

IN THE HIGH COURT OF MEGHALAYA

AT SHILLONG

Cus. Appl. No.1 of 2018

SHRI MANIK RANJAN PAUL

Vs

THE COMMISSIONER OF CUSTOMS, (PREV)

Mohammad Yaqoob Mir, CJ & H S Thangkhiew, J

Dated: May 06, 2019

Appellant Rep by: Ms P Sikdar, Adv.

Respondent Rep by: Mr N Mozika, CGC

Cus - Four trucks of betel nuts, two carrying whole betel nuts and two carrying spilt betel nuts were seized - The assessee has claimed to be the owner of same - In effect, assessee has admitted that the betel nuts were of foreign origin i.e., were imported from Myanmar - The observation that the assessee could not purchase on credit from four unknown persons is misplaced, when four persons are admitting that they have sold the betel nuts on credit to the assessee, how can that be denied has not been looked into - That apart, four persons have filed four affidavits in this Court admitting that they have sold the betel nuts to the assessee - If any person has to sell his product to anyone and admits to have sold even abruptly creating buyer, that cannot be questioned, this aspect of the case too has not been looked into by the Tribunal - Tribunal has not appreciated the contentions nor there is any logical reason recorded for agreeing with the findings recorded in O-I-O - Whether dry betel nuts could be preserved for more than one year or not, no finding to that effect has been recorded except by showing that there is a gap of one year between import and sale, when according

to assessee dry betel nuts can be preserved after proper treatment for a longer period - It will be appropriate to remand the case back to the Tribunal for deciding appeal filed by assessee afresh - Order of the Tribunal is set aside and matter remanded to the Tribunal: HC

Matter remanded

JUDGEMENT

Per: Mohammad Yaqoob Mir:

1. Appellant aggrieved by the order dated 23-03-2018 passed by the Customs, Excise and Service Tax Appellate Tribunal hereinafter referred to as Tribunal have filed this appeal before this Court under Section 130 of the Customs Act, 1962 hereinafter referred to as Act of 1962.

2. Background of the case – On an information of the officer of the Customs Headquarter Preventive Unit, Shillong, four trucks bearing registration No. MZ-05-3857, MZ-05-3867, AS-11BC-9147 and AS-24C- 2275 carrying dry betel nuts (Supari) of various origin allegedly smuggled from Myanmar, were intercepted at Manderdisa District, P.S. Langting, North Cachar Hills, Assam on 05-03-2016. The truck drivers did not produce any documents except the road challans issued by M/s Paul Traders owned by Shri. Manik Ranjan Paul (appellant herein). The drivers, on questioning, had divulged that they had brought those dry betel nuts from Mizoram. The Custom Officer believed that the betel nuts had been illegally smuggled, seized all four trucks along with the betel nuts. Investigation was carried out, finally order in original dated 29-03-2017 was passed by Commissioner of Customs (Preventive) NER, Shillong, in terms whereof four vehicles as seized were confiscated and were valued at Rs. 19,35,000/-. Option was given to the respective owners of the said vehicles to pay a fine of Rs. 2,00,000/- each in lieu of confiscation under Section 115 (2) of the Customs Act, 1962. Penalty of

Rs. 1,00,000/- was imposed on Shri. Bimalendu Roy under Section 112 (b) (ii) of the Customs Act, 1962, penalty of Rs. 50,000/- was also imposed on Shri. Sujit Roy under Section 112 (b) (ii) of the Customs Act, 1962. Furthermore, adjustment/appropriation, of Rs. 2,58,750/- , Rs. 2,25,000/-, Rs. 2,58,750/-, Rs. 2,25,000/- paid vide TR-6 Challan Nos. 10/2016-17, 09/2016-17, 11/2016-17, 12/2016-17 all dated 23-05-2016 as security deposit by the concerned owners of the said vehicles towards fine/penalty was made. A penalty of Rs. 2,00,000/- each was imposed on Shri. Lalduha, Shri. Khuangluaia, Shri. Zothanmawii, Shri. Thahleikhuaia under Section 112 (b) (ii) of the Customs Act, 1962. In addition thereof, a penalty of Rs. 50,000/- each on Shri Faizul Mia, Shri. Abidur Rahman Laskar, Shri. Nurul and Shri. Abdul Kalam Laskar under Section 112 (b) (ii) of the Customs Act, 1962 was imposed. As against the order in original, appeal before the Tribunal was filed only by Shri. Manik Ranjan Paul. Joint appeal was also filed by Shri. Bimalendu Roy and Shri. Manik Ranjan Paul unsuccessful as the same have been dismissed on 23-03-2018.

3. We have heard the learned counsel for the parties. Admittedly, four trucks of betel nuts, two carrying whole betel nuts and two carrying spilt betel nuts were seized. The appellant has claimed to be the owner of the same, it is his case that he had purchased the betel nuts from four persons namely,

(i) M/s Zothanmawii (Exporter & Importer), Venglai Champhai, Mizoram-796321,

(ii) M/s Khuangluaia & Sons, Champhai, Mizoram,

(iii) M/s J H family Enterprise (Lalduha) Champhai, Mizoram and

(iv) M/s Thahleikhuaia Champhai, Mizoram.

4. The appellant had also produced in support of his case four credit memos issued by the said persons all dated 27-02-2016, the quantity of dry betel nut in the said memos are shown as 9000 kgs, 15000 kgs, 16500 kgs, 15000 kgs, in total 55500 kgs. In addition, he had produced seven bills of entry, duly signed by Inspector and Superintendent Land Customs Station, Zokhawthar.

5. In effect, the appellant has admitted that the betel nuts were of foreign origin i.e., were imported from Myanmar.

6. In the order in original, the Commissioner of Customs (Preventive) has recorded various findings which include finding to the effect that the variety of the goods recovered/seized were of whole and split whereas the description of the goods imported were whole and differ from one another in the matter of description, based on which has recorded an opinion that Shri, Manik Ranjan Paul (appellant) has not been able to prove that the goods were of the same description as given in the bills of entry. According to him, papers have been manipulated.

7. As against the findings recorded, various contentions were raised in the memo of appeal filed before the Tribunal but it appears that learned Tribunal has not addressed those contentions effectively. Learned Tribunal in the order has mentioned that the appellant (Shri. Manik Ranjan Paul) has furnished four bills of entry when as a matter of fact he had produced seven bills of entry. Further, it has been opined that the documentary evidence furnished by the appellant is not acceptable. Betel nuts were imported in October 2014 and October 2015, whereas goods were seized in the month of March, 2016. The investigation has also established that the consignments was fictitious and also observed that the goods were purchased on credit from a person apparently not known to the owner of the goods. Finally, after considering the whole record, learned Tribunal has concluded as under:

(i) Admittedly, seized goods are of Myanmar origin, illegally imported.

(ii) Betel nuts are not notified in terms of Section 123 of the Customs Act, 1962, the onus was on the Customs to prove that the seized goods were smuggled goods.

(iii) The gap between purported import of goods and the purchase thereof cast doubts on the linkage between the two. It is questionable that the owner of the goods would have procured betel nuts on credit without knowing the suppliers before hand.

8. The first question for consideration is as to whether the betel nuts seized were the same as were imported pursuant to seven bills of entry duly signed by the Inspector and Superintendent of Customs Land Station. The finding recorded by the adjudicating authority is that there was a gap of one year and secondly, betel nuts in two trucks were whole whereas in two other were split when in the bills of entry, the betel nuts were whole. The issue of trade practice converting betel nuts from whole into spilt has not been looked into.

9. The observation that the appellant could not purchase on credit from four unknown persons is misplaced, when four persons are admitting that they have sold the betel nuts on credit to the appellant, how can that be denied has not been looked into. That apart, four persons referred herein above have filed four affidavits in this Court admitting that they have sold the betel nuts to the appellant. If any person has to sell his product to anyone and admits to have sold even abruptly creating buyer, that cannot be questioned, this aspect of the case too has not been looked into by the learned Tribunal.

10. In our view, learned Tribunal has not appreciated the contentions nor there is any logical reason recorded for agreeing with the findings recorded in the order in

original. Whether dry betel nuts could be preserved for more than one year or not, no finding to that effect has been recorded except by showing that there is a gap of one year between import and sale, when according to learned counsel for the appellant dry betel nuts can be preserved after proper treatment for a longer period.

11. It will be appropriate to remand the case back to the learned Tribunal for deciding appeal filed by the appellant afresh. Order of the Tribunal dated 23-03-2018 is set aside and matter remanded to the learned Tribunal for deciding the appeal filed by the appellant afresh after giving reasonable opportunity of hearing to the parties. Learned counsel for the parties to appear before the learned Tribunal on 06-06-2019.

12. Instant appeal succeeds as above.