CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 87108 of 2019

(Arising out of Order-in-Original No. 115/2018-19/Commr/NS-I/JNCH dated 28.03.2019 passed by Commissioner of Customs, Nhava Sheva-I, JNCH)

Commissioner of Customs Nhava Sheva-I **.....Appellant**
JNPT, Custom House, Nhava Sheva, Raigad,
Maharashtra – 400 707.

VERSUS

Dry Nut Enterprises **.....Respondent**
2204, 1st Floor Gali Higa Beg, Tilak Bazar,
Delhi – 110 006.

Appearance:

Shri Ram Kumar , Authorized Representative for the Revenue
Shri Harish Kohli, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87480/2023

Date of Hearing: 03.11.2022
Date of Decision: 02.05.2023

PER : S.K. MOHANTY

Brief facts of the case, leading to this appeal, filed by Revenue, are summarized hereinbelow:

1.1 India and Sri Lanka, being member countries of the South Asian Association for Regional Co-operation (SAARC), have agreed upon for entering into preferential trading agreement for transacting in certain goods at concessional rate of Customs duty, as opposite to the normal rate prevalent in the Tariff structure, designed by both the countries. For accomplishing the said objectives, both the countries have entered into the Indo-Sri Lanka Free Trade Agreement (ISFTA). In order to give effect to the treaty, the Central Government in exercise of the powers conferred by sub-section (1) of Section 5 of the Customs Tariff Act, 1975 had issued the Notification No.19/2000-Cus. (N.T.) dated 06.03.2000, in framing the Customs Tariff (Determination of origin of goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000 (for short, referred to as "the Rules, 2000"). The Central Government had also issued the Notification No. 26/2000-Cus., dated 01.03.2000, in providing for exemption to specified goods of Sri Lankan origin. The said notification has *inter alia*, provided for various conditions/procedures, which have to be followed for availment of the customs duty exemption by the importer of the specified goods. One of the conditions itemized in the said notification is that the importer shall prove to the satisfaction of Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, in accordance with the Rules, 2000 that the goods in respect of which the benefit of the said exemption is claimed, are of the origin of Sri Lanka.

1.2 By availing the benefits provided under notification dated 01.03.2000 and the Rules, 2000, the respondents herein had imported 22 consignments of the notified goods 'Areca Nuts' of Sri Lankan origin. The Bills of Entry filed at the time of importation were assessed by the proper officer having jurisdiction over the Nhava Sheva Port. The declaration made by the respondents was accepted and the benefit provided under the notification dated 01.03.2000 was extended by the department and the imported goods was allowed clearance for home consumption. Subsequently, the respondents had also imported six numbers of said consignments on different dates, which were awaiting clearance by the Customs authorities. In the meantime, the Directorate of Revenue Intelligence (DRI), Mumbai had received intelligence that some importers were importing Areca

Nuts of Indonesian origin, but in order to evade payment of customs duty, the said goods were routed through Sri Lanka and then brough to India, by arranging the country of origin certificate as Sri Lanka. On the basis of the intelligence, the department had inquired into the matter in detail. The relevant import documents were examined and statements of various persons were recorded under summon. The live consignments (supra) imported by the respondents were kept on hold during the course of investigation. On the basis of investigation, the department had initiated show cause proceedings against the respondents, seeking for confirmation of the differential duty demand for both past and live consignments. The department had alleged that the subject goods were imported from Indonesia and the respondents had fraudulently managed to get the certificate of origin from Sri Lanka, in order to get the preferential rate of duty provided under the aforementioned notification.

1.3 The show cause notice dated 10.07.2018 issued to the respondents, seeking recovery of differential duty amount was adjudicated by the learned Commissioner of Customs, JNCH, Nhava Sheva vide Order-in-Original No.115/2018-19/Commr/NS-I/JNCH dated 28.03.2019 (for short, referred to as "the impugned order"), wherein the proposals made in the SCNs were dropped. The learned adjudicating authority has made the following observations in the impugned order to support dropping of the proposals made in the SCN:

> *"30. To summarize, the impugned notice seeks to deny the preferential tariff treatment available under ISFTA to 4 live and 22 past consignments areca nuts imported by DNE on the ground that the areca nuts were of Indonesian origin and were fraudulently shown as of Sri Lankan origin. The evidence on the basis of which these allegations have been made include, primarily, test reports in respect of the samples drawn from the live consignments and tracking details of the containers in respect of 4 past consignments. I have already noted above that the test reports contain merely opinion of a person, and suffer from a case of conflict of interest. Besides, it is settled law that test reports of one consignment cannot be applied to others which have not*

