cargo of Sri Lankan origin, had, after arrival at Colombo from Singapore, not been destuffed; we are unable to fathom that an investigation agency takes such determination of fact on mere statement instead of ascertaining such to be a fact. Statements or assertions are too tenuous an evidence to hang a fact upon. We find it mystifying that these strands of disparate evidence, that only hint at an origin, have been put together to infer that 'betel nuts' are not of Sri Lankan origin. Agricultural products such as 'betel nut', cultivated in a few countries of Asia with India contributing to over half thereof leaving others distantly behind and indistinguishable as to its origin, cannot be conclusively held to have originated from Indonesia without clear evidence of having been sourced from Indonesia. The relied upon evidence may have been reason enough cast doubts on the declared origin which, of itself, is too inconclusive except by resort to rule 13(2) and 13(3) of Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000. Neither has any step been

taken to initiate the procedure prescribed in rule 13(4) of Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000. Treaties and agreements are, generally, enforced through national legislation and, even if not, have been judicially determined as enforceable through courts of law. Here is an institution of the State of a contracting party that places such premium on lack of trust in institutional mechanism established by the Agreement, and with overriding effect, as to superimpose conventional ascertainment relied upon in domestic investigations under the garb of implied national interest. To approve of such travesty, merely on the ground of noble intentions, is to put the stamp of approval on whittling of the authority of the State from within. We cannot do so.

16. Seizure of the consignment at Nagpur is a brazen act of intrusion. As pointed out by Learned Counsel, 'betel nuts' are not included in section 123 of Customs Act, 1962. Implied resort to this particular exception to the principle of smuggling having to be established by customs authorities, by seizure of goods that were not in a customs area and requiring the owners to produce evidence of provenance, is contrary to Customs Act, 1962. Going a step further, even the invoices furnished were discarded without any examination on the part of the original authority. The scope of section 123 of

Customs Act, 1962 has been implicitly expanded by executive overreach inasmuch as the enactment, presupposing illegal entry into the country has been invoked in relation to an agricultural product, predominantly originating in India, and, thereby, upturning the logic for existence of section 123 of Customs Act, 1962 on its head. The decisions of the Tribunal in *re Maa Gauri Traders* and of the Hon'ble High Court of Patna in *re Ayesha Exports* leave no room for doubt that claim of goods having been sourced in Assam cannot be discounted by resort to 'expert opinion' of Arecanut Research & Development Foundation (ADRF). The law has been violated by those entrusted with its enforcement.

17. Compounding that breach, goods that have not been established to be sourced from outside India were subject to determination as 'unfit for human consumption' – a province not conferred by Customs Act, 1962 to customs authorities even on imported goods and which, at best, may be regulated for customs clearance only to such extent as the designated authority under the Food Safety and Standards Act, 2006 decides. Resort to that enforcement domain on goods found within the territory of India is clearly extralegal and an encroachment upon jurisdiction conferred upon Food Safety and Standards Authority of India with its domain expertise that customs authorities have not.

18. The confiscation of 148.230 MT of 'betel nuts' at Nhava Sheva

under section 111 of Customs Act, 1962 is invalid for being consequent upon determination of origin in the absence of compliance with procedure laid down in Customs Tariff (Determination of Origin of Goods under Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000. In the absence of that validating ascertainment, the liability to duty other than in accordance with exemption in notification no. 26/2002-Cus dated 1<sup>st</sup> March 2002 is contrary to law. Fines imposed under section 125 of Customs Act, 1962 are, therefore, set aside as also penalties under section 112 and 114AA of Customs Act, 1962. Confiscation of 106.11 MT of 'betel nuts' at Nagpur under section 111 of Customs Act, 1962 is set aside. Penalties under section 112 and 114AA of Customs Act, 1962 are also set aside.

19. Accordingly, the appeals are allowed by setting aside the two impugned orders.

*(Order pronounced in the open court on 27/06/2023)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***