

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76580 of 2018

(Arising out of Order-in-Appeal No.96/Pat/Cus/Appeal/2017 dated 23/11/2017 passed by Commissioner (Appeals) of Central GST & CX, Patna)

Sunil Kumar Yadav

S/o Rishi Kishun Yadav
(Prop: M/s Sunil Traders
15, Sirsiya, P.O.+ P.S.; Kotwa, Anchal Kotwa,
Dist. East Champaran, Bihar)

Appellant

VERSUS

Commissioner of Customs (Preventive), Patna

(Birchand patel Path, Central Revenue Building, Patna-800001)

Respondent

APPEARANCE :

Ms. Atika Sumran Ahmed, Advocate for the Appellant
Mr. Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.76065/2023

Date of Hearing : 12 July 2023

Date of Decision : 12 July 2023

PER R. MURALIDHAR

On 10/04/2015, the Customs Officials intercepted one vehicle bearing Nepal Registration No. Na-2-Cha/6141 loaded with Cut Betel Nut coming from Nepal to India near Indo-Nepal Border Pillar No.- 321. The Driver of the vehicle could not provide any proper document for the consignment 1500 Kgs of cut Betel Nut valued at Rs.3,00,000/- along with the vehicle bearing Nepal Registration No. Na-2-Cha/6141 valued at Rs.1,40,000/- were seized under Section 110 of the Customs Act, 1962. Statements were recorded from the detained person, Shri Chunda Mani Neopani and vehicle owner, Shri Rameshwar Raut Kurmi. As per their Recorded Statement on 15/04/2014, recorded under Section 108 of the Customs Act, 1962, they stated that the goods were booked from Birganj, Nepal to Bailwas, Nepal. However, due to failing of vision in the night, they reached in the Indo Nepal Border. After about five months, the present Appellant Shri Sunil Kumar Yadav approached

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the Customs officials stating that he is the owner of the cut Betel Nut. He submitted that he had dispatched 1500 Kgs of cut Betel Nut to Shri Navin Kumar. This was loaded for delivery at district Sitamarhi, Bihar vide Bill No. 10 dated 10/04/2015. After due process, the Adjudicating Authority held that Betel Nuts were of foreign origin and confiscated them. He gave the option to redeem the same on payment of Redemption Fine of Rs. 1,35,000/- to the Appellant. He also demanded Customs Duty of Rs.3,80,688/-. He imposed penalty of Rs. 5,000/- on the Appellant. Being aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals). He has dismissed their Appeal. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that the Department failed to follow proper procedures and Rules in this case. The Appellant was not provided with the copies of Panchnama, Seizure Report and Recorded Statements of the two persons which have been relied upon by the Department to issue the Show Cause Notice. She produces photocopy of the Invoice No. 10 showing that the goods were sold by the Appellant to one Navin Kumar on 10/04/2015. She also produces a photocopy of Invoices No. 13 dated 08/04/2015 issued by M/s Kumar Trading Co. to the present Appellant for the purchase made by him on 08/04/2015. She submits that these documents prove that the goods were of Indian origin only. Hence, she prays that the impugned OIA may be set aside and the Appeal may be allowed.

3. The Learned AR submits that it is an admitted fact that vehicle involved is bearing the Nepal Registration number. When it was intercepted at the Indo Nepal Border, the driver has stated that the goods were to be transported within Nepal only from Birganj to Bailwas. This Statement was also corroborated by the vehicle owner. Both these statements were recorded in April 2015. The Appellant though claiming to have dispatched the consignment on 10/04/2015 did not appear in picture till 03/09/2015. After five months, he came into picture and

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claimed that these goods were initially purchased by him and was being sold by him to Navin Kumar vide his Invoice No. 10 dated 10/04/2015. The AR submits that even now the Appellant has just produced only the photocopies of the Invoices whose veracity cannot be checked at this stage after more than eight years. The very fact that the Appellant did not pursue the case when the consignment did not reach to Mr. Navin Kumar after 11th or 12th of April 2015, till he met the Customs Officials in September 2015 shows that he was not the owner of the goods. The Learned AR submits that both the lower Authorities have considered all the submissions of the Appellant and have given a considered and detailed findings while imposing the Redemption Fine, charging Customs Duty and imposing penalty on the Appellant. He submits that the Appeal is liable to be dismissed.

4. Heard both sides and perused the documents and the submissions.

5. Admittedly there is no dispute that the vehicle in question is bearing Nepal Registration number and the owner of the vehicle has appeared before the Customs Officials and claimed the ownership and stated that the vehicle was taken for movement within Nepal only. The Driver has also corroborated the same stating that the goods were loaded at Birganj Nepal for delivery at Baiswal, Nepal. If these factual details are seen together, it would clarify that the goods were of foreign origin only. When the seizure was effected, the Appellant was nowhere in the picture. He suddenly emerges as the owner of the goods after about five months. He claimed that he removed the goods within India in the vehicle but he does not remember the vehicle number and details of the driver. He states that this vehicle had broken down and he went with another vehicle to get the goods shifted from the earlier vehicle. After reaching there, he did not find the vehicle which had broken down and hence could not carry out transfer of the goods with new vehicle. While all these happened on 11/04/2015, the Appellant was not in a position to state as to what action he has taken to follow up with the

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purported buyer of the goods Navin Kumar. In the normal course, the buyer would have informed that the good have not reached him. It is surprising that the Appellant did not follow up to locate his consignment worth more than Rs.1.65 Lakhs (as given in the Invoice No. 10 dated 10/04/2015). After more than five months, he has approached the Customs Officials on the ground that he is the owner of the goods.

6. It is seen from the records that he has not sought copies of the Panchnama, Recorded Statement etc. from the Adjudicating Authority. It is on record that he has not attended the Personal Hearings granted to him and OIO was passed ex-parte based on the facts available on record with the Department. Even in the Appeal filed before the Commissioner (Appeals), he has not raised the issue of non supply of these documents. It is seen from the present Appeal Papers, in their Grounds of Appeal, they have not raised the issue about non-supply of these documents. Therefore, the Appellant raising this issue at the time of final arguments now shows that it is only a ploy on their part to drag the case further knowing fully well that the Department may not be in a position to place all the details before the Appellant for the action taken in April 2015.

7. From the OIO and OIA, it is seen that the lower Authorities have followed the principles of natural justice and passed detailed and considered orders justifying the Redemption fine imposed, Custom Duty demanded and penalty imposed on the Appellant. Therefore, I see no reason to interfere with the impugned OIA. Accordingly, the present Appeal stands dismissed.

8. The Adjudicating Authority is directed to check whether the calculation towards Customs Duty demanded has been done correctly or not.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja