

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86557 of 2023

(Arising out of Order-in-Appeal Nos. 640 to 642 (Gr. I & IA)/2023(JNCH)/Appeals dated 13.06.2023 passed by Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.)

Suresh Kumar Garg

.....Appellant

B-10/4, Wazirpur Group Industrial Area
Delhi – 110 052.

VERSUS

Commissioner of Customs (NS-I)

.....Respondent

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

WITH

Customs Appeal No. 86558 of 2023

(Arising out of Order-in-Appeal Nos. 640 to 642 (Gr. I & IA)/2023(JNCH)/Appeals dated 13.06.2023 passed by Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.)

Anpurna Devi Garg

.....Appellant

B-10/4, Wazirpur Group Industrial Area
Delhi – 110 052.

VERSUS

Commissioner of Customs (NS-I)

.....Respondent

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

WITH

Customs Appeal No. 86766 of 2023

(Arising out of Order-in-Appeal Nos. 640 to 642 (Gr. I & IA)/2023(JNCH)/Appeals dated 13.06.2023 passed by Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.)

Shiv Ganga Polypet LLP

.....Appellant

B-10/4, Wazirpur Group Industrial Area
Delhi – 110 052.

VERSUS

Commissioner of Customs (NS-I)

.....Respondent

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

Appearance:

Shri Akhil Krishan Maggu, Advocate for the Appellants
Shri D.S. Mann, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85751-85753/2024

Date of Hearing: 05.04.2024
Date of Decision: 05.08.2024

PER : M.M. PARTHIBAN

These appeals have been filed by M/s Shiv Ganga Polypet LLP, Delhi; Shri Suresh Kumar Garg, Partner and Ms. Anpurna Devi Garg, Partner of the above said business entity (herein after, for short referred together as 'the appellants'), assailing Order-in-Appeal Nos. 640 to 642 (Gr. I & IA)/ 2023 (JNCH)/Appeals dated 13.06.2023 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia*, have imported goods vide Bill of Entry (B/E) No. 3343458 dated 22.09.2017 declaring it as 'Sri Lanka Areca Nuts' and classifying under Customs Tariff Item (CTI) 0802 8090 of the First Schedule to the Customs Tariff Act, 1975 with declared price of USD 351000 for 90 MTs under the cover of four invoices Nos.SAE007/2017 to SAE0010/2017, all dated 16.09.2017. The appellants had claimed the benefit of customs duty exemption under Notification No.26/2000-Customs dated 01.03.2000 under India Sri Lanka Free Trade Agreement (ISFTA). The duty exemption under this notification is subject to the condition that the importer shall prove to the satisfaction of the Deputy Commissioner of Customs/Assistant Commissioner of Customs, that the imported goods are of the origin of Sri Lanka in accordance with the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri

Lanka and the Republic of India) Rules, 2000 issued vide Notification No. 19/2000-Customs (N.T), dated 01.03.2000.

2.2 The above referred imported goods covered under the impugned B/E was assessed by JNCH customs appraising group and was also examined by customs officers in docks examination area, as per the examination order given by them. During the examination of the said imported cargo, the customs docks examination officers noticed that there were no marks of country of origin on the jute gunny bags containing areca nuts; there were only certain mark as MIG and in different language; there was a burnt cigarette of Indonesian Brand '234 Fatsal' in the container. On having reasonable suspicion that the goods were not of the declared country of origin, the matter was referred by the JNCH Customs appraising group for 100% examination by the Special Intelligence & Investigation Branch (SIIB) of JNCH Customs and for their further investigation. During the examination of the imported goods by SIIB, it was found by them that some of the bags in each container were found to have water damage; no marks and numbers on the goods have been mentioned; the stencil marking on the bags appear to be in Javanese script with some numerals. Accordingly, SIIB conducted further investigation by recording statements from the concerned persons. Further during the course of investigation, the export documents from Sri Lanka were called for from the shipping line, and upon its scrutiny, the SIIB noticed that the declared value in Sri Lanka export documents in Schedule-II is USD 2400/- per MT (C&F) as against the declared value of USD 3900/- per MT (C&F) in the bill of entry filed by the appellants. Therefore, SIIB investigation came to the conclusion that the appellants have overvalued the imported goods in order to comply with the requirement of DGFT's Notification No.35/2015-2020 dated 17.01.2017 which is prescribed a Minimum Import Price (MIP) Rs.251/- per Kilogram in order to allow the imports as "Free" under the Foreign Trade Policy; the appellants have wrongly claimed the full exemption from Basic Customs Duty (BCD) under Notification No.26/2000-Customs dated 01.03.2000, as the goods are not of Sri Lankan origin for evading 100% BCD applicable on impugned goods. However, on the request of appellants, the goods were provisionally allowed for release upon execution of bank guarantee of Rs. 2,98,04,497/- and the bond for full amount of assessable value. The quantum of bank guarantee was disputed by the appellants, which was decided by the Tribunal in its