> *been tested. In respect of the tracking details of 4 containers, I have already discussed that their evidentiary value is rather limited in view of the inherent infirmities. Besides, tracking details of 4 containers cannot be blindly extended to cover all other imports without any firm and cogent basis. Other evidence, e.g., short time gap between local purchase of containers at Colombo and their boarding on vessels bound for Nhava Sheva, inability of shipping agents to provide tracking and other details of import consignments, a syndicate operating out of Sri Lanka to circumvent ISFTA etc. are assertions without being backed by required corroboration. However, the most glaring infirmity in the proposals of the impugned notice is the lack of any enquiry at the end of Sri Lankan government. As discussed above, the notification extending preferential tariff under ISFTA and the rules of origin governing the agreement contain detailed provisions regarding co-operation, joint enquiry, and investigation of the two contracting parties. Since, imports under ISFTA are governed by the 2 notifications discussed above, there could have been no conceivable reason not to follow the due procedure as laid down. The investigation was required, in my considered opinion, to present the evidence of circumvention of the rules of origin under ISFTA to appropriate Sri Lankan authorities and seek a mutually satisfactory resolution. Not having done so is fatal to the cause of the proposals contained in the show cause notice."*

2. Revenue has assailed the impugned order *inter alia*, on the ground that the adjudicating authority has failed to appreciate various evidences gathered during investigation, as detailed in the SCN, to prove that the imported goods were originated from the country other than Sri Lanka and that only routing of the containers were made to show that those were of Sri Lankan origin. It has further been contended that the adjudicating authority has failed to appreciate that during investigation, various documents were called from the importer as well as the shipping company such as, stuffing details, place of stuffing of the said goods, booking of containers, stuffing report and surveyor's report of the said stuffing, but those documents were not provided by the shipping agent in India,

assigning the reason that their counterpart in Sri Lanka as well as the importer had not provided the same. Thus, it is contended that the original authority had failed to appreciate that the requirement of evidence, other than the Country Of Origin (COO) certificate, cannot be examined in their proper perspective, is not legal and proper.

3. Heard both sides and examined the case records, including the written notes of submissions filed by both sides.

4. Certificate of Origin issued by a competent and designated authority would be sufficient to demonstrate the genuineness of the origin of goods to avail the scheme of preferential tariff. Notification No.26/2000-Customs dated 01.03.2000 stipulates that the importer has to prove to the satisfaction of the Deputy Commissioner or Assistant Commissioner of Customs, as per the requirement of Rules, 2000 read with Notification No. 19/2000-Customs (N.T.) dated 01.03.2000 that the goods in respect of which the benefit of this exemption is claimed are of the origin of Sri Lanka. The respondent in the present case had filed the Bill of Entry, in annexing the import documents namely, Bill of Lading, packing list, commercial invoice along with the country of origin certificate issued by the Chamber of Commerce, Colombo. Since, the Department of Commerce & Industry, Government of Sri Lanka had authenticated the documents under ISFTA, the bonafide and authenticity of such certification cannot be questioned by the proper officer at the port of import. It is not the case of Revenue, that the respondent had forged the certificate, mentioning the country of origin as Sri Lanka. Suppose, the DRI had any apprehension or doubt about the genuineness of the COO, then they could have easily verified the same from their counterpart in the Customs department in Sri Lanka or through Indian Embassy at Sri Lanka.

5. We find that the department has mainly relied upon the test reports submitted by Shri U. Pramod Kumar, Deputy General Manager, Arecanut Marketing, CAMPCO, Mangalore, which were approved by Dr. S. Keshava Bhatt, Executive Officer, ARDF. In the

cross examination of Dr. Bhatt during the course of adjudication proceedings, he has stated that there is no definitive test to establish the origin of arecanuts and that he has no personal experience on Sri Lanka arecanuts inasmuch as he has not undergone any training/ advance course on arecanuts, and has not travelled to any arecanut producing country for advanced research. Since, the framer of the test report has not placed any authoritative submissions, placing blind reliance on such report, without carrying out any other verification/examination would not alter the situation that the goods were not of Sri Lankan origin. Further, during the course of cross examination, the Bill of Lading (B/L) accompanying the import shipments were shown to the Shri Rohira, who had agreed that the fonts, alignments and setting of the two sets of documents were different and the B/L was received by mail. The respondent herein had raised the serious doubt on the authenticity of the switch B/L and had questioned its admissibility. We find that such aspect has been adequately dealt by the original authority in the impugned order passed by him. He has held that the provisions of Section 138C (1) (c) of the Customs Act, 1962, so far as it relates to a statement contained in a document and included in a printed material produced by a computer require fulfillment of the conditions stipulated in Section 137C(2) *ibid*, which has not been fulfilled by the department. He has further held that the provisions of Section 139 ibid do not come to the rescue of the documents relied upon inasmuch as M/s Cargosol was not made as a party in the show cause proceedings. We are in complete agreement with the observations made by the original authority in dropping the show cause proceedings initiated against the respondent. On the basis of the available records, since he has arrived at the conclusion that the goods are of Sri Lankan origin, different views cannot be expressed by us, especially for the reason that no documentary evidences were produced by the department to prove that the goods are of Indonesian origin and not of Sri Lankan origin.

6. In view of above discussions, we do not find any infirmity in the impugned order passed by the learned Commissioner of Customs, Nhava Sheva-I. Therefore, the appeal filed by Revenue is dismissed.

(Order pronounced in the open court on 02.05.2023)

(C J Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)