(2020) 12 CESTAT CK 0046

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 77344 Of 2019

Smt.Laltanpuii @Hash Commissioner Of Customs (Preventive), NER, Shillong

Date of Decision : 09-12-2020

Acts Referred:
Customs Act, 1962 — Section 123

Citation : (2020) 12 CESTAT CK 0046

Hon'ble Judges : P. K. Choudhary, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Nihar Dasgupta, S.S. Chattopadhyay

Final Decision : Allowed

Judgement

1. On the basis of Intelligence received officers of DRI Guwahati Regional Unit, intercepted two trucks on Jalukbari flyover on NH-31 and seized 32

MT of betel nut (valued totally at Rs 88,00,000) contained in 400 bags, along with trucks(valued at Rs 34,00,000) and documents, under the reasonable

belief that the same are liable for confiscation being smuggled from Myanmar. On completion of investigation, a Show Cause Notice dated 27.04.2018

was issued seeking confiscation of seized goods and imposing penalties on parties alleged to have been involved therein. The said Show Cause Notice

was confirmed by the Commissioner of Customs (Preventive) Shillong vide order CCP/NER/10/2019 dated 06.06. 2019. Hence this appeal.

2. Learned Counsel for the appellants submits that considering the fact that issue involves live consignments of highly perishable goods (Betel nut),

Tribunal has allowed early Hearing; as two other appellants Shri Bhima Varapu Venkata Krishna Reddy (owner of Truck No. AP-16-TG3344)

Appeal No D/77200/2019 and Shri Muchhu Venkateswara Rao (owner of Truck No AP-16-TD- 9797) Appeal no D/77201/2019 have not deposited mandatory pre-deposit, hearing of the incumbent appellant may kindly be continued. Learned counsel submits that tax Invoices and other documents,

including Receipt No. 3215 dated 25.10.2017 issued by Trade & Commerce Department, Govt of Mizoram, show indigenous origin of the goods;

Goods under seizure are of Assam/ Mizoram origin, purchased from local market/ sellers; Reports of the Agricultural and Processed Food Products

Export Development Authority (APEDA) and Directorate of Areca Nut and Spices Development, Ministry of Agriculture, both Government of India

indicates that Assam is the 3rd highest and Mizoram is the 8th highest producer of Betel nuts in India during 2017-18; during 2013-14, Mizoram had

produced Areca nut of 6050 MT; Place of loading is Vairegte, Mizoram, along Assam-Mizoram border; Distance from Vairegte to border in Champai

is 325 Km; Distance from greater Guwahati to Indo - Myanmar border (Champai) is over 600 KM.

3. Learned Counsel submits that it was alleged that Areca nut Research & Development Foundation, Mangalore (ARDF) has reported that the

samples were found to be of Indonesian origin and unfit for human consumption; Assam State Public Health Laboratory, Guwahati, has not found it to

be of foreign origin, but not suitable for human consumption and that a few suppliers have denied sale of Betel nuts to the Appellant. Learned Counsel

submits that the grounds of confiscation are frivolous as ARDF is a private body looking after the interest of Areca nut growers in South India,

therefore, biased and motivated; Samples were not drawn in presence of the owner of the goods and as such violative of provisions of Section 144 of

the Customs Act, 1962.

3.1. Commissioner (Appeals) in a recent judgement in the case of Md Monjurul Haque Laskar, Appeal No V-2(A) Cap/15/SH/2018, dated 27.03.019,

held that ARDF is not an accredited laboratory to issue a certificate of origin; it was also held so by Honâ??ble Patna High Court in the case of M/S

Ayesha Exports vs The UOI & Others in Civil Writ Jurisdiction Case No.7589 of 2018; Honâ??ble High Court of Madras in Isha Exim case 2018

(13) G.S.T.L. 273 (Mad.), held that report of private laboratory (ARDF) without accreditation with Central Government is not sufficient. The Tribunal

also affirmed the same in Appeal No C/76574/ 2019. In the case of Maa Gauri Traders 2019 (369) ELT 1024 (Tri â?"All), Tribunal held that in absence of any evidence that confiscated goods were illegally smuggled into India, same cannot be confiscated merely based on test report of an

organization which later on also admitted that country of origin cannot be determined through test in laboratory. It was affirmed by Honâ??ble High

Court 2019 (368) ELT 913 (All.)

4. Learned Counsel further submits that Provisions of Food Safety & Standards Act, 2006 implemented by State Government and not by Customs

authorities as held by this Bench in Kubolay Paul 2017 (348) ELT 131 (Tri. - Kolkata); seized Betel nuts are neither Prohibited under the Customs

Act, 1962 nor notified under Section 123 ibid and thus burden of proof is on the department; in the appellants case, neither Provisional Release was

given nor goods were allowed to be redeemed, though in some cases betel nut was allowed to be released on payment of redemption fine.

5. Learned Counsel further submits that the revenue held the statement of suppliers wrongly; Betel nuts are agricultural products, grown and sold by

the small farmers in Mizoram; tribal peoples involved in Mizoram are illiterate and cash transactions are not recorded by the small growers; moreover,

they are located in remote parts of Mizoram. He submits that commissioner himself accepted that ... Although Smt Laltanpuii submitted a

number of purported purchase vouchesr of Betel nuts, she could not provide the detailed address and contact numbers of sellers and

due to that investigation could not verify those vouchers...; He submits that Understandably, itâ??s not the problem of the appellants if the

department cannot verify the claim. It is for the department to prove the allegations. Quoting from Wikipedia, learned counsel avers that Mizoram is a

land of rolling hills, valleys, rivers and lakes in Northeast India; as many as 21 major hill ranges or peaks of different heights run through the length and

breadth of the state, with plains scattered here and there; in the context of topography in Mizoram, precise address and contact number of the tribal

sellers located in remote areas is ill conceived.