Final Order No. A/85007/2018 dated 12.01.2018 by reducing the amount of bank guarantee to 50% i.e., Rs.1,49,02,248/-. Upon fulfillment of the conditions of bank guarantee and execution of the bond, the jurisdictional Commissioner of Customs had provisionally released the impugned goods to the appellants. After completion of the investigation, Show Cause Notice (SCN) dated 20.09.2018 was issued on the appellants proposing for confiscation of imported goods by denying the exemption notification benefit claimed by the appellants and for finalizing the assessment of B/E, encashing the bank guarantee for the differential duty, if any, besides proposing for imposition of penalty on the appellants under the Customs Act, 1962. The SCN was adjudicated by the Additional Commissioner of Customs, Appraising Group-I & IA, Nhava Sheva-I, JNCH vide Order-in-Original dated 15.02.2021, in confirmation of customs duty demands by denying the exemption under notification No. 26/ 2000-Customs dated 01.03.2000 in finally assessing the B/E and ordering for encashing the bank guarantee, confiscation of the impugned goods under Section 111(d) & 111(m) *ibid*, and for imposition of redemption fine under Section 125 *ibid*, penalties under Section 112(a), 114AA *ibid* on the appellants. Having been aggrieved with the above order, the appellants have filed appeals before the Commissioner of Customs (Appeals), who had disposed of the same by passing the impugned order dated 13.06.2023 by conforming the order passed by the original authority and in rejecting the appeals filed by the appellants. Feeling aggrieved with the above order, the appellants have filed these appeals before the Tribunal.

3.1. Learned Advocate for the appellants submitted that the imported goods vide B/E No 3343458 dated 22.09.2017 covered in the present appeals consist of 90 MTs of Areca nuts of Sri Lanka origin, and the appellants have paid to their supplier an amount of USD 351879.81 equivalent to Rs.2,25,48,458.88/- in eight payments through banking channel. He further submitted that the inadvertently declared incorrect value in export documents of Sri Lanka Customs have been sought for amendment by the supplier abroad, and such amendments have been accepted by the Sri Lanka customs authorities, by duly amending the value of the impugned goods. Accordingly, the declared value of goods was amended from USD 43,200 to USD 70,200 in CUSDEC documents No. E 60934, No. E 60269, No. E 60935 in respect of 18 MTs of areca nuts each (altogether 54 MTs) and

another CUSDEC document No. E 60271 was also amended from USD 86,400 to USD 140,400 for 36 MTS of areca nuts by Sri Lanka customs authorities on 12.12.2018. In view of the average value of imported goods per Kg. being Rs.252/- as per the declared value in the B/E, and the export documents of Sri Lanka have also been revised, he claimed that the requirement of DGFT notification have been properly fulfilled.

3.2 In respect of the allegation against fake Country of Origin (COO) certificates, learned Advocate had submitted that the Ministry of Industry and Commerce, Sri Lanka have duly certified the four COO certificates issued in respect of the impugned goods and this has also been again confirmed by the Director General of Commerce, Sri Lanka. He further submitted that the department had not provided any evidence for such allegation fake COO, as their query for such verification of COOs addressed to the Indian authorities at Colombo by e-mail have also been replied by the Deputy Head, Economic & Commercial wing, High Commission of India in Sri Lanka stating that COO issued by the Ministry of Industry and Commerce, Sri Lanka under the SAFTA are accepted by Indian Customs authorities, and if the Customs authorities need to verify the authenticity, the same is to be done separately with the Ministry of Industry and Commerce, Sri Lanka. He further submitted that no such exercise was undertaken by Customs Department and hence the allegation of fake COO is completely baseless.

