

Commissioner Of Customs, Ludhiana vs M/S Star Spices on 14 November, 2024

Author: Sanjeev Prakash Sharma

Bench: Sanjeev Prakash Sharma

Neutral Citation No:=2024:PHHC:148495-DB

CUSAP No. 4 of 2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 24.10.2024
Date of Pronouncement : 14.11.2024

1. CUSAP No. 4 of 2024 (O&M)

Commissioner of Customs, Ludhiana ... Appellant
Versus
M/s Star Spices ... Respondent
2. CUSAP No. 5 of 2024 (O&M)

Commissioner of Customs, Ludhiana ... Appellant
Versus
M/s Sherry Network Private Limited ... Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sunish Bindlish, Senior Standing Counsel and
Mr. Viney Kumar, Advocate, for the appellant.

Ms. Radhika Suri, Senior Advocate with
Mr. Saurabh Kapoor, Advocate,
Mr. Abhinav Narang, Advocate and
Ms. Muskaan Gupta, Advocate, for the respondents
respondents.

SANJEEV PRAKASH SHARMA, J.

These are two Customs Appeals preferred by the Commissioner of Customs against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh (for short, "the CESTAT")

dated 07.06.2024 whereby the order of absolute confiscation of A Areca reca Nuts imported by the two companies, namely, M/s Star Spice and M/s Sherry Network Private Limited, respondents in CUSAP No. 4 and 5 of 2024, respectively, by the order in original dated 14.12.2023, and the order which was further upheld by the order in Appeal dated 15.04.2024, have been set aside and the goods have been permitted to be re-exported re exported on payment of fine of ` 25 lacs in lieu 1 of 14 Neutral Citation No:=2024:PHHC:148495-DB of confiscation and at the same time, the penalty imposed was reduced to ` 10 lacs.

2. The brief facts are being quoted oted from the case relating to CUSAP No.4 of 2024, wherein it has been stated that the respondents imported consignments of Areca Nuts claiming benefit of exemption from payment of customs duty in terms of Indo-

Indo Sri Lanka Free Trade Agreement notification dated 01.03.2023, which permits 100% exemption from levy of basic customs duty in respect of imports only from Sri Lanka. It is the case of the Revenue that as per the prior intelligence received by DRI, certain importers were engaged in malpractice of mix mixing ing consignments of Areca Nuts of Sri Lanka origin with that of shipments originating outside the SAARC territory and paying nil basic customs duty on the basis of notification dated 01.03.2000. It was suspected that the respondents were engaged in such exports exports and, therefore, the consignments imported by the respondents were put on hold and examined by the customs authority along with the officers of DRI in the presence of the authorized representatives of the respondent-importers.

respondent importers. Samples were drawn from the said consignments and sent for testing to three different laboratories, namely, (i) Central Revenue Control Laboratory, New Delhi; (ii) Areca Nut Research and Development Foundation, Mangalore; and (iii) National Food Laboratory, Ghaziabad. It has been stated that as per the examination and testing of the representative samples, it was found that the Areca Nuts were not meeting the requirements as per FSSAI, 2011 and were found to be broken by moulds and insects. As per the report received from the Arec Arecaa Nut Research and Development Foundation, the quality of samples of Areca Nuts was found to be very bad with infestation and visible moulds inside. The report 2 of 14 Neutral Citation No:=2024:PHHC:148495-DB further confirmed that the Areca Nuts were a mixture of Sri Lankan and Indonesian origin. The report report received from National Food Laboratory, Ghaziabad reflected that the Areca Nuts were found with presence of visible fungal growth and musty, which did not confirm to the standards laid down under Regulation 2.3.55. of the Food Safety and Standards, Re Regulations, gulations, 2011. As per the report, the samples were, thus, found to be 'substandard' in terms of Section 3(1)(zx) and unsafe food as per Section 3(1)(zz)(x)(xi)(xii) of the Food Safety and Standards Act, 2006 (for short, 'the Food Act of 2006").

