CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86814 of 2024

(Arising out of Order-in-Appeal No. 654 to 656(Gr.I & A)/2024(JNCH)/Appeals dated 07.05.2024 passed by the Commissioner of Customs (Appeals), Mumbai - II).

Caliber International **.... Appellant**
SCF 92, Sector – 14, Main Market,
Near Om Sweets, Gurugram – 122001.

Versus

Commissioner of Customs, Nhava Sheva - I **....Respondent**
JNCH, Nhava Sheva, Taluka –Uran, Raigad – 400 707.

With

Customs Appeal No. 86815 of 2024

(Arising out of Order-in-Appeal No. 654 to 656(Gr.I & A)/2024(JNCH)/Appeals dated 07.05.2024 passed by the Commissioner of Customs (Appeals), Mumbai - II).

Pradeep Saggar **.... Appellant**
B-55, DDA Flats, D-Block,
Vasant Vihar, New Delhi - 1100575.

Versus

Commissioner of Customs, Nhava Sheva - I **....Respondent**
JNCH, Nhava Sheva, Taluka –Uran, Raigad – 400 707.

And

Customs Appeal No. 86816 of 2024

(Arising out of Order-in-Appeal No. 654 to 656(Gr.I & A)2024/(JNCH)/Appeals dated 07.05.2024 passed by the Commissioner of Customs (Appeals), Mumbai - II).

Vritika Katyal **.... Appellant**
SCF 92, Sector – 14, Main Market,
Near Om Sweets, Gurugram – 122001.

Versus

Commissioner of Customs, Nhava Sheva - I **....Respondent**
JNCH, Nhava Sheva, Taluka –Uran, Raigad – 400 707.

Appearance:

Shri Kuldeep Singh Nara, Advocate for the Appellant
Shri Piyush Badhe Barasu, 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/85877-85879/2025

Date of Hearing: 12.02.2025
Date of Decision: 06.06.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Caliber International, Gurugram along with Shri Pradeep Saggar, Ms. Vritika Katyal, both partners of the appellant M/s Caliber International (herein after, referred together as "the appellants", for short) assailing the Order-in-Appeal Nos. 654 to 656 (Gr. I & A)/2024/(JNCH)/Appeals dated 07.05.2024 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, Taluka-Uran, District Raigad, Maharashtra.

2.1 The brief facts of the case are that the appellants had imported 'Dry Dates' by classifying it under Customs Tariff Item (CTI) 0804 1030 under Bill of Entry (B/E) No. 6795924 dated 22.12.2021, for a total quantity of 55150 kgs. in 1103 bags stuffed in two 40 feet containers, exported by M/s Aarsh International Foodstuff, Dubai, UAE to Nhava Sheva; and self-assessed the same declaring the country of origin as 'United Arab Emirates' and paid applicable customs duty. Based on suspicion and intelligence that the subject goods might be of Pakistan origin and country of origin certificate might have been manipulated, said imported goods were put on hold by the officers of Special Intelligence and Investigation Branch (SIIB) of JNCH Customs Commissionerate. The said imported goods stuffed in two 40 feet containers were subjected to 100% physical examination by the Customs officers posted at Docks examination under the supervision of the Deputy Commissioner of Customs, Docks, JNCH, Nhava Sheva. During such examination it was found that the quantity, valuation and quality of the goods found as declared and the gunny bags were found with printed marking as '*G. Wt.51 Kg. NWT-50Kg., Month of Production OCT-2021, Best before OCT-2023*.' Since, the appellant importer M/s Caliber International had also imported dry dates from same supplier in another B/E No.7184374 dated 22.01.2022, wherein about ten gunny bags appear similar to the gunny bags of impugned goods under B/E No. 6795924; and in that case, the gunny bags were found with label/tags mentioning as "Sargodha Jute Mills Limited Manufacturer & Exporter of High Quality Jute Products in Pakistan…". Therefore, it appeared to the Customs officers that the impugned goods have been mis-declared in respect of country of origin in order to evade customs duty at higher rate of 200% for such goods imported from Pakistan. Therefore, the impugned goods were seized vide seizure memo dated 22.03.2022 and were granted with No Objection Certificate (NOC) by SIIB (I) on 12.04.2022 for provisional release upon execution of suitable bond and security deposit for the differential duty including fine and penalties.