3.3 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal and judgements of Hon'ble Supreme Court, in the respective cases mentioned below:

- (i) *Unique Spices. Vs. Commissioner of Customs, Tuticorin* – 2019 (366) E.L.T. 83 (Mad.)
- (ii) *Aabis International Vs. Commissioner of Customs, Chennai Customs-II Commissionerate* – 2021 (377) E.L.T. 479 (Mad.)
- (iii) *R.S. Industries (Rolling Mills) Ltd. Vs. Commissioner of Central Excise, Jaipur* – 2018 (359) E.L.T. 698 (Tri. - Del..)
- (iv) *BDB Exports Pvt. Ltd. Vs. Commissioner of Customs (Preventive), Kolkata* – 2017 (347) E.L.T. 662 (Tri.- Kolkata)

3.4 In view of the above submissions, learned Advocate prayed the impugned order is liable to be set aside and requested that their appeal filed by the appellants may be allowed.

4.1 Learned Authorised Representative (AR) reiterated the findings made by the Commissioner (Appeals) in the impugned order and submitted that there is sufficient evidence for confirmation of adjudged demands as follows. The import consignment had no marking of Sri Lankan origin on the packaging of the impugned goods; the stencil marking of 'MIG' is written in Javanese script, and a burnt cigarette bud of Indonesian brand '234 Fatsal' was found in the cargo; certain bags of the imported goods were damaged; payment for full amount of higher value of imported goods at the rate of USD 3900/- per MT has not reflected in the export documents obtained from the shipping line; the importer has not remitted USD1100 to the supplier; impugned goods were sold in the local market at Rs.210/- kgs. and the test report of the Areca Nuts Research and Development Foundation, Mangalore has stated that the impugned goods seems to be white split areca nut of Indonesian origin.

4.2 Learned AR also submitted that the appellants had imported the impugned goods below the MIP and therefore the appellants are liable for penalty under the Customs Act, 1962. Since the imported goods of value below the MIP are not permitted for import under the FTP, these are liable for confiscation and the imposition of redemption fine is justifiable in the impugned order.

4.3 Thus, learned AR justified the action taken by learned Commissioner of Customs (Appeals) in upholding the confirmation of the adjudged demands in the original order and thus pleaded for rejecting the appeals filed by the appellants.

4.4 In support of Revenue's stand, learned AR had relied upon the judgement of Bombay High Court, in the case *Amritlakshmi Machine Works Vs. Commissioner of Customs (Import)* – 2016 (336) E.L.T. 225 (Bombay).

5. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

6.1 The issues involved herein before us is to decide the following:

(i) Whether the imported goods classified under CTI 0802 8090 and declared as 'Sri Lanka Areca Nuts' with value of USD 351000 for 90 MTs by the appellants is eligible for availing the benefit of customs duty exemption under Notification No.26/2000-Customs dated 01.03.2000 in terms of India Sri Lanka Free Trade Agreement.

(ii) Whether the imported goods fulfill the requirement of DGFT Notification No. 35/2015-2020 dated 17.01.2017, in order to claim the import of impugned goods as 'Free'.

(iii) Whether the impugned order dated 13.06.2023 upholding confirmation of adjudged demands in original order is legally sustainable.

6.2 In the impugned order dated 13.06.2023, learned Commissioner of Customs (Appeals) had given a finding that the sealed samples of the imported goods have been tested by the department and test report from the Areca nut Research & Development Foundation (ARDF), Mangalore, Karnataka had suggested that the areca nuts imported by the appellants appear to be white split areca nuts of the Indonesian origin, which is in violation of the terms specified in the Notification No.26/2000-Customs dated 01.03.2000 under ISFTA. He had also observed that though the appellants have denied the results of the test report, however, nothing had come on record to doubt these test results and to reject the test report. Further citing the reasons that there is no clarity on the payment made by the appellants to the supplier abroad for the full value of the imported goods, he had concluded that the appellants have attempted to circumvent the fulfillment of MIP requirement in terms of the DGFT notification. Accordingly, learned Commissioner of Customs (Appeals) had upheld the order of the original authority.