3. The adjudicating authority arrived at a conclusion that the imported consignment was contrary to the prohibition imposed under Section 25 of the Food Act of 2006. The respondents have fraudulently mis mis--

declared the country of origin to avail the benefit of noti notification fication dated 01.03.2023 and that the imported consignment was not fit for human consumption. Apart from considering the

reports of the concerned laboratories, it considered the evidence retrieved from the partner of the firm in the shape of phone records, records, chats, emails extracted by the forensic team on 05.10.2023, which reflected that the respondents had enquired about containers from Indonesia, which was to reach Colombo. There was conversation regarding hiding of low quality goods at the back of the container tainer and the response of the partner of the respondents to the request by the exporter to make payment directly, thus, stating that he cannot show shipment through Indonesia. There were documents shared between the partner of the respondents and the exporter wherein payment from Sri Lanka to Indonesia were being shared. It was evident that the consignment from Indonesia was being re-routed re routed through Sri Lanka in order to avail the undue 3 of 14 Neutral Citation No:=2024:PHHC:148495-DB benefit of the notification. The statement of the partner under Section 108 of the Customs Act, 1962 admitting of having such conversation was also noticed. It was contended by learned counsel for the appellant that the confiscation of goods under Section 111 (d) of the Customs Act, 1962 was rightly directed in terms of the provisions provisions by the adjudicating authority. Therefore, the discretion exercised by it under Section 125 of the Customs Act, 1962 of absolute confiscation of goods was not liable to be interfered with.

4. Learned counsel for the appellant has taken pain to take this Court to the order dated 14.12.2023 passed by the adjudicating authority to submit that there was no occasion to interfere with the said order by the appellate authority. The request for re-export re export made by the respondent respondent--

importers was rejected. The The respondents challenged the order in original by filing appeal before the appellate authority. In appeal the order dated 15.04.2024 passed by the adjudicating authority was upheld.

5. It was further submitted by learned counsel for the appellant that thee respondents had not requested that the goods to be tested by any other 'A' credited laboratory to prove that the goods were of edible grade. The respondent-importers respondent importers preferred appeal before the CSTAT, who vide its order dated 07.06.2024 partially allowed the appeal, reducing the penalty to ` 10 lacs and setting aside the order of absolute confiscation. It permitted the goods to be re-exported re exported on payment of fine of ` 25 lacs in lieu of confiscation of goods.

6. Learned counsel for the appellant further submitted that the CSTAT has wrongly interfered with the discretion available to the Customs Authorities with regard to the imposition of fine and of absolute 4 of 14 Neutral Citation No:=2024:PHHC:148495-DB confiscation. There was no occasion to direct for re re-exporting porting of the goods, which were prohibited to import in India. It was submitted that the evidence relating to the statements, the partner's conduct and the digital evidence of conversation with the supplier was collected in the year 2018 and can be considered ered while examining the goods, which were imported in 2023. Since the Areca nuts were found to be not consumable humanly, there was no occasion to direct the goods be re-exported.

re exported. It is further submitted that there is conscious mis-declaration.

mis He relies on the judgments of Supreme Court in U. P. State Road Transport Corporation and another vs Mohd. Ismail and others 1991 (3) SCC 239; Union of India vs Jain Shudh Vanaspati Limited 1996 (86) E.L.T. 460 (SC); Garg Woolen Mills (P) Limited vs Addl. Collr of Customs, Customs, New Delhi 1998 (104) E. L. T. 306 (SC); judgments of Bombay High Court in Commissioner of Customs (AP), Mumbai vs Alfred Menezes 2009 (242) E.L.T. 334 (Bom.); Jigesh Praveen Shah vs Union of India (2023) 8 Centax 3 (Bom.); and judgment of Madras High Court in Commissioner of Customs (AIR), Chennai Chennai-1 1 vs P. Sinnasamy 2016 (344) E. L.T. 1154 (Mad.).

7. It is further submitted that the observations of the Tribunal that the respondent-importer respondent importer was not aware of the fact that the impugned goods are of substandard bstandard quality and not adhering to Indian standards, is a way of misleading the Court. It is further submitted that the guarantees sustained by the Tribunal is not in accordance with the provisions of the Customs Act and reduction of penalty cannot be sustained.

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8. Per contra, the respondents have filed their written submissions. It is submitted that Section 25 of the Food Act of 2006 read with Food Safety Standard Authority of India Import (Regulations) 2017 requires that 5 of 14 Neutral Citation No:=2024:PHHC:148495-DB all imports of food items ought ought to be subject to the provisions of the Food Act of 2006. The respondent is a regular importer of food items and duly registered with the FSSAI and imported 6 consignments of Areca Nuts and filed Bills of Entries dated 17.09.2023, 01.10.2023, 08.10.2023, 08.10.2023, 08.10.2023 and 08.08.2023 at the Port of ICD CONCOR, Ludhiana. The consignments comprising of Sri Lankan origin Areca Nuts from M/s DLK Spice Export, 476/2, Kandy Road, Anwarama, Mawenella, Sri Lanka was done while various invoices which have been mentioned in the petition.

9. It is stated that in terms of the Customs Act, 1962 as well as Foreign Trade Policy, whenever any goods namely food items are being imported, the same are subject to Fumigation Certificate as well as Phytosanitary Certificate Certificate issued in terms of the requirements of FSSAI Department. The respondents on the basis of the aforesaid documents issued by the exporter filed bill of entries under Section 46 of the Customs Act for the purpose of clearance of goods. Since the import imported ed Areca Nuts having originated from Sri Lanka, the same were subject to exemption from basic customs duty in terms of notification dated 01.03.2023. The respondents claimed the said exemption. It is submitted that the goods accompanied with the E.Country of origin certificate issued by the Sri Lankan Government duly affixed with bar code on the said certificates, which upon verification were linked to the Sri Lankan Website confirming the origin of goods from Sri Lanka. On 17.09.2023, the goods were import imported ed vide bill of entry subject to examination and testing from Port Health Officer, Amritsar, who opined the samples were fit for human consumption. However, the officers of DRI and Custom Department examined the bill of entry and again drew samples on 09.10.2023.

0.2023.

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10. Learned counsel for the respondents further submitted that when the goods were not released, they requested for release of the goods but the same were retained for further testing, although there was no such requirement in law. It is submitted that as per FSSAI Import Regulations, 2017, procedure for testing has been prescribed and timelines for testing of samples have been laid down. But the appellant failed to follow the timelines and deliberately sent the same to three different laboratories.

s. One consignment had already been tested and found to be fit for human consumption. The protest of the respondents was not taken into consideration and the samples were sent much after the goods had been imported to India. After sending the samples to the three National Food Laboratory, Ghaziabad on 21.10.2023, the samples were again drawn on 26.10.2023 and forwarded to the Central Revenue Control Laboratory, New Delhi and it reported that the samples were found with visible fungal growth and musty in odour and do not confirm with the Food Safety and Standards Regulations 2011 and are unsafe for human consumption. The said report was not made available to the respondents and the Customs Department did not supply the test reports to the respondents although the same were required to be provided in terms of circular dated 18.07.2017.

11. It was further submitted by learned counsel for the respondents that the respondents vide their letter dated 19.10.2023 requested for re re--

testing of the samples. The writ petition was filed before this Court as the imported goods were subject to heavy demurrage and detention charges. The respondents were facing immense pressure from the supplier. The respondents vide letter dated 25.11.2023, 05.12.2023, 06.12.2023 and 12.12.2023 requested re for re-export export of the imported consignments. The re re--

7 of 14 Neutral Citation No:=2024:PHHC:148495-DB testing was not acceded to and the Custom Department proceeded to reject the request for re-export.

re export. He submitted that the CESTAT ultimately accepted the request and the respondents did not want the concerned goods to be taken, having noticed the report of the laboratories, which they are not contesting. Further submitted that they should not be made to suffer on account of substandard material having been sent by the supplier to them. It is submitted that the order passed by the CESTAT does not warrant any interference.

12. We have carefully considered the written submissions as having been filed by both the parties and the judgments cited. We find that the only question which needs to be determined determined by this Court is whether the Tribunal has erred in setting aside the order in original and order in appeal whereby the absolute confiscation of the Areca Nuts imported by the respondents was ordered.

13. We find that the learned CESTAT while partly allowing the appeal, passed the following order:-

order:

"19.1. Accordingly, the appeal No. C/60207/2024 is partially allowed modifying the impugned order in the following terms:

i. Absolute confiscation is set aside and the appellants are allowed to re-export export the impu impugned gned goods on payment of a fine, in lieu of confiscation, of Rs.25 Lakhs (Rupees Twenty Twenty-Five Five Lakhs only). Penalty imposed on the appellants under Section 112 of the Customs Act, 1962 is reduced to Rs.10 Lakhs. ii. The impugned goods are permitted to be re re-exported rted subject to the compliance of the impugned order subject to the above modifications.