6. Learned Counsel also submits that Betel nuts are used other than for direct consumption (chewing) also; low variety are used in making Pan masala

/Gutkha after processing and removing any fungal infestation; more damaged Betel nuts are used in making ply wood, coloring dye etc.; therefore, it is

ill conceived to conduct suo moto food test without considering its use.

7. Learned Counsel relies upon the following cases.

(i). CCE& ST, Siliguri Vs Narendra Lohia, 2018 (359) ELT 731 (Tri. - Kolkata) Customs Appeal No.77344 of 2019 5

(ii). Samsuddin Barbhuyia Vs CC(Prev), Shillong, 2017 (358) ELT 1145 (Tri. â?" Kolkata)

(iii). Maqsood Alam Vs CC, Lucknow, 2015(324) ELT 162 (TriDel)

(iv). Sonali Traders Vs CC, Allahabad, 2013 (298) ELT 302 (Tri. - Del.)

(v). Dungarmal Mohata Vs CC (Preventive), Calcutta, 2006 (200) ELT 522 (Cal),

(vi). Chhiteshwar Prasad, 2018 (364) ELT 570 (Tri. - Kolkata)

8. Learned Authorised Representative for the department reiterates the findings of OIO.

9. Heard both sides through video conferencing and perused the appeal records.

10. The issue for consideration in the instant case is to see whether Revenue has established the allegation that the seized betel nuts are of foreign

origin and are smuggled. Ongoing through the records of the case, it is seen that Revenue bases its case on the certificate issued by Arecanut

Research and Development Foundation (ARDF), Mangalore and the fact that the owners could not establish the Indian origin of the arecanut.

Regarding the allegation against Smt. Laltanpuli, it is averred in the OIO that although she submitted a number of purported purchase vouchers, she

could not tell the detailed address or contact numbers of the sellers; purchaser issued the vouchers and not the sellers; the signatures of sellers appear

to be forged; Smt laltanpuli has given contradictory statements and retracted them; Shri Shashi Chowdhury, who is alleged to have been involved in

this case as a consignee, was a habitual offender and was involved in smuggling of arecanut seized in earlier cases; the drivers stated that after

proceeding some distance on Guwahati Kolkata Road they were asked to come back to Guwahati. We find that the evidence collected by

investigation could establish a reasonable doubt as to the origin of arecanut. But the same is not enough to prove the smuggled nature of the arecanut.

We find that investigation was only in the direction to conclude that there was no proof for indigenous and licit procurement of betel nut seized and

that the claim of the appellants cannot be verified in some cases. We find that the betel nut is not notified under Section 123 of the Customs Act, 1962 and therefore, the burden of proof lies with the department to prove the same. Itâ??s not just enough to prove by negative inference. Allegation

requires to be proved by cogent and positive evidence. We find that no such positive evidence has been put forth by the department. There is not even

a reference or narration as to how and wherefrom the impugned goods are smuggled. We find that the Tribunal in the case of Dharmendra Kumar

Jha 2016(344) ELT 264(Tri-Kol) held that betel nut is not a notified commodity under Section 123 of the Customs Act, Act 1962 and the

onus is on the department that seized goods were in fact smuggled in to India. We find that the department has not discharged its burden.

11. Revenue relies heavily on the certificate issued by Arecanut Research and Development Foundation (ARDF), Mangalore. We find that various

fora have held that the institute is not accredited and hence, the report is not reliable. It was held by High Court of Patna 2020 (371) ELT 353 (Pat.)

that in absence of any material to show ARDF Mangalore is accredited laboratory by competent authority under Act and Rules, itâ??s

report cannot have consequence of fastening of any legal liability and â??No legal liability can flow from report of such an

institutionâ??, hence authorities not justified in again relying thereon to justify seizure in question. Tribunal, in the case of M/s Maa Gauri

Traders 2019 (369) ELT 1024 (Tri â?" All), held that since betel nuts are also produced in India, in absence of any evidence that confiscated

goods were illegally smuggled into India, same cannot be confiscated merely based on test report of an organization which later on also

admitted that country of origin cannot be determined through test in the laboratory. We also find that Learned Commissioner (Appeals) in

the case of Monjurul Haque Laskar set aside the departments stand on the above ground and the order was upheld by the Tribunal vide final order

75038/2019 on an appeal filed by the department. Tribunal observed that (Para 8).

Revenueâ??s entire reliance is on the basis of M/s Arecanut Research & Development Foundation, Mangalore (ARDF) Certificate. As it is

reported that the ARDF is not an accredited Laboratory, no legal liability can flow from the report of such institution. The Revenue could not

prove that the goods were smuggled or produce any corroborative evidence in support of their caseâ?¦

We also rely on Dungarmal Mohata Vs CC (Preventive), Calcutta, 2006 (200) ELT 522 (Cal).

12. In view of the above, we find the betel nut being non notified goods; burden to prove the fact of smuggling lies on the department and the same

has not been discharged; the report of ADRF, Mangalore cannot be relied upon. On the issue of goods being held to be unfit for human consumption,

we hold that as the goods are neither imported nor proved to be smuggled, no action by Customs is warranted. In view of the above discussions,

seizure of impugned betel nut is not justified and needs to be set aside. Therefore, nothing survives in the case and appeal is liable to be allowed. We

allow the same with consequential relief, if any, as per law.

(Order pronounced in the open court on 09 December 2020.)