7.1 From plain reading of the Notification No.26/2000-Customs dated 01.03.2000, it transpires that it provides exemption from the levy of Basic Customs duty in terms of legal provisions contained in Section 25(1) of the Customs Act, 1962, in respect of specified goods listed in the table appended

to it, subject to certain conditions. These conditions as specified in the said notification as applicable to the import of areca nuts are viz.,

- (i) the importer shall prove to the satisfaction of the Deputy Commissioner of Customs/Assistant Commissioner of Customs, that the imported goods are of the origin of Sri Lanka in accordance with the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 issued vide Notification No. 19/2000-Customs (N.T), dated 01.03.2000;
- (ii) the importer follows the procedure specified by the Government of India, from time to time.

It is not in dispute that the imported areca nuts are duly covered as one of the items specified in the table appended to such notification as one of the eligible item for exemption under such notification. The Department is only disputing the origin of the imported areca nuts on the basis of test reports obtained from ARDF laboratory, Mangalore and certain evidences seen during examination to state that there was burnt cigarette bud of Indonesian brand and there was no specific marks and numbers in packages indicating the origin of Sri Lanka.

7.2 In the test report dated 31.07.2018 of the Areca nut Research & Development Foundation (R.) obtained by the department, it is stated that the identification of origin has been arrived at based on cut test, appearance, size etc., The extract of the test report is as below:

"IDENTIFICATION OF ORIGIN
Based on cut test, Appearance, Size etc.

Texture:

The Areca nuts supplied are of medium nuts with round to oval in shape. Light brown in colour. Frequently portion of a hard, brittle grey, silvery coat are attached more or less firmly to the seed. The cut portion of Betel Nut exhibits a marbled interior, dark brown lines alternating with opal white portions. This resembles to the texture of Indonesian origin.

Conclusion:

The sample of Areca nuts provided by the Deputy Commissioner of Customs, Office of the Commissioner of Customs, SIIB(I), Nhava Sheva, Raigad, Maharashtra vide letter F. No. SG/Misc-212/2017-

18/SIIB(I) JNCH dated 05.07.2018 under its seal (Bill of Entry No. 3343458 dated 22.09.2017, imported by M/s Shiv Ganga Polypet LLP) has been tested and seems to be of White Split Areca nuts of Indonesian Origin. Nearly 15% of the areca nut samples supplied are infested with fungus."

On perusal of the test report, it is seen that the above test report do not bring out the testing of any specific characteristics of the imported areca nuts, to state that the product is from specific origin. There is no definite finding given on the basis of any specific facts to say that the imported goods are not of Sri Lanka origin. It is also on record in the impugned order at paragraph 6.2, that the appellants have denied the results of such test report. Therefore no re-test for confirmation of the test results appear to have been conducted by the department. In this regard, we find that the Central Board of Excise and Customs (CBEC) had prescribed detailed guidelines on how the imported goods shall be tested, re-tested in order to decide the issue in a conclusive manner and to facilitate the trade. The extract of the said circular is given below:

"Circular No. 36/2001-Cus., dated 15-6-2001

F. No. 450/21/1998-CUS.IV

*Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs, New Delhi*

Subject : Application of PFA Act, 1954 and other Acts for the clearance of consignments of food articles - instructions – regarding

I am directed to refer to the Board's Circular No. 103/2000-Cus., dated 15th December, 2000 on above mentioned subject. In the said Circular, detailed guidelines were provided for examination, testing of food items prior to Customs clearance. Since then the Directorate General of Foreign Trade has issued a Notification No. 3(RE-2001)/1997-2002, dated 31-3-2001 asking the Customs to ensure that all the imported edible/food products comply with the conditions of the Prevention of Food Adulteration Act, 1954 prior to their clearance. In this connection, the D.O. letter No. R-2604/M(CUS & EP)/2001, dated 21-4-2001 of Member (Customs) to all the Chief Commissioners refers.

2. Pursuant to the said notification of the DGFT, the following decisions have been taken for clearance of food articles.

2.1 The Customs shall undertake following general checks in addition to testing of samples in terms of sub-paragraph 2.3 and paragraph 3 prior to clearance of food items, and if the product does not satisfy these requirements, clearance shall not be allowed :-

(a) The condition of the hold in which the products were transported should be checked to see whether they meet the requirements of storage, as per the nature of the product, and does not in any way cause deterioration or contamination of the products.

(b) Physical/visual appearance in terms of possible damage - whether it is swollen or bulged in appearance; and also for rodent/insect contamination or presence of filth, dirt etc. - should be checked.

(c) The product should meet the labeling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules. This includes ensuring that the label is written not only in any foreign language, but also in English. The details of ingredients in descending order, date of manufacture, batch no., best before date etc., are mandatory requirements. All products will also have to indicate details of best before on all food packages. (Reference Ministry of Health Notification No. GSR 537(E), dated 13th June 2000).

2.3 All the consignments of edible/food products imported through ports, airports, ICDs, CFSs, Land Customs Stations shall be referred to PHOs for testing and clearance shall be allowed only after receipt of the test report. Pending receipt of test report, such consignments may be allowed to be stored in warehouses under Section 49 of the Customs Act, 1962. If the product fails the test, the Customs authorities will ensure that the goods are re-exported out of the country by following the usual adjudication procedure or destroyed as required under the relevant rules.

2.4 As regards ICDs/CFSs/ports/airports/LCSs, where Port Health Officers are not available, the Customs shall draw the samples and get these tested from the nearest Central Food Laboratory or a laboratory authorised for such testing by the Directorate General of Health Services.

2.5 The Customs shall also develop a data base regarding importers and import sources and products which are found to consistently fail the tests and give some feedback on the nature of the shortcomings noted to the DGHS to serve as input for policy formulation.

3. In addition to testing of food items under the PFA Act, 1954, these items shall also be subject to examination/testing to ensure compliance of the requirements of other Acts, regulations, and orders such as Meat Food Products Order, 1973, Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989, the Livestock Act, etc., for the time being in force if these are also covered by these Acts/orders, before these are allowed clearance into the country.

4. The Board Circular No. 103/2000-Cus., dated 15-12-2000 stands rescinded.

5. These instructions, issued in continuation of Member (Customs)'s D.O. letter referred to above, may be brought to the notice of all concerned by way of issuance of a suitable Public Notice/Standing Order.

6. Difficulties, if any, in implementation of these instructions, may be brought to the notice of the Board. Kindly acknowledge receipt of this Circular."

"Circular No. 30/2017-Cus., dated 18-7-2017**F. No. 450/15/2017-Cus. IV**

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Detailed guidelines for re-testing of samples - Regarding.

World Trade Organization (WTO) negotiated Trade Facilitation Agreement (TFA), which aims at simplifying the trade processes and bringing down barriers to trade has come into force w.e.f. 22nd February, 2017. India is a signatory to this agreement.

2. India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed :

a. Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise, shall be communicated to the importer or his authorized representative/Customs Broker immediately on its receipt.

b. In case the importer or his agent intends to request the Additional/Joint Commissioner of Customs for a re-rest, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.

c. Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/institution.

d. Re-test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.

e. The requests for re-test of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing the samples, the importer or his representative shall be present and certify that the samples drawn are representative.

f. The competent authority shall consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.

g. The facility of re-testing, is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. Board expects that such denial would be occasional and on reasonable grounds to be recorded in writing.

h. Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed mutatis mutandis.

3. Difficulties, if any, in implementation of this circular, should be brought to the notice of the Board...."

7.3 We find that neither the jurisdictional Customs authorities have drawn the samples of the impugned goods for testing by the Departmental Central Revenue Control Laboratory (CRCL) or the laboratories certified/approved by the Port Health Officer (PHO)/ Food Safety and Standards Authority of India (FSSAI). Further, when the test results were not acceptable to the appellants, facility for re-testing have not been conducted to provide a reasonable evidence on the test results, as per the guidelines prescribed by CBEC. However, the appellants have got the impugned goods tested in RCA Laboratories, Mumbai, which is approved by the FSSAI and the test result in report dated 02.07.2018 provides the results of chemical testing, microbiological identification, tracing of residues and other trace metals, to conclude that it cannot recognize the country of origin of the tested samples on the basis of above factors. In the above factual matrix, we are of the considered opinion that the test results obtained either by the Department or by the appellants do not provide any concrete evidence for determination of the origin of the imported goods. Hence it is not feasible to take the same for arriving at the conclusion of the disputed issue.

7.4 In the case before us, for determination of origin of the imported goods specific procedure has been prescribed under Notification No. 19/2000-Customs (N.T), dated 01.03.2000. The extract of the said notification is given below:

"In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement. - (1) These rules may be called the Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application. - These rules shall apply to goods consigned from the territory of either of the Contracting Parties.

3. Determination of Origin .- No product shall be deemed to be the produce or manufacture of either country unless the conditions specified in these rules are complied with in relation to such products, to the satisfaction of the appropriate Authority.

4. Claim at the time of importation. - The importer of the product shall, at the time of importation -

(a) make a claim that the products are the produce or manufacture of the country from which they are imported and such products are eligible for preferential treatment under the India-Sri Lanka Free Trade Agreement, (hereinafter referred to as the Agreement), and

(b) produce the evidence specified in these rules.

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11. Certificates of origin. - Products eligible for a Certificate of origin in the form annexed shall support Preferential treatment issued by an authority designated by the Government of the exporting country and notified to the other country in accordance with the certification procedures to be devised and approved by both the Contracting Parties.

12. Prohibitions. - Either country may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations.

13. Co-operation between contracting parties :-

(1) The Contracting Parties will do their best to co-operate in order to specify origin of inputs in the Certificate of origin.

(2) The Contracting Parties will take measures necessary address, to investigate and, where appropriate, to take legal and/or administrative action to prevent circumvention of this Agreement through false declaration concerning country of origin or falsification of original documents.

(3) Both the Contracting Parties will co-operate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of the Agreement to address problems arising from circumvention including facilitation of joint plant visits and contacts by representatives of both Contracting Parties upon request and on a case-by-case basis.

(4) If either Party believes that the rules of origin are being circumvented, it may request consultation to address the matter or matters concerned with a view to seeking a mutually satisfactory solution. Each party will hold such consultations promptly....."

In terms of the above procedure prescribed for determination of origin, the appellants submitted requisite Certificate of Origin (COO) vide CO/ISFTA/17/20432, CO/ISFTA/17/20433, CO/ISFTA/17/20435, and CO/ISFTA/17/20436, all dated 19.09.2017 issued by the Ministry of Industry & Commerce, Sri Lanka stating that they are certifying that the goods are produced in Sri Lanka on the basis of control carried out by them. On the basis of the query raised by the Consulate General of Sri Lanka in Mumbai, the Ministry of Industry & Commerce, Sri Lanka vide their letter dated 27.11.2017 have confirmed that the aforesaid report COO's were certified by them and the same may be informed to the Indian authorities. From the above, we find that the origin of the imported goods have been duly certified in terms of Notification No. 19/2000-Customs (N.T), dated 01.03.2000. Further, the same has also been reconfirmed as explained above by the Sri Lankan authorities issuing such COO. However, the customs authorities in India have not followed the due procedure prescribed for taking of the matter of verification of the origin for seeking mutually satisfactory solution. From the above factual matrix and the documents/evidences produced to support the fact about the country of origin of the impugned goods is of Sri Lanka, we are of the *prima facie* view that country of origin (COO) as stated by the appellants is correct, and there are no independent evidence adduced by the Department to prove against such fact.

7.5 On the basis of above conclusion, we are of the considered view that the impugned goods are eligible for the customs duty exemption under Notification No.26/2000-Customs dated 01.03.2000.

8.1 In respect of the issue relating to the value of imported goods and whether it is in compliance with MIP notification of the DGFT, the appellants have submitted a statement of account in respect of the bank account

maintained with HDFC Bank, Nhava Sheva Branch to state that full payments have been effected in eight transactions of date 26.07.2017, 10.08.2017 (2), 08.09.2017 (3), 25.09.2017, 29.09.2017 for payment of full value, as declared in the B/E, to the overseas supplier. Further, the supplier have also got the export documents submitted before the customs authorities at Sri Lanka, duly amended to reflect proper value of the export goods. This is also evidential from the documents produced by the appellants in support of the Sri Lanka Customs having accepted the amendments sought by the supplier abroad, by duly amending the value of the impugned goods. Accordingly, the declared value of goods was amended from USD 43,200 to USD 70,200 in CUSDEC documents No. E 60934, No. E 60269, No. E 60935 in respect of 18 MTs of areca nuts each (altogether 54 MTs); and another CUSDEC document No. E 60271 was also amended from USD 86,400 to USD 140,400 for 36 MTS of areca nuts by Sri Lanka customs authorities on 12.12.2018. On the above basis, and as per the declared value in the B/E, the average value of imported goods per Kg. works out to Rs.252/- which is in compliance with the MIP of Rs.251/- notified by the DGFT, Ministry of Commerce & Industry in Notification No.35/2015-2020 dated 17.01.2017. Thus, we are of the considered view that the areca nuts imported by the appellants from Sri Lanka can be allowed for import as "Free". Therefore, the conclusion arrived at by the authorities below, that the imported goods have violated the legal provisions under Section 111(d) and 111(m) of the Customs Act, 1962, is not sustainable on the basis of above facts.

8.2 In the absence of any evidence produced by the department to prove the violations in respect of imported goods as per Section 111(d) and 111(m) *ibid*, as discussed above, the proposal for confiscation of the impugned goods and imposition of redemption fine by the authorities below are not legally sustainable.

9.1 In the case of *Commissioner of Customs (Preventive), NER Region, Shillong Vs. Laltanpuui* - 2022 (382) E.L.T. 592 (Meghalaya), the Hon'ble High Court of Meghalaya had held that the test results reported by non-accredited laboratory of Areca nut Research and Development Foundation, Mangalore cannot be relied upon and dismissed the appeal filed by the department. The extract of the said judgement is given below:

"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."*

9.2 The above judgement when appealed before the Hon'ble Supreme Court by the department by filing a SLP (Civil) Diary No. 27003 of 2022, the Hon'ble Apex Court had decided vide its judgement dated 31.10.2022, by holding that there is no good ground and reason to interfere with the impugned judgment and hence, dismissed the special leave petition filed by the department.

9.3 In the case of *Chalissery Kirana Merchant Vs. Union of India* -2012 (323) E.L.T. 556 (Kar.), the Hon'ble High Court of Karnataka have held that invoice and certificate of origin of concerned chamber of commerce indicating country of origin being a SAFTA country to be preferred over mere contrary suspicion. The relevant paragraphs of the said judgement is extracted and given below:

"4. *On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I am of the view that there is merit in the contention of the petitioner, that the imports in question were effected after complying with the procedural requirements of the SAFTA notification, which enabled the petitioner to claim clearance of the goods at concessional rate of duty. The relevant documents, such as the certificate of origin issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan, and the invoice that accompanied the consignment, clearly indicated that the goods were of Pakistani origin. As against this, the only material relied upon by the Customs authorities, to doubt the correctness of the aforesaid certificates and invoices, is the detection of certain gunny bags in the containers that held the imported goods, which gave rise to a suspicion that the goods could have been sourced from Indonesia. At this stage of the proceedings, I am of the view that the certificates issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan should be given due weightage insofar as they are certificates issued in terms of a notification that was issued to give effect to a multilateral agreement entered into*

between South Asian Countries, to which both India and Pakistan were signatories. I am, therefore, of the view that the goods can be permitted a provisional clearance on the petitioner executing a bond for the assessable value, paying duty on the consignment in terms of the SAFTA notification, and paying 35% of the differential duty (on tariff rate) in respect of the consignment that has been imported. The petitioner shall also furnish a bond, without any surety or security, in favour of the respondents towards the remaining portion of the differential duty. I make it clear that, if the petitioner complies with the aforesaid conditions, the respondents shall release the consignment of goods imported by the petitioner under Ext.P6 series of bills of entry, forthwith and without any further delay.

5. I must hasten to add that, the observations in this judgment with regard to the certificates relied upon by the petitioner are only for the purposes of arriving at a prima facie view with regard to the entitlement of the petitioner for a provisional release of the goods and shall not in any way affect the findings of the respondents, in the adjudication that is to follow."

10. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble Supreme Court and High Court as discussed above, we are of the considered view that the impugned goods classifiable under CTI 0802 8090 are eligible for availing the benefit of customs duty exemption under Notification No.26/2000-Customs dated 01.03.2000 in terms of India Sri Lanka Free Trade Agreement read with Notification No. 19/2000-Customs (N.T), dated 01.03.2000 and DGFT Notification No. 35/2015-2020 dated 17.01.2017. On the above basis, the impugned order upholding confirmation of adjudged demands in the original order does not stand the scrutiny of law and therefore is not legally sustainable.

11. In the result, by setting aside the impugned order dated 13.06.2023, we allow the appeals in favour of the appellants with consequential relief, if any, as per law.

(Order pronounced in open court on 05.08.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)