2.2 As a result of the investigation, the department had proposed for classification of impugned goods under CTI 9806 0000 attracting BCD of 200% and IGST/CVD of 18% instead of declared CTI 0804 1030 with applicable duty of 20% BCD and 12% IGST/CVD, and proposed for recovery of differential duty along with interest, confiscation of impugned goods under Section 111(m) *ibid* and for imposition of penalties under Section 112(a)/114A and 114AA ibid by issue of Show Cause Notice (SCN) No. 818/2022-23/JC/Gr.I&IA/NS-I/CAC/JNCH issued vide DIN No.20220878 NU000000ADA9. The original authority i.e., Additional Commissioner of Customs, Gr. I&IA, NS-I, JNCH in adjudication of the above SCN had passed an Order-in-Original No.1554/2022-23/ADC/Gr.1&1A/NS-I/CAC/ JNCH dated 03.03.2023 in rejecting the self-assessment made by the appellants and in passing a speaking order for re-assessment under Section 17(4)/17(5) of the Customs Act, 1962. Further, the said original authority also confiscated the impugned goods and ordered the same for release against payment of redemption fine and imposed penalties on the appellant-importer and the partners of the appellant-importer under Section 112(a)(ii) and 114AA ibid. Being aggrieved with the above order, the appellants have preferred an appeal before the learned Commissioner of Customs (Appeals), who had rejected the appeal filed by the appellants by upholding the order of the original authority. Feeling aggrieved against such order, the appellants have filed these appeals before the Tribunal.

3.1 The learned Advocate for the appellants had submitted that on the basis of documents such as Bill of Lading; commercial invoice; packing list; Certificate of Origin issued by the Dubai Chamber of Commerce & Industry; Phytosanitary certificate issued by The Cooperation Council for the Arab States of the Gulf, after visual inspection by the designated officer at Jable Ali Port, Center for Agricultural and Veterinary Quarantine on 14.12.2021;

clearly provide that the imported goods are of 'United Arab Emirates' origin and not of Pakistan Origin. Further, he explained that the supplier M/s Aarsh International Foodstuff Trading L.L.C., M-07, Building No.4, Aweer Fruit & Vegetable market, Dubai, UAE had procured jute bags separately and therefore the printing on the jute bags to the effect that such bags are manufactured from Pakistan cannot be extended to the 'dry dates' procured by them from UAE. Learned Advocate had also stated that the Regional Plant Quarantine Station, Maharashtra of the Directorate of Plant Protection, Quarantine & Storage, Department of Agriculture Cooperation & Farmers welfare in the Ministry of Agriculture & Farmers Welfare, which is the authorised government organization, had examined the imported dry dates and have also certified that the country of origin as 'United Arab Emirates' in their certificate dated 28.02.2022 against the suspect consignment of the appellant-importer from the same supplier in B/E No.7184374 dated 22.01.2022, on the basis of which the present case was made out by the department. On the above basis, learned Advocate pleaded that the impugned order of the Commissioner of Customs (Appeals) cannot be sustainable and prayed that the impugned order to be set aside.

3.2. In support of their stand, the learned Advocate had relied upon the following decision of the Tribunal:

(i) *Omega Packwell Private Limited & Ors. Vs. Commissioner of Customs, Noida* – 2024 (6) TMI 455 -CESTAT-Allahabad

(ii) *Commissioner of Customs, Trichy Vs. New Bombay Exports* - 2009 (238) E.L.T. 540 (Tri. - Chennai)

(iii) *Suresh Kumar Aggarwal* Vs. *Commissioner of Customs-III, Raigad, Maharashtra* - 2024 (6) TMI 779 CESTAT- Mumbai

(iv) *P.D. Tradelink Vs. Commissioner of Customs, NS-I, Nhava Sheva* – Final Order No. A/85441/2024 dated 22.04.2024.

4. On the other hand, learned Authorised Representative for Revenue supports the impugned order and submits that the learned Commissioner of Customs (Appeals) had passed a detailed order and hence the same is sustainable. Therefore, he requested that the appeal filed by the appellants may be rejected.

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

6. On careful consideration of the submissions made by both the sides, we find that the issue of dispute for consideration before us is to decide whether the impugned order upholding the re-assessment under Section

17(5) of the Customs Act, 1962 by changing the declared country of origin and consequent classification, demand of additional duty, imposition of fine and penalties on the appellants are legally sustainable.

7. In order to examine, whether the provisions of Section 17(5) ibid are applicable to the facts of the case, we would like to refer the relevant legal provisions of the Customs Act, 1962:

> ***"Definitions.***
> ***2.*** *In this Act, unless the context otherwise requires,—*
> *xx xx xx xx xx*
>
> *(2)assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—*
>
> (a) *the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
>
> (b) *the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
>
> (c) *exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
>
> (d) *the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
>
> (e) *the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*
>
> (f) *any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*
>
> *and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*
>
> ***Assessment of duty.***
> ***17.*** *(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*
>
> *(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:*
>
> ***Provided*** *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*
>
> *(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the*

importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

8.1 On careful consideration of the said provisions, we find that in case of any type of assessment, besides classification and assessable value of imported goods, the country of origin is also required to be determined in accordance with the provisions of Section 14 of the Customs Act, 1962 and the Customs Tariff Act, 1975. In the present case, we find that the appellants had self-assessed the goods in terms of Section 17(1) *ibid*, by declaring the value of the imported goods as per invoice price. It is also on record that on the investigation conducted by SIIB, JNCH Customs officers in verification of such self-assessment in terms of Section 17(2) and 17(3) ibid, the appellants had submitted to the department, all the relevant documents for the supply of imported goods from the supplier's end at United Arab Emirates, such as those specifically issued for proving the country of origin i.e., Certificate of Origin No. 21105532 dated 13.12.2021 issued by the competent authority Dubai Chamber of Commerce & Industry; Certificate of Fumigation Ref. UPTS/FUM/5258/ 2021 dated 14.12.2021 and Phytosanitary Certificate No. DXB-APH-02415-1877589 dated 15.12.2021. These facts bring out clearly that the appellants did not confirm his acceptance for change in country of origin proposed by the proper officer of Customs for re-assessment of goods under Section 17(4) ibid. Thus, the proper officer of customs was required for passing of a speaking order on the re-assessment of imported goods under Section 17(5) ibid.

8.2. The order dated 03.03.2023 passed by the original authority had relied on the evidences gathered during the investigation such as press report that after withdrawal of Most Favoured Nation status to Pakistan and hiking customs duty to 200% on all imports from Pakistan, the dry dates exports from Pakistan to UAE, Kuwait, Oman, Bangladesh, Turkey have increased; similarly, there has been shift in the volume of imports of dry dates from UAE and Oman to India having increased and on the contrary imports from Pakistan reduced; there were no marks indicating the origin of the goods as United Arab Emirates except a loosely stitched paper containing details of FSSAI, product name, exporter, importer, net weight, gross weight, production date, expiry date, country of origin as United Arab Emirates. The original authority also noted that incidentally, the papers were loosely stitched on each jute bag which could be removed easily; further, jute bags covered under the present consignment are similar to jute bags covered in an earlier consignment vide B/E No.7184374 dated 22.01.2022, wherein those were found with markings of Pakistan origin; in view of the similar modus operandi as above and on the basis of evidence in the form of packing material found during physical examination in one another consignment imported by appellants from the same supplier abroad, the original authority had come to the conclusion that the impugned goods are of Pakistan origin.

9. It is also revealed from the factual matrix of the case and more particularly from the Order-in-Original No.1522/2022-23/ADC/Gr.1&1A/ NS-I/CAC/JNCH dated 28.02.2023 adjudicating the case of imports under B/E No. 7184374 dated 22.01.2022, at paragraph 2 that out of the total 1120 bags of imported goods i.e., dry dates, only in 10 gunny bags of dry dates, the jute bags were found attached with tag/label mentioning that "*SARGODHA Jute Mills Limited Manufacturer & Exporter of High Quality Jute Products in Pakistan; Email: info@sargodhajute.com; Website: www. sargodhajute.com*" and one gunny bag of dry dates was found attached with green coloured tag/label mentioning as 'Thal Limited (Jute Division), Manufacturer & exporter of Eco friendly & Food Grade jute products; e-Mail:tj_sales@hoh.net'. On this basis, the investigation wing of the department had concluded, only on the basis of label of the packaging material and that 'Sargodha Jute Mills limited' being a leading manufacturer of jute bags based in Pakistan, that the imported dry dates are also of "Pakistan origin" and not of "United Arab Emirates origin". The findings of the learned Commissioner of Customs (Appeals) that the investigating unit has reasonably established that the goods are of Pakistan origin, is factually

