

(2008) 09 PAT CK 0017

In the Patna High Court

Case No : Tax Case No. 73 of 2001 with Tax No's. 24-27 of 2001 and 6, 50 and 53 of 2002

Commissioner of Customs, Patna

APPELLANT

Vs

Dwarika Prasad Agarwal

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Customs Act, 1962 — Section 130A

Citation : (2012) 275 ELT 183 : (2009) 2 PLJR 858

Hon'ble Judges : Ravi Ranjan, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Judgement

1. Various quantity of betel nuts were seized by the officers of the Directorate of Revenue Intelligence under a reasonable belief that same were smuggled into India. Proceedings for its confiscation were initiated and the Deputy Commissioner confiscated the betel nuts and inflicted personal penalty upon the owners thereof. Owners appeals before the Commissioner (Appeals) also failed. They carried the matter in appeal further before the Customs, Excise and Cold (Control) Appellate Tribunal, hereinafter referred to as the Tribunal. The Tribunal set aside the order of confiscation and penalty on the ground that Custom authorities have failed to prove that "betel nuts were of foreign origin and they were imported illegally".

2. Aggrieved by the same, the Commissioner of Customs has preferred these applications u/s 130A of the Customs Act. This Court by order dated 11-2-2003 directed the Tribunal to draw statement of case and refer the following questions of law for determination in Tax Case No. 13 of 2001:-

(a) Whether the Tribunal without referring any of the evidence which has been relied upon by the original or appellate authority was justified in reversing the said order.

(b) Whether the finding arrived at by the Tribunal is perverse in the sense that

without adhering to the material evidence it has arrived at such a finding.

3. Identical questions of law have been drawn in other cases also.

4. Tribunal as directed drew the statement of case and forwarded the aforesaid questions of law for determination.

5. In order to establish that the betel nuts are of foreign origin the authority rely on the trade opinion.

6. Mr. Rakesh Kumar Singh, appearing on behalf of the petitioner submits that persons well versed in the trade having opined that betel nuts were of foreign origin, there was no justification for the Tribunal to reject that opinion.

7. Mr. Birju Prasad, appears on behalf of the Opposite party.

8. We do not find any substance in the submission of Mr. Singh. It is not in dispute that betel nut is non-notified item and, as such, the onus to prove that the same is of foreign origin lies on Custom authority. It is further not the case that betel nuts available in the country are significantly different than those of foreign country. The contention that betel nuts of foreign origin are little bigger than what is available in the country itself will not lead to the conclusion that it is of foreign origin. In our opinion, in absence of significant and apparent difference between the betel nuts available in this country and of foreign origin it shall be difficult to come to a definite finding that betel nuts are of foreign origin on the basis of trade-opinion. We hasten to add that trade opinion may not be an expert opinion but opinion based on long experience in the trade considering significant difference in the items of Indian origin and foreign origin may be of persuasive value and may not be thrown out only on the ground that trade opinion is not an expert opinion. If there are significant differences in shape, size, taste etc., of betel nuts of Indian origin than the betel nuts of foreign origin the person in trade may form an opinion that it is of foreign origin which in the facts of a given case may be accepted. However in the present case we find that the trade opinion is not based on any significant decisive difference. In that view of the matter, we are of the opinion that betel nuts directed to be confiscated cannot be said with certainty to be of foreign origin.

9. Accordingly our answer to substantial question no. (a) formulated is in affirmative and it is held that in the facts and circumstances of the case the Tribunal was justified in reversing the order of original and the appellate authority.

10. In view of aforesaid, the answer to second question No. (b) is also in the negative and we hold that the finding arrived at by the Tribunal is based on sound principle and cannot be said to be perverse.

11. To put the record straight, it is worth mentioning here that a large number of cases involving the same issue i.e. Tax Case No. 68 of 2002 (Commissioner of Central Excise, Patna v. M/s. SCI Sheo Shankar Chemical Industry India Ltd.),

Tax Case No. 69 of 2002 (Commissioner, Customs Department Govt. of India v. Shri Devi Shankar Tiaway) and Tax Case No. 54 of 2002 (Commissioner of Customs, Patna v. Pyus Chakrabarty, Prop. Pijus Trading Co.) have been dismissed by order dated 13-9-2006 and 8-9-2006 by a Division Bench of this Court.

12. Tax cases stand disposed off accordingly.