8 of 14 Neutral Citation No:=2024:PHHC:148495-DB iii. The appellant shall submit an undertaking that the goods will not be routed back to the country. iv. An endorsement shall be made in the export documents to the extent th that the goods are being re-- exported for the reason that they are found to be unfit for human consumption as per Indian Standards."

14. It has come on record that the respondents are regular importers having imported about 100 consignments of Areca Nuts. Th Thee goods were cleared after testing by the Public Health Officer at the custom stations. The Revenue Officers, however, in the present case seized the three consignments on the basis of messages exchanged between the partner of the firm and the foreign supplier supplier in the year 2018 and proceeded to conclude that the Areca Nuts which have been imported in the year 2023 were wrongfully shown to be imported from Sri Lanka but the goods were actually brought from Indonesia.

15. Learned counsel for the respondents has candidly stated during the course of arguments that they have not challenged the reports of the Areca Nut Research and Development Foundation, Mangalore because they do not want to continue and keep the goods with them and want the same to be re-exported ed back to the concerned consigner. It has also been argued that the report from the Areca Nut Research and Development Foundation, Mangalore, has not been held to be reliable as the said institute is not credited by the Supreme Court while dismissing the SLP in the case of Commissioner of Customs (Preventive) vs Laltanpuh (2022) 1 Centax 4 (SC). We, therefore, accepted the contention raised by the Customs Department that the goods were found to be not fit for human consumption. The Areca Nuts were not fit or safe as per the National Food Laboratory, 9 of 14 Neutral Citation No:=2024:PHHC:148495-DB Ghaziabad. The question arises as to whether after such report is received, the authorities can be said to have correctly taken a decision to confiscate the substandard goods and not allow to be re-exported.

re exported.

16. From the documents which have been noticed in the order in original dated 14.12.2023, it is apparent that the goods having been imported from Sri Lanka stands fully established. The report of Areca Nut Research and Development Foundation, Mangalore men mentioned tioned that the

ceased Areca Nuts are mixture of Sri Lankan and Indonesian origin. The exemption from payment of custom duty is for imports only from Sri Lanka as per the notification No. 26/2000 dated 01.03.2023.

17. While the appellants have relied upon the said report to treat all the Areca Nuts to be of Sri Lankan origin, we find that the Supreme Court in *Laltanpuh's* case (supra) has held that the report of the Areca Nut Research and Development Foundation, Mangalore, about foreign origin of ceased goods could not be relied upon. At the same time, there is a certificate of origin, duly signed by the Assistant Director of Commerce, Colombo, which has been placed on record as Annexure R-13, R 13, which has not been found to be forged by the authorities. The verification of the consignment by the Department of Commerce, Sri Lanka dated 09.10.2023 is also on record. Another certificate of origin of 18,000 kg of Areca Nuts containing Sri Lanka Areca Nuts is also on record. The respondents have also placed on record the gazette notification dated 26.03.2019 issued by the Democratic Socialist Republic of Sri Lanka whereby the import of Black Pepper, Areca nuts, Nutmeg/ Mace, Tamarind and Cinnamon is not permitted in Sri Lanka from any other country. Thus, it is apparent that the alleged allegation of Areca Nuts not being from Sri Lanka origin seems to be doubtful and on 10 of 14 Neutral Citation No:=2024:PHHC:148495-DB messages retrieved between the concerned partner of the respondents and the seller from Indonesia of the year of 2018, cannot be taken into consideration for the purpose of import of Areca Nuts done after 26.03.2019, when the aforesaid notification banning import of Areca Nuts, etc. from any other country in Sri Lanka was imposed.

18. A presumption against law cannot be allowed. Therefore, the basis of holding that there is an attempt to evade duty by the importers is without basis.

respondents is found to be without basis.

19. It would be apposite to quote the findings of CESTAT, which are as under:--

"16. We find that the impugned goods have been tested to be unfit for human consumption as per FSSAI standards. Neither the Adjudicating Authority nor the Appellate Authority has given evidence vis vis-à-vis the Sri Lankan Standards. Moreover, it appears that the said conclusion has been arrived at with the presumption that there are no other uses of areca nuts other than for human consumption. We find that there are certain industrial uses of the areca nuts. On going through the technical sources, it is understood that areca nuts are used for the manufacture of paints; areca nut dust used for dyeing clothes and tanning leather, it can be used as an adhesive in ply board, areca nut husk is used to make many industrial products such as hardboard, insulation wool, cushions, paper, paper board and activated carbon. Thus, we find that it cannot be presumed that the impugned areca nut, if re-exported, exported, would be used only for human consumption in Sri Lanka and elsewhere. It cannot also be presumed that the consignment will be routed back to India. We are of the considered opinion that while the appellants can be penalized for importing goods in violation of provision of 11 of 14 Neutral Citation

No:=2024:PHHC:148495-DB FSSAI and rules made there under, not permitting re-export export would not serve any purpose. It has been more than 06 months since the import has taken place and it is likely that the goods will further deteriorate and would not have any commercial value and would be in the danger of losing industrial value, if any. Allowing the same to further deteriorate would only cause unintended financial loss to the appellant and would cause a wasteful outflow of foreign exchange from the Indian importer to the foreign buyer. The Department contends that no evidence of the foreign buyer accepting the consignment has been given. However, we find that a letter dated 24.04.2024, M/s DLK Spice Export, Sri Lanka have requested the appellants to make the outstanding payment and to avoid financial strain, immediate action may be taken to re-export the goods. In view of the same, we are of the opinion that benefit of doubt can be given to the appellant as they are a regular importer is not denied. Therefore, we find that ends of justice can be met if a suitable redemption fine is imposed in lieu of confiscation and if the appellant is suitably penalized while permitting the re-export of the impugned goods.

goods. Indian Authorities should not have any objection if the impugned goods are re-exported. In case of such an apprehension, an endorsement can be made on the export documents that the goods are permitted to be re-exported as they were found to be unfit for human consumption as per Indian standards. We find that as the goods are of value of Rs.10 Crore imposition of redemption fine of Rs 2 Cr is certainly harsh. We are of the considered opinion that a fine of Rs 25.00 Lakhs would be sufficient to meet the ends of justice and the goods can be permitted to be re-exported on payment of redemption fine."

21. The submission of learned counsel for the Revenue that once the authority has exercised its jurisdiction in terms of Regulation 10 (11) of 12 of 14 Neutral Citation No:=2024:PHHC:148495-DB the Food Safety & Standards (Import) Regulations 2017 and disallowed the re-export of food items, the CESTAT would not have taken another view, is found to be without any basis. The CESTAT hears an appeal, and therefore, all the arguments including the submissions relating to decision on Regulation 10 (11) of the Regulations 2017 can be examined by the Tribunal. Scope of Tribunal is wide enough to examine whether the discretion exercised by the authority was legal and proper. It can also take a different view after examining the reasons taken into consideration by the concerned authority. In the present case, the CESTAT found that the Areca Nuts may not be fit for human consumption, but the same are of such a nature which can be used for ancillary and industrial purposes by its original consignee or seller. Having reached to such a conclusion, it decided to direct the authority to allow the re-export of the food items which is provided as one of the options available under Regulation 10 (11) of the Regulations 2017. It, therefore, has interfered with the discretion exercised by the concerned authority and directed for re-export.

re export.

22. We also do not find force in the arguments raised by learned counsel for the appellant with regard to reducing of fine of ` 2 crores to ` 25 lacs and personal fine of ` 10 lacs, as no reason has come forward for imposing such a harsh fine. More so, when we find that the goods were sent by the seller to the importer without there being any participation of the importer in receiving substandard substandard Areca Nuts. We, accordingly, reject the aforesaid submission of learned counsel for the appellant also.

23. We also find that the CESTAT has also examined the wasteful outflow of foreign exchange from Indian Importers for Foreign Buyers as one of the he reasons for allowing the re-export.

re export. We find such reason to be 13 of 14 Neutral Citation No:=2024:PHHC:148495-DB sound and in accordance with public policy. We, therefore, do not find any ground to warrant interference. The appeals filed by the Revenue are found to be without merit and are accordingly dismissed.

dismissed.

If the goods have not been allowed to be re re-exported, exported, the authority shall now allow them to be re-exported re exported forthwith.

24. All pending applications stand disposed of.

25. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

14.11.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No