incorrect, as only part of the goods contain the blue/green colour tag/labels bags indicating that these were made in Pakistan and in rest of the bags were without any such markings, which learned Commissioner (Appeals) had presumed that "*it could have tried to remove all the labels/tags from all the gunny bags, however, in a hurry, some tag/labels were left in mutilated condition*. *This act of the supplier shows mala fide intention to evade the customs duty*." It is a fact that the packing material or the label of the packing material, that too found in part of the consignment, cannot be a reasonable basis to decide the country of origin for the online imported goods; and the packing of the imported goods is not the foolproof criteria to decide the origin of imported goods. Further, it is factually incorrect to treat the imported goods is also originating from that country of origin of packing material. The press reports published in public domain without any specific reference to the present imports cannot be taken to be a basis, when various documents such as Bill of Lading indicating the port of shipment as Jabel Ali, United Arab Emirates; commercial invoice, packing list were produced by the appellants importer showing the evidence of country of origin of imported dry dates as United Arab Emirates. Further, the Certificate of Origin issued by the Dubai Chamber of Commerce & Industry; Phytosanitary certificate issued by The Cooperation Council for the Arab States of the Gulf, after visual inspection by the designated officer at Jable Ali Port; and Center for Agricultural and Veterinary Quarantine on 14.12.2021, clearly provide that the imported goods are of 'United Arab Emirates' origin and not of Pakistan Origin. We also find that the imported goods upon arrival in India, have also been subjected to Plant quarantine procedure in terms of Plant Quarantine (Regulation of Import into India) Order, 2003 issued in accordance with Sub-section (1) of Section 3 of the Destructive Inspects & Pests Act, 1914; and the Regional Plant Quarantine Station, Maharashtra of the Directorate of Plant Protection, Quarantine & Storage, Department of Agriculture Cooperation & Farmers welfare in the Ministry of Agriculture & Farmers Welfare, had examined the imported dry dates imported by the appellant-importer from the same supplier having such alleged mis-declared packaging material in one another B/E and have also certified that the country of origin as 'United Arab Emirates+95' in their certificate dated 28.02.2022 recommending release of the imported goods for consumption purpose only. Thus, we find that these evidential documents placed on record which have been issued specifically declaring that the imported goods are of 'United Arab Emirates' origin forms sufficient reason to conclude that the imported goods are of 'United Arab Emirates'. Thus, we do not find any merits in the impugned order for upholding the order of original authority confirming that the imported goods are of Pakistan origin, without any proper support of documents for confirmation of adjudged demands and for imposition of redemption fine and penalties on the appellants importer. Further, it is not the case of Revenue that the imported goods did not comply with the Food Safety and Standards (Packaging and labelling) Regulations, 2011 and therefore the action for confiscation and penalties were proposed.

10.1 In this regard, we find that the Co-ordinate Bench of the Tribunal in the case of *Doves International Vs. Commissioner of Customs, New Delhi* – 2018-TIOL-2219-CESTAT-Del. have held that merely because of use of gunny bags showing that these bags are products on one country, cannot by itself enable that the imported goods also should be treated as though of the same country of origin to which the packaging materials belongs to. The relevant paragraph of the said Order is extracted below:

> *"5. After hearing the lengthy arguments and on perusal of the material available on record, it appears that the main allegation of the Department is that, a few gunny bags were found having the marks 'Produce of Indonesia', but the fact remains that in para 5.4 of the impugned order, the adjudicating authority has observed that :*
>
> > *"5.4 ...... I agree with the argument of the Noticee that merely markings on packing material cannot be the clinching evidence for determining the country of origin of the goods contained therein especially when laboratory tests are inconclusive......"*
>
> *We also agree with the arguments advanced by the learned counsel for the assessee-Appellants that for packing of the material, old gunny bags can be reused and it is not a ground to deny the benefit of country of origin. The Hon'ble High Court of Kerala vide order dated 28.01.2015 (Writ Petition (C) No. 2275/2015) directed that the seized goods be released provisionally within three days, so the goods were released as per the terms and conditions of the High Court decision."*

10.2 In the case of *Sukumar Mondal Vs. Collector of Customs (Preventive)*- 1990 (48) E.L.T. 56 (Tri. - Cal.), the Co-ordinate Bench of the Tribunal had also held the country of origin of the imported goods cannot be decided on the basis of marks found in some of the imported goods. The relevant paragraph of the said order of the Tribunal is extracted below:

> ***"15.*** *We have said earlier that the appellants have contended that the marks of foreign origin as communicated by the department to them were there in some of the garments. There was no indication that they were there in all the garments. We feel that where the only basis on which the garments were confiscated was the marks of*

foreign origin it would not be in order to confiscate all the garments as if all of them were of foreign origin, when admittedly such marks were found in only some of them. Further, the thrust of the judgements cited by the learned JDR regarding the effect of the marks of foreign origin is only that they were of foreign origin or that they had been imported. That does not mean that these goods had been smuggled into the country rendering them liable to confiscation."

Since there are no evidences to prove that the imported goods are of Pakistan origin and on the other hand there is substantial proof to show that the goods are of United Arab Emirates origin, we consider it appropriate to set-aside the impugned order in the light of the discussions in the preceding paragraphs.

11. In view of the foregoing discussions and analysis and on the basis of the decisions of the Tribunal, we are of the considered view that the impugned order passed by the learned Commissioner of Customs (Appeals) cannot be sustained. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

12. In the result, by setting aside the impugned order dated 07.05.2024, the appeals filed by the appellants are allowed.

(Order pronounced in open court on 06.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha