IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75325 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Debasish Saha, **: Appellant**
Prop. Of M/s. Papai Traders,
Son of Shri Dipak Saha@Mrinal Saha,
Chinsura Station Road, Pallyshree, Dhrampur,
Dist-Hooghly, West Bengal

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75326 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Dipak Saha@Mrinal Saha, **: Appellant**
S/o-Shri Manundra Nath Saha,
Chinsura Station Road, Pallyshree, Dhrampur,
Dist-Hooghly, West Bengal

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75327 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Narayan Karmakar, **: Appellant**
S/o Late Netai Karmakar,
Teghoripara Road, Nabadwip, Nadia-741302

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
Customs House, 3rd Floor,
15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75328 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Sujit Mitra, **: Appellant**
S/o-Shri Keshab Mitra,
Rabindra Nagar, Falakata, Jalpaiguri,
W. B. 735211

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75440 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Md. Shamim Uddin alias Md. Shamim, **: Appellant**
S/o-Matair Ali,
Kunarpara, P.O. Umarpur, P.S.-Badarpur,
Dist. Karimganj, Assam-788 806

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75441 of 2022

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Zoramthari, **: Appellant**
Proprietor of Zotei Enterprise,
145, IIDC Road, Zote, Champhai,
Mizoram-796321

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 76039 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Nilkamal Saha, **: Appellant**
S/O-Lt. Mangal Chandra Saha,
Deshbandhu Para, Falakata,
Dist-Alipurduar-735211

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75126 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Anjan Kumar Paul, **: Appellant**
S/O-Lt. Anil Kumar Paul,
Village- Algapur, Part-I, P.O.- Kalibari Bazar,
Dist-Hailakandi, Assam-788150

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

AND

Customs Appeal No. 75236 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/AKR/56-67/2022 dated 23.02.2022 passed by the Commissioner of Customs(Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Smt. Lalenkawli, **: Appellant**
Proprietor of M/s. A. D. Store
New Champai, Mozoram.

VERSUS

The Commissioner of Customs(Preventive), **: Respondent**
West Bengal, Kolkata, Customs House,
3rd Floor, 15/1, Strand Road, Kolkata-700001

APPEARANCE:

Shri Arijit Chakravorty, Advocate for the Appellant
Shri S. Chakravorty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76499-76507/ 2026

DATE OF HEARING: 29.07.2026
DATE OF PRONOUNCEMENT: 15.10.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order challenging the absolute confiscation of the goods in question and penalties have also been imposed.

1.1. As all the appeals are arising out of a common order, they are taken up together for disposal by way of a common order.

2. The facts of the case are that intelligence was received at the Office of the Directorate of Revenue Intelligence (DRI) in Siliguri on 03.03.2019 to the effect that two consignments of smuggled betel nuts were to be transported via two trucks having registration numbers as AP-27TX-6129 and WB-65C-5608 through Siliguri area of West Bengal. The Intelligence further suggested that the said betel nuts had been smuggled into India from Myanmar through the porous Indo-Myanmar border at Champhai, Mizoram and stored at a Godown at Vairengte, Mizoram for onward transportation of the same to various parts of the country.

3. Acting upon the said intelligence, the officers of the DRI along with two independent witnesses reached at Goaltuli More on Fulbari-Ghoshpukur Bypass Road, P.S-Phansidewa, Dist- Darjeeling at about 19:10 hrs on 03.03.2019 and mounted surveillance and kept vigil over every passing vehicle. At about 19:45 hrs of 03.03.2019 one truck bearing registration No. WB-65C-5608 was found approaching from Fulbari side. The DRI officers signalled the said vehicle to stop. On being signalled by the DRI officers the vehicle came to halt and as soon as the vehicle stopped the DRI officers intercepted the said vehicle. Following this truck other truck bearing registration number AP-27TX-6129 was found approaching from Fulbari side and the DRI Officers intercepted this truck too. Both the trucks had two occupants each, one being the Driver and other being the handy man of the vehicle.

3.1. By showing their identity cards the DRI officers disclosed their identity to the occupants of the intercepted trucks and enquired about their names, where they were coming from and whether they were carrying any contraband with them. In reply the occupants of the truck bearing registration number AP-27TX-6129 identified themselves as:

A. Shri Kona Nagraju, Age -45 yrs, S/o- Lt Venkateswararao, House No: 1/237-A, Naizam Peta, P.O & P.S- Gudivada, Dist- Krishna, Andhra Pradesh-521301, the Driver and;
B. Shri V Rambabu, Age-42 yrs, S/o- Lt Ramana, Vill-Dowleswaram, P.O & PS.- Dowleswaram, Dist- East Godavari, Andhra Pradesh, PIN-533125, the Handyman.

Whereas the occupants of the trucks bearing registration number WB-65C-5608 identified themselves as:

C. Shri Munjur Alam, Age 23 yrs, S/o- Shri Abu Bakkar, Vill- Kumbhira, P.O-Sabdalpur, P.S-Baishnabnagar, Dist- Malda, PIN-732201, the Driver;

D. Tariqul Hoque, Age- 23 yrs, S/o- Lt Samsul Hoque, Vill- Chaksapur, Pada-Dareshatullarabadi Anarasekherabadi Paryant, Samserganj, Murshidabad-742202, the handyman; P.O- ChandniDaha, P.S-

4. On being asked the driver and handyman of the truck bearing registration number AP-27TX-6129 further stated that they were carrying betel nuts that had been loaded from Vairengte, Mizoram and the same were destined to Hooghly, West Bengal. In support of their claim, then they produced certain documents before the DRI officers. They produced:

a. One Manifest despatch bearing No. IRL/581 dated 28.02.2019 issued by Indian Roadlines, Bhaga Bazar, Cachar, Assam;

b. One money Receipt No. R 421211, Book No. 178425 dated 03.03.2019;

c. One Tax Invoice (in duplicate) bearing No. S/AD/278 dated. 28.02.2019 issued by M/s AD Store, 152, New Champhai, Mizoram-796321 to M/s Papai Traders, Basanta Bagan, Rabindranagar, Chinsurah, Hooghly-712106;

d. One e-way bill bearing No. 841041071570 dated 28.02.2019 recovered from the vehicle No. AP-27-TX-6129;

e. One Transport Consignment note (in duplicate) issued by Indian Roadlines, Bhaga Bazar, Cachar, Assam, PIN-788120.

4.1. The driver and handyman of the truck bearing registration number WB-65C-5608 too stated that they were carrying betel nuts that had been loaded from Vairengte, Mizoram and the same were destined to Nabadwip, West Bengal. In support of their claim, they produced certain documents before the DRI officers. They produced:

a. One Receipt bearing No. 13099 Book No 524 dated 28.02.2019 issued by Govt of Mizoram Commerce & Industries (Commerce Wing),

b. Tax Invoice (In duplicate) no. 26 dated 28.02.2019 issued by M/s Zotei Enterprise, 145, IIDC Road, Zote, Champhai, Mizoram-796321 to Shri Narayan Karmakar, Teghori Para Road, Nabadwip, West Bengal PIN-741302

c. One Consignment note (in duplicate) bearing L.R. No. BR 355 dated 28.02.2019 issued by M/s Badarpur Guwahati Roadways, H.O: Badarpur, Dist- Karimganj, Assam;

d. One e-way bill bearing No. 82104 1059947 dated 28.02.2019.

5. After intensive questioning by the DRI officers the drivers and the handymen of both the intercepted trucks, the Revenue entertained the view that trucks were actually loaded with huge quantity of betel nuts of foreign origin which were smuggled into India from Myanmar through Indo-Myanmar border at Champhai, Mizoram and after being smuggled into India through porous Indo-Myanmar border areas of Champhai at Mizoram, the same are brought to Vairengte by trucks and stored in various godowns. It is the case of the Revenue that the drivers and handymen of both the intercepted trucks admitted to have noticed that a number of vehicles with Mizoram registration numbers came loaded betel with nuts which were allegedly smuggled from Myanmar to India.

6. Since the place of interception was a public place and thus was not conducive for carrying out thorough search of the vehicles and slowly several vehicles and onlookers started gathering around creating a chaos, Summons under Section 108 of the Customs Act, 1962 were issued to both the drivers and the handy men of the said two intercepted trucks requiring their presence before the officers of DRI, Siliguri regional Unit on 03.03.2019 at about 20:30 hrs at DRI office situated at "Dey Bhawan", Ashutosh Mukherjee Road, College Para, Siliguri for further search and seizure formalities. In compliance to the Summons the drivers and handy men of both the two intercepted trucks accompanied the DRI officers to the office premises of Directorate of Revenue Intelligence, Siliguri Regional Unit along-with their trucks bearing registration No: AP-27TX-6129 and WB-65C-5608 for further search and

seizure formalities. Both the independent witnesses too accompanied the DRI officers to the DRI office premises. Upon search in the presence of two independent witnesses and in the presence of all the occupants of the intercepted trucks, it was found as follows: -

A. On search of the truck bearing registration No. AP-27TX-6129, 209 bags of betel nuts having total weight 16.302 MT, One Registration certificate issued by Transport Department, Govt. of Andhra Pradesh & One Insurance certificate of the said vehicle along with Transport documents & Tax Invoices etc. of 16.302 MT of betel nuts were recovered.

B. From the truck bearing registration No. WB-65C-5608, 293 bags of betel nuts having total weight 22.854 MT, One Registration certificate issued by Transport Department, Govt. of West Bengal and One Insurance certificate of the said vehicle along with Transport documents and Tax Invoices etc. of 22.854 MT of betel nuts were recovered.

6.1. Thereafter, the search of the persons of the drivers and the handymen of both the intercepted trucks was conducted. However, no incriminating document/object was recovered from the personal possessions of the drivers and handymen of the said trucks. It was found as follows: -

A. From the personal possession of Shri Kona Nagraju, the driver of the truck bearing registration No. AP-27TX-6129, one Old and used black coloured "ASUS" mobile phone bearing IMEI Nos. 351958100485428 & IMEI

No. 351958100485436 inserted with SIM nos. 7997118777 & 9533389629 was recovered.

B. From the personal possession of Shri Munjur Alam, the driver of the truck bearing registration No. WB-65C-5608 one Old and used golden coloured IMEI No. Samsung Galaxy 351678093384251/02& IMEI No. 351679093384259/02 inserted with SIM nos. 8637078822 & 7872316561 was recovered. J7 Prime mobile phone bearing

However during search no mobile phones were recovered from any handyman of the said two intercepted trucks.

7. The total quantity of smuggled betel nuts recovered from the above mentioned two trucks, allegedly smuggled into India from Myanmar, came to 39.156 MT and the value of the same was determined at Rs. 1,07,67,900/-(the value has been calculated @Rs.275/- per kg of betel nuts]

8. The DRI officers then seized all the recovered goods, documents and carrier vehicles under Section 110 of the Customs Act, 1962 (herein after referred to as said Act) on the ground that the impugned betel nuts were smuggled into India through unauthorized routes and thus, are liable to confiscation under Section 111(b) & 111(d) of the said Act. The recovered mobile phones and the documents recovered were seized under Section 110(3) of the said act as it was felt that the same would be useful for, or relevant to, the proceedings under the said Act. The two (02) carrier vehicles, bearing registration numbers AP27TX6129 and WB-65C-5608 being used to transport the smuggled

betel nuts were also seized under Section 110 of the Customs Act, 1962 on the belief that those are liable to be confiscated under Section 115(2) of the Customs Act, 1962. Thereafter the DRI Officers, drew three representative samples of the seized betel nuts believed to be of foreign origin in duplicate from each of the two consignments loaded in two trucks and thus six (06) sets of samples in duplicate were drawn and each sample weighed about 500gms. The samples were then put in separate envelopes and sealed in presence of the intercepted persons and the two independent witnesses. The drivers and handymen of the concerned truck from which the samples were drawn appended their signatures on the respective packets of the sealed samples and both the independent witnesses too appended their dated signatures on the sealed packets of the samples. A Panchanama dated 04.03.2019 was drawn covering the entire procedure of interception, search, seizure and drawing of representative samples. All the four (04) occupants of the two (02) intercepted trucks were then supplied with a copy of the inventory each under their dated signature acknowledging the receipt.

8.1. Statements of all the four (04) apprehended persons namely (i) Munjur Alam and Tariqul Hoque (the driver and the handyman of the truck bearing registration number WB-65C-5608 respectively) and (ii) Shri Kona Nagraju and Shri V Rambabu (the driver and the handyman of the truck bearing registration number AP-27TX-6129 respectively) were recorded on 04.03.2019 under Section 108 of the said Act.

9. From the documents / tax invoices recovered, it was noticed that the names of the consignors were (i) M/s. Zotei Enterprise, 145, IIDC Road, Zote, Champai, Mizoram-796321 [Proprietor: Smt. Zoramthari] and (ii) M/s. AD Store, 152, New Champai, Champai, Mizoram-796321 [Proprietor: Smt. Lalenkawli]; whereas the names of the consignees were (i) M/s. Narayan Karmakar, Teghoripara Road, Nabadwip-741302 and (ii) M/s. Papai Traders, Basanta Bagan, Rabindranagar, Chinsurah, Hooghly-712106 respectively.

10. Pursuant to the above, follow-up enquiry was conducted at the end of the purported consignors and consignees of the said consignments and the statements of various persons connected therewith were also recorded on various dates.

11. The samples drawn from the seized betel nuts were sent to the Chief Executive, Arecanut Research & Development Foundation (R), Varanashi Towers, 223, Mission Street, Mangalore 575001, Karnataka, amongst others, along with the test memo with request to conduct necessary tests/ examination of the samples and to ascertain the territorial origin of the seized betel nuts. The Executive Officer vide his letter No. ARDF/DRI/SLG/18-19/288 dated 01.04.2019 submitted his report and the reports received read as follows:

> i) The sample of betelnuts provided by the Directorate of Revenue Intelligence, Siliguri Regional Unit, Siliguri, WB vide letter DRI. F.NO. 18/CL/IMP/DRI/SLG/2018-19/288 Dtd: 05.03.2019 (Sample No: S-1; Vehicle: AP-27TX-6129) under its seal has been tested and

seems to be of North-East including Myanmar Region. The betel nut (arecanut) samples supplied are not of good quality and more than 20% of the nuts are infested with moulds especially in the pith region. This quality does not comply with the BIS standard fixed for arecanut (Betel Nut).

ii) The sample of betelnuts provided by the Directorate of Revenue Intelligence, Siliguri Regional Unit, Siliguri, WB vide letter DRI. F.NO. 18/CL/IMP/DRI/SLG/2018-19/288 Dtd: 05.03.2019 (Sample No: S-2; Vehicle: WB-65C-5608) under its seal has been tested and **seems to be of North-East including Myanmar Region. The betel nut (arecanut) samples supplied are not of good quality and more than 25% of the nuts are infested with moulds especially in the pith region. This quality does not comply with the BIS standard fixed for arecanut (Betel Nut).**

12. From the evidences and statements recorded during the course of investigation, the following allegations, inter alia, were made by the Revenue: -

(i) Smt. Zoramthari (Appellant No. 6), proprietor of M/s Zotei Enterprise, Zote, Champhai, Mizoram: She was alleged to be one of the important conduits of the betel-nut smuggling syndicate and to have acted at the behest of Shri Joseph Tapadar. As per the investigation, she allowed her firm's name, GST registration and tax invoices to be used for giving a

legitimate appearance to consignments of alleged foreign-origin betel nuts. She was stated to have received betel nuts in small quantities from persons coming from Myanmar, informed Shri Joseph Tapadar upon accumulation of sufficient quantity, and thereafter received trucks along with the requisite documents arranged by him for transportation of the goods. Though she initially claimed the goods to be of indigenous origin, she subsequently stated that she acted merely as a collecting agent and did not maintain records or prepare the relevant documents herself. She nevertheless addressed a letter dated 23.04.2019 to DRI seeking provisional release of the seized betel nuts, claiming ownership thereof, and subsequently also approached the Hon'ble Calcutta High Court for their release. The investigation accordingly alleged that, notwithstanding her stated role as a collecting agent, she knowingly facilitated the use of her firm's credentials in the movement of the subject consignments and thereby assisted the principal operators of the alleged smuggling syndicate.

(ii) Smt. Lalenkawli (Appellant No. 9), proprietor of M/s A.D. Store, New Champhai, Mizoram: It was alleged that Smt. Lalenkawli had acted as an important conduit of the betel-nut smuggling syndicate and to have acted in concert with Shri Nilkamal Saha, stated to be one of its key members. As per the investigation, she permitted the use of her

firm's name, GST registration and invoices for giving a legitimate appearance to consignments of alleged foreign-origin betel nuts. She was stated to have procured betel nuts in small quantities from across the Myanmar border, accumulated them into full truck-loads and thereafter informed Shri Nilkamal Saha, who arranged the trucks for their transportation. Though she initially claimed the goods to be of indigenous origin procured from the local market, she subsequently stated that the betel nuts had been procured from Myanmar and that her role was confined to their collection. She further stated that she did not maintain stock or transaction records and that the records and documents of her firm were maintained by Shri Nilkamal Saha, for which she allegedly received a margin of about ₹0.50 per kilogram. Statements of the consignee, Shri Debasish Saha, and his father, Shri Mrinal Saha, were relied upon by the investigation to indicate that they placed orders with Shri Nilkamal Saha and were unaware of Smt. Lalenkawli, thereby suggesting the latter's firm was being operated through him. The investigation accordingly alleged that she facilitated the transportation of the subject consignments by allowing her firm's credentials to be used in the said transactions.

(iii) Shri Sujit Mitra @ Bulu (Appellant No. 4), resident of Falakata, West Bengal: He was alleged to be a key member of the betel-nut smuggling syndicate and to facilitate the

movement of smuggled consignments through West Bengal. According to the statement of the driver of truck No. WB-65C-5608, Shri Munjur Alam, he was identified, along with Md. Shamim of Silchar, as an owner of the subject betel nuts and was to be contacted at the Assam-Bengal border for arranging documents relating to agricultural marketing tax for the consignment. His involvement was further sought to be corroborated by Call Detail Records showing repeated communication with the said driver during the transit of the subject truck, as well as the use of mobile numbers registered in his and his wife's name. Though Shri Sujit Mitra denied knowing the driver, the consignor/consignee concerns and other persons connected with the consignment, he admitted that on an earlier occasion he had facilitated the passage of five trucks carrying betel nuts, which were subsequently seized by DRI. The investigation also relied upon material indicating his association with Shri Anjan Kumar Paul, Shri Nilkamal Saha and other alleged members of the syndicate, including WhatsApp communications concerning movement of vehicles. He was accordingly alleged to have been an important operational link who arranged and facilitated the passage of trucks carrying alleged foreign-origin smuggled betel nuts through West Bengal.

(iv) Shri Nilkamal Saha (Appellant No. 7), resident of Falakata, West Bengal: It was alleged that Shri Nilkamal Saha is one of the important

members of the betel-nut smuggling syndicate and to have facilitated the movement of the alleged smuggled consignments through West Bengal. The driver of truck No. AP-27TX-6129, Shri Kona Nagaraju, stated that Md. Jakir had identified Shri Nilkamal Saha and Shri Anjan Kumar Paul as the owners of the betel nuts and had instructed him to contact Shri Nilkamal Saha at Baxirhat for arranging documents relating to agricultural marketing tax to facilitate the passage of the consignment. Shri Nilkamal Saha, in his statement dated 06.04.2019, admitted that he had facilitated the passage of the said truck on the request of Shri Mrinal Saha of M/s Papai Traders and had arranged payment of the marketing tax. His involvement was further sought to be corroborated by Call Detail Records showing communication between him and the driver during transit of the subject truck. Smt. Lalenkawli, proprietor of M/s A.D. Store, also stated that she procured betel nuts in small quantities from across the Myanmar border, informed Shri Nilkamal Saha upon accumulation of a truck-load, and that he arranged the truck and maintained the firm's records and documents. Statements of Shri Mrinal Saha and Shri Debasish Saha were further relied upon to indicate that orders for the betel nuts were placed with Shri Nilkamal Saha and that the consignments from A.D. Store had previously been procured through him. The investigation also relied upon material indicating his association with Shri Sujit Mitra @ Bulu and other alleged members

of the syndicate, including exchange of contact details and communications concerning e-way bills. He was accordingly alleged to have acted as an important operational link in arranging and facilitating the transportation of alleged foreign-origin betel nuts through West Bengal.

(v) Shri Anjan Kumar Paul (Appellant No. 8), resident of Algapur, Hailakandi, Assam: He is alleged to be a principal and controlling member of the betel-nut smuggling syndicate and to have operated in association with Shri Nilkamal Saha, Shri Sujit Mitra @ Bulu, Shri Joseph Tapadar and others. The driver of truck No. AP-27TX-6129, Shri Kona Nagaraju, stated that Md. Jakir had identified Shri Anjan Kumar Paul and Shri Nilkamal Saha as the owners of the subject betel nuts and had informed him that the consignments had been brought to Vairengte after being smuggled into India from Myanmar through unauthorised routes. Though Shri Anjan Kumar Paul, in his statement dated 07.03.2019, denied any continuing involvement in the betel-nut trade, Shri Nilkamal Saha subsequently stated that he regularly purchased betel nuts from Shri Anjan Kumar Paul through firms including M/s Joy Guru Enterprise, M/s Ranjita Enterprises and M/s Shiv Shakti Enterprise. The investigation further relied upon the earlier seizure proceedings concerning M/s Ranjita Enterprises, wherein Shri Anjan Kumar Paul was alleged to have exercised actual control over the firm despite another person being shown as its proprietor, as well as WhatsApp

communications and vehicle details exchanged between him and Shri Sujit Mitra @ Bulu. These materials, together with the statements of persons associated with the subject consignments, were relied upon to allege that Shri Anjan Kumar Paul exercised a significant role in procuring, controlling and facilitating the movement of alleged foreign-origin smuggled betel nuts into India through the network of other alleged members of the syndicate.

(vi) Shri Narayan Karmakar (Appellant No. 3), proprietor of M/s Narayan Karmakar, Nabadwip, Nadia: As per the Revenue, Shri Narayan Karmakar was allegedly a major participant in the betel-nut smuggling network. In his statement dated 05.03.2019, he admitted having business dealings with M/s Zotei Enterprise, proprietorship concern of Smt. Zoramthari, and stated that she used to send consignments of betel nuts to him. The investigation subsequently relied upon Smt. Zoramthari's statement that the betel nuts were procured from persons bringing them across the Myanmar border and were thereafter collected and dispatched through the arrangement of Shri Joseph Tapadar. In view of his admitted communication with Smt. Zoramthari and his position as consignee of the subject consignment transported in truck No. WB-65C-5608, the investigation alleged that Shri Narayan Karmakar was aware of, and complicit in, the movement of the alleged foreign-origin betel nuts.

(vii) Shri Debasish Saha (Appellant No. 1), proprietor of M/s Papai Traders: The said person is alleged to have been involved in the procurement and dealing of betel nuts supplied through the alleged smuggling network. During investigation, he admitted knowledge of M/s A.D. Store and stated that his firm had previously received betel nuts from the said concern, which had been purchased through Shri Nilkamal Saha, though he denied knowing its proprietor, Smt. Lalenkawli. He also stated that Shri Nilkamal Saha had informed Shri Dipak Saha about the seizure of the subject consignment and the likelihood of a DRI visit. The investigation further relied upon the Ledger Account of M/s Papai Traders showing substantial transactions with Shri Nilkamal Saha, including supplies stated to be worth about ₹3 crores on credit, and upon the statement that the subject consignment had been ordered from Shri Nilkamal Saha. These circumstances were relied upon to allege that Shri Debasish Saha was part of the business network through which the alleged foreign-origin smuggled betel nuts were procured and dealt with.

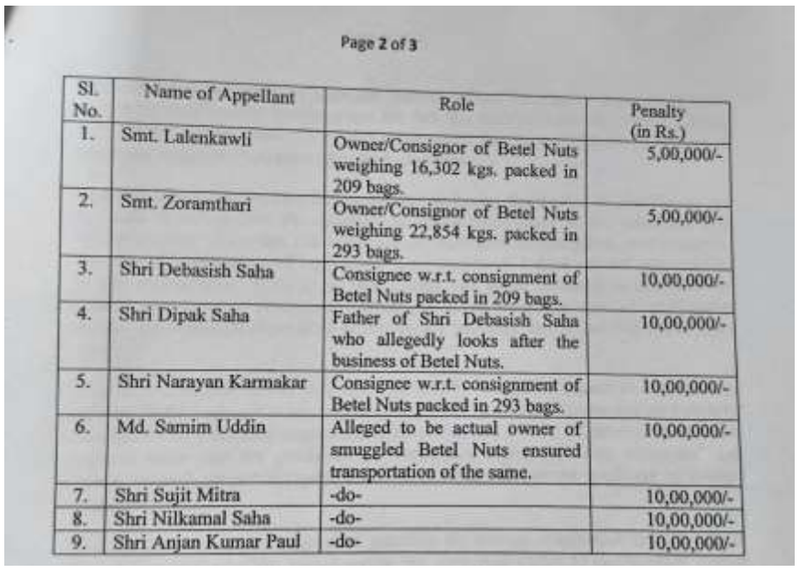
(viii) Shri Dipak Saha @ Mrinal Saha (Appellant No. 2): The Revenue alleges that the said person has been actively involved in procurement of betel nuts from members of the alleged smuggling syndicate, particularly Shri Nilkamal Saha and Shri Anjan Kumar Paul. In the instant case, the investigation found that he had placed an order for betel nuts with Shri

Nilkamal Saha. The Ledger Account of M/s Papai Traders was further relied upon to show substantial credit purchases from Shri Nilkamal Saha, including supplies stated to be worth about ₹3 crores. Shri Dipak Saha was also stated to have been informed by Shri Nilkamal Saha about the seizure of the subject consignment and the likelihood of a DRI visit. Though he denied knowledge of the foreign origin of the betel nuts, the investigation relied upon the above business dealings and his admitted transactions with the alleged members of the syndicate to allege his complicity in the procurement and dealing of the subject goods.

(ix) Md. Shamim Uddin (Appellant No. 5), resident of Karimganj, Assam: It has been alleged that he was of the important members of the betel-nut smuggling syndicate operating in the North-East. In the present case, the driver of truck No. WB-65C-5608, Shri Munjur Alam, stated that Md. Jakir, who had escorted the vehicle to Vairengte for loading, had identified Md. Shamim of Silchar and Shri Sujit Mitra @ Bulu as the owners of the subject betel nuts. The investigation further relied upon records of two earlier DRI cases concerning alleged smuggling of betel nuts in which Md. Shamim Uddin had been arrested/booked or made a noticee, as well as the allegation that he continued to be associated with the movement of alleged foreign-origin betel nuts through the use of invoices, e-way bills and GST particulars of other firms. He was also alleged to have

avoided interrogation by the DRI in the present as well as an earlier case. On the basis of the foregoing, the investigation alleged that Md. Shamim Uddin was one of the principal persons connected with, and an alleged owner of, the subject consignment of foreign-origin betel nuts.

13. Upon completion of the investigation and on the basis of the statements of the persons investigated into, a Show Cause Notice dated 29.08.2019 was issued, for absolute confiscation of the said betel nuts under Sections 111(b) and 111(d) of the Customs Act, 1962 and for imposition of penalties on the appellants herein, amongst others, under Sections 112(a) and 112(b) of the Customs Act, 1962 for their respective roles. The details of the same are provided in the table given below: -



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Sl. No.	Name of Appellant	Role	Penalty (in Rs.)
1.	Smt. Lalenkawli	Owner/Consignor of Betel Nuts weighing 16,302 kgs. packed in 209 bags.	5,00,000/-
2.	Smt. Zoramthari	Owner/Consignor of Betel Nuts weighing 22,854 kgs. packed in 293 bags.	5,00,000/-
3.	Shri Debasish Saha	Consignee w.r.t. consignment of Betel Nuts packed in 209 bags.	10,00,000/-
4.	Shri Dipak Saha	Father of Shri Debasish Saha who allegedly looks after the business of Betel Nuts.	10,00,000/-
5.	Shri Narayan Karmakar	Consignee w.r.t. consignment of Betel Nuts packed in 293 bags.	10,00,000/-
6.	Md. Samim Uddin	Alleged to be actual owner of smuggled Betel Nuts ensured transportation of the same.	10,00,000/-
7.	Shri Sujit Mitra	-do-	10,00,000/-
8.	Shri Nilkamal Saha	-do-	10,00,000/-
9.	Shri Anjan Kumar Paul	-do-	10,00,000/-

14. During adjudication, the adjudicating authority inter alia observed that the driver and the handymen of the two vehicles, in their respective statements, have stated that they saw the vehicles bearing

Mizoram registration numbers, which came with loaded betel nuts from Myanmar to India; that the Report of Arecanut Research and Development Foundation (ARDF) corroborated that the goods had been smuggled from Myanmar; and that Smt. Zoramthari and Smt. Lalenkawli (appellant nos. 6 and 9 herein) in their statements dated 13.03.2019 and 14.03.2019 had admitted that the goods are of foreign origin. Therefore, the goods were held to be of foreign origin by the adjudicating authority, inter alia on the basis of report dated 01.04.2019 of ARDF, Mangalore wherein it was opined that sample of the goods "seems to be North East including Myanmar region" and the statements recorded from the drivers. Accordingly, by way of adjudication order dated 28.08.2020, the goods, viz. betel nuts having total weight of 39.156 M.T. valued at Rs.1,07,67,900/-, were absolutely confiscated under Section 111(b) and 111(d) of the Customs Act, 1962 and penalties, inter alia, on the appellants were imposed under Section 112(a) and (b) of the Customs Act, 1962, as stated in the paragraph 13 hereinabove.

14.1. The appellants, amongst others, challenged the aforesaid adjudication order dated 28.08.2020 before the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, Kolkata, who, by way of the impugned Order-in-Appeal No. KOL/CUS/CCP/AKR/56-67/2022 dated 23.02.2022, rejected the same and upheld the order passed by the lower authority.

14.2. Aggrieved from the said order, the appellants are before us.

15. The Ld. Counsel appearing on behalf of the appellants submits that the case has been laid out on the basis of statements and also on the basis of Test Report of the Arecanut Research and Development Foundation (ARDF), Mangalore dated 01.04.2019.

15.1. It is pointed out by the Ld. Counsel for the appellants that the drivers and handymen have categorically submitted before the ld. adjudicating authority that their statements dated 04.03.2019 were nothing but computed typed by the investigating authority and that they were asked to sign the same without knowing the contents thereof; that as such, any adverse conclusion on the basis of such purported statement of drivers and handymen is bad in law.

15.2. He further submitted that the respective statements of appellants, namely, Smt. Zoramthari and Smt. Lalenkawli (appellant nos. 6 and 9 herein) dated 13.03.2019 and 14.03.2019 would also clearly reveal the fact that both of them had procured the betel nuts locally as well. Hence, it is his contention that it cannot be presumed that seized betel nuts were of Myanmar origin and had been smuggled into India.

15.3. The Ld. Counsel for the appellants has also submitted that the betel nuts are non-notified in nature and hence, the burden of proof is on the Revenue to substantiate the allegation of illegal importation of the same; that it is a settled position of law that unless and until foreign origination is established upon evidence, the question of confiscation of such goods under Section 111 of the Act does not and cannot arise. He submits that in the

present case, there is no such cogent / actual evidence to establish the allegation of foreign origination of the seized goods and thus, the order of confiscation and consequential imposition of penalties are seriously bad in law and liable to be quashed.

15.4. It is also the submission of the Ld. Counsel for the appellants that the report of ARDF, Mangalore cannot be the basis of any adverse finding since it is no more res integra that such organization has no authority or capacity to determine origination of betel nuts; that further, in the instant case, the said report opined that goods are of the North East region including Myanmar and hence on such purported report, it cannot be presumed that the goods are of foreign origin.

15.5. He also relied on the following decisions: -

i. *Commissioner of Customs, Central Excise and Service Tax, Siliguri v. Subodh Das [2023 (385) E.L.T. 693 (Cal.)]*

   - which order has been affirmed by the Hon'ble Apex Court reported in 2024 (388) E.L.T. 391 (Supreme Court).

ii. *Maqsood Alam v. Commissioner of Customs, Lucknow [2015 (324) E.L.T. 162 (Tri. – Delhi)].*

iii. *Maa Kamakhya Trader v. Commissioner of Customs (Preventive) [2024 (389) E.L.T. 185 (All.)]*

15.6. On the basis of these submissions, the Ld. Counsel for the appellants prayed that the impugned order be set aside.

16. On the other hand, Ld. Authorized Representative of the Revenue supported the impugned order.

17. Heard the parties and considered their submissions.

18. We find that in this case, the sole allegation is that two trucks loaded with betel nuts, which were intercepted at Goaltuli More on Fulbari-Ghoshpukur Bypass Road, P.S.: Phansidewa, District: Darjeeling, West Bengal were carrying betel nuts of foreign origin.

18.1. The drivers of the said trucks were having the invoices wherein the consignors were shown as M/s. AD Store and M/s. Zotei Enterprise, both of which were located in Mizoram whereas the consignee names for the same were M/s. Papai Traders and Narayan Karmakar respectively, both of which were of West Bengal.

18.2. Thus, considering the documentary evidence available, it cannot be merely said that the betel nuts were seized at the border of Indo-Myanmar.

19. Further, we take note of the fact the Test Report relied upon by the ld. adjudicating authority, of ARDF, Mangalore, does not conclusively say that the betel nuts in question are of Myanmar origin. In fact, the said Test Report says that it "*seems to be of North East including Myanmar region*". This does not mean that the goods are of 'Myanmar origin'.

20. Moreover, even if the goods are presumed to be of Myanmar origin, in that case also, as the said goods viz. 'betel nuts' are not notified under Section

123 of the Customs Act 1962, therefore, the burden of proving that the said betel nuts are smuggled one lies on the Revenue, which the Revenue has failed to establish. Merely on the basis of a statement, it cannot be concluded that the betel nuts in question are smuggled one.

21. The same view was taken by the Hon'ble High Court at Calcutta in the case of *Commissioner of Customs, Central Excise and Service Tax, Siliguri v. Subodh Das [2023 (385) E.L.T. 693 (Cal.)]* wherein the Hon'ble Calcutta High Court observed as under: -

> *"4. The first question which was considered by the Learned Tribunal is as to on whom the burden of proof lies in establishing that the goods in question are smuggled goods. The Tribunal, in our view, rightly took into consideration the fact that betel nuts are not goods notified under Section 123 of the Customs Act. Hence, no adverse presumption against the respondents should be made about the said goods being smuggled or being of foreign origin. Therefore, the Tribunal rightly held that the burden is on the department to prove that the goods were of foreign. Origin.*
>
> *5. In support of its conclusion, the Tribunal placed reliance on the judgment of this Court in the case of Commissioner of Customs (Preventive), WB, Kolkata v. Sudhir Saha, reported in 2004 (172) E.L.T. 26 (Cal.) = 2004 taxmann.com 1512 (Cal.). In the said decision, the Court held that betel nuts which were seized are not notified goods under Section 123 of the Customs Act and the said provision applies only in respect of goods which are smuggled and smuggled goods means something suggesting that they are of foreign origin and their recent importation from abroad. In this regard,*

reliance was placed on the decision in the case of Shantilal Mehta v. Union of India, reported in 1983 (14) E.L.T. 1715.

6. The Tribunal noted that the facts of the case on hand were identical to that of the facts in the case of Sudhir Saha and that the burden of proof to establish the smuggled nature of the seized goods was on the department and taking note of the factual position, the Tribunal held that the department miserably failed to discharge the burden cast upon them. Further, the Tribunal look note of the finding recorded by the Commissioner in the adjudication order wherein it has been stated that there may be a possibility that the subject betel nuts too are of foreign origin and were smuggled to India. Commenting upon the said finding, the Learned Tribunal, in our view, rightly held that this finding is based entirely on presumption for which there is no legal or factual basis disclosed. That apart, the Tribunal has also examined the other facts, namely, the statements which were recorded from the respondents at the first instance, which were subsequently retracted before the Learned Magistrate. The Tribunal found that the statements initially recorded from the respondents who are semi-literate persons were identical and one was mirror image of the other and, therefore, the Tribunal rightly disbelieved those statements and in any event the same having been retracted at the earliest point of time, held that the statements could not have been the basis of the adjudication. Further, on facts, the Tribunal found that the goods were seized far away from the international border in the interior of North Bengal from trucks/warehouses and also it is an undisputed fact that betel nuts are sold in the adjoining States of Assam and Manipur as well as

north districts of West Bengal and their adjacent area. Therefore, the Tribunal came to the conclusion that in the absence of evidence on the contrary disclosed, it has to be concluded that the Revenue has been unable to establish the smuggled nature of the seized goods and, thus, discharge the burden of proof cast upon the respect.

7. Further, the Tribunal examined the other factual aspects and found that the documents on record show that the goods were purchased from local markets and/or from Mandi located in Jalpaiguri district of West Bengal. The said purchases of agricultural produce such as betel nuts are regulated by the respective District Regulated Market Committees and the Sub-divisional Officers in terms of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Further, the Tribunal noted that copies of the receipts issued by the Market Committees were on record evidencing that the market fee was paid by the respondents and, therefore, concluded that the seized consignment had been purchased on payment of such cess under the Regulation Act of 1972. Furthermore, the bag containing the seized goods did not contain any foreign markings. Furthermore, the Tribunal noted that during the course of investigation undertaken by the DRI, no other incriminatory material was obtained either from the raids conducted or in course of interrogating witnesses that would indicate that the said goods were sourced from outside India.

8. Thus, based on presumptions and assumptions, it cannot be held that the goods were smuggled goods and in the absence of any evidence produced by the Revenue to discharge the burden cast upon them, in our view, the Tribunal noting the facts of

the case had rightly granted the relief in favour of the respondents. Furthermore, there was no testing of the seized goods through any accredited Agency for determining any constituent property or characteristic that would indicate or establish foreign origin of the said goods. The Tribunal noted that the only evidence on the basis of which the proceedings were initiated and the order of adjudication was passed against the nine respondents is based on a statement recorded from the respondent in CUSTA 22 of 2022. All the respondents were arrested and produced before the Learned Chief Judicial Magistrate, Siliguri before whom the so-called voluntary statements were retracted. The Tribunal noted that it is on record that the respondent in CUSTA 22 of 2022 had retracted the statements on 16th March, 2016 before the Learned Additional Chief Judicial Magistrate, Siliguri before whom he was produced after arrest. Thus, in the absence of any independent evidence to bring home a charge of smuggling, the Tribunal set aside the adjudication order. Furthermore, the Tribunal noted that there was no discussion on the retraction of statements made on oath by the respondents and the witnesses who implicated the respondents were, not produced for cross-examination in spite of a specific request made by the concerned respondent and this request was rejected on the ground that the occupants of the trucks had allegedly described the true facts in course of the statements recorded under Section 108 of the Act which were affirmed by the respondent in CUSTA 22 of 2022."

The above order has been affirmed by the Honourable Apex Court as reported in *2024 (388) E.L.T. 391 (Supreme Court).*

21.1. In the case of *Maqsood Alam v. Commissioner of Customs, Lucknow [2015 (324) E.L.T. 162 (Tri. – Delhi)],* this Tribunal while dealing with an identical issue, has held as under: -

> *"4. The core issue to be decided in the present appeals is whether the impugned goods were of foreign origin and were smuggled. It is seen that betel nuts are not notified under Section 123 of the Customs Act, 1962. Consequently, the onus to prove that the goods are of foreign origin and are smuggled is squarely on Revenue and this onus cannot be discharged merely on the basis of suspicion. Neither in show cause notice nor in adjudication order any evidence has been produced as to from where the goods have been smuggled and what is the origin thereof. It is seen that Shri Maqsood Alam has confirmed that the goods were sent by him to M/s. RK Enterprises, who has also confirmed having placed the order therefor: M/s. Bahubali Attractions Pvt. Ltd. has accepted having supplied the goods to Shri Maqsood Alam and has also claimed along with the evidence of cash memos that they had bought almost 46 tons of betel nuts under various cash memos (on payment including VAT) from two cooperative societies, which in turn had bought the goods from NCCF and the cooperative societies have mentioned the invoice numbers of NCCF under which the goods were bought by them (i.e., the cooperative societies), The adjudicating authority has essentially relied on the visual opinion of the Customs authorities that the goods are similar to the goods which are smuggled from Nepal and statements of the cooperative society and NCCF personnel given after visual examination of the impugned goods that they are not those sold by them. There is force in the appellants' contention*

that the goods were sold to NCCF in the month of March, 2008, which in turn were sold by the cooperative societies in the month of April, 2008 and were further sold by M/s. Bahubali Attractions Pvt. Ltd. in the month of May, 2008 and it is not legally valid to treat the opinions of the personnel of the cooperative societies/NCCF based on mere visual examination of the impugned goods after so many months as a sustainable legal evidence, more so because they sell betel-nuts to various customers and cannot. be reasonably expected to remember whether the impugned goods were sold by them or not. In any case, an opinion based on visual examination of betel-nuts cannot be accorded a legal force to sustain the allegation of smuggling as has been held by various judicial pronouncements. In the case of CC (Preventive) v. Dugarmal Mohata [2006 (200) ELT 522 (Cal.)], the Kolkata High Court held that trade opinion cannot form the basis or foundation to establish the fact that seized betel nuts were either of smuggled character or were of foreign origin and smuggled into India from Nepal. In the case of CC (Preventive) v. Raj Kumar Jaiswal [2006 (204) E.L.T. 561 (Cal.)], the Kolkata High Court observed that if Revenue is unable to disclose even name of foreign country where goods are allegedly manufactured and at same time, is unable to produce anybody who actually smuggled any part of goods from Bangladesh and in the report on result of chemical examination there is no indication as to foreign origin, Tribunal committed no illegality in setting aside order of confiscation. and penalty. In the case of CC (Preventive). Mumbai v. Aakash Enterprises [2006 (205) E.L.T. 23 (Bom.)], the Bombay High Court observed that the Tribunal's finding that in cases of non-notified goods, burden lies on Revenue to prove illegal

entry into country is correct and that the burden lay on the Department to produce some material/evidence to establish that seized goods were smuggled goods. Similarly, in the case of CC (Preventive), Mumbai v. Shri Ganesh Enterprises [2006 (199) E.L.T. 208 (Bom.). the High Court reiterated that the burden lay on the Department to produce some material/evidence to establish that seized goods were smuggled goods.

5. Thus the opinions that the goods are of foreign origin based on visual examination are totally insufficient to quasi judicially arrive at a finding that the goods are of foreign origin. Further being of foreign origin in itself does not mean that the goods are smuggled for which positive evidence is to be produced by Customs authorities to establish the smuggled nature of goods. We find that the Customs has not even attempted to produce any such evidence in the present case. As regards the marking "Triveni, Kolkata in transit to Nepal" found on a few bags, in the case of CC (Preventive) v. Dugarmal Mohata (supra). The Calcutta High Court observed, "No reliance can be placed regarding inscription "Biratnagar, Nepal, Transit to Calcutta to Nepal" which were found on some of the seized bags". It may be mentioned here that mere suspicion based on circumstances is not sufficient to sustain the allegation of smuggling.

6. In view of the analysis above, we are of the view that Customs have failed to establish that the goods, were smuggled. Once the allegation of smuggling is held to be unsustainable, no penalties and redemption fine survive consequently all the appeals are allowed and the impugned order is set aside."

21.2. Further, the Honourable Allahabad High Court in the case of *Maa Kamakhya Trader v. Commissioner of Customs (Preventive) [2024 (389) E.L.T. 185 (All.)]* again examined the said issue and observed as under: -

> *"21. Since jurisdiction to seize the goods arises on the formation of such "reason to believe", we cannot allow the revenue to casually pass that test. Presumption of legality of a transaction arising on the strength of a Tax Invoice may be destroyed only on the strength of valid "reason". Here, the goods were accompanied with Tax Invoices issued by the supplier. Sri Karni Traders. The discrepancy alleged in absence of Invoice Nos. 10 and 11 may not stand in face of undisputed facts that such documents were also made available to the revenue authorities with the reply sent through e-mail on 2nd December, 2023.*
>
> *22. Those Tax Invoices were not required to accompany the goods. The petitioner's Tax Invoices that were issued to the purchaser Sri Balaji Traders were found accompanying the goods. Therefore, only a suspicion arose to the revenue authorities that the goods sold by the petitioners may have been procured from outside the country. Yet, to reason that the transaction, had originated from outside the frontiers of the country, there was no material with the revenue authorities, at that stage. The revenue only obtained purely subjective opinions one from traders and another from ARDF. While the opinion of the traders (on the face of it) were subjective, formed on ocular observations of the two traders, the alleged expert opinion of the ARDF is no more than that. As extracted above, it only brings out that there exist two qualities of*

Arecanuts found loaded on the two trucks in question. No scientific or established/recognised test was performed by the ARDF on the sample Arecanuts and no objective test report was submitted by the ARDF in support of its opinion that some of Arecanuts "may be" of foreign origin.

23. Unless there pre-existed objective/scientific test to determine the origin of goods and/or unless the ARDF report had arisen on such a test to ascertain the origin of goods, the report of the ARDF though described as one of a neutral third party, it may never be acknowledged as cogent or objective material that may lead to formation of a "reason to believe" that the goods were of foreign origin.

24. Second, even that opinion is not definitive but only suggestive. The words "resembles and seems" used in the report to record the opinion of the ARDF itself admit of possibility of the facts being otherwise. In fact, no definite opinion has been expressed that the goods were of foreign origin. Unless such definitive opinion existed, the report itself may never form objective material to form a "reason to believe". Suspicions, howsoever strong may never replace/substitute "reasons" that may be tested against material on which it may arise.

25. Similar conclusion has been reached by this Court with respect to similar report of the ARDF with respect to Betel nuts in Commissioner Customs, (Preventive) v. M/s. Maa Gauri Traders (supra), wherein it was observed as below :-

> *"The report of the ARDF has also been held to be not reliable inasmuch as it could not be shown with any degree of certainty that the origin of the betel nuts could be established by testing in a laboratory, as is clear by the answer to the RTI query given by Directorate of Arecanut And Spice Development, Ministry of Agriculture and Farmers Welfare, Government of Kerala."*

26. Third, no material has been shown to us to reach conclusion different from that reached by the Meghalaya High Court INC.C. (Preventive), NER Region, Shillong wherein it was observed as below:-

> *"4. The Division Bench of the Tribunal recorded the finding that the confiscated betel nut is non-notified goods and therefore, burden to prove the fact of smuggling lies on the department and same has not been discharged. In this regard, the department relied upon the certificate issued by the Arecanut Research and Development Foundation, Mangalore to show that the confiscated goods/betel nuts are of foreign origin. However, the Tribunal refused to consider this certificate on the ground that the said Institution is not accredited and hence the report was not relied on. The Tribunal in this regard relied on the decision of the Patna-High Court reported in 2020 (371) E.L.T. 353 (Pat.)."*

Therefore, we are not inclined to give any undue credence to the report of ARDF than it may otherwise deserve.

27. As to the other material, in the first place, the petitioner was not required to carry the Tax Invoice of purchases made by its its supplier- Sri Karni Traders. Prima facie, the Tax Invoices issued by M/s. Sri Karni Traders were evidence of valid purchase made by the petitioner within the country. In absence of a legal requirement, the absence of the purchase documents of Sri Karni Traders (during transportation by the petitioner), may never have led to formation of a "reason to believe" that goods were of foreign origin. At most, a suspicion may have arisen to the revenue authorities, at that stage. However, once the purchase documents of Sri Karni Traders were made available by the petitioner along with his reply dated 2-12-2023 and other reply (which the revenue does not dispute), the suspicion that may have existed stood resolved - to the benefit of the assessee. Before any "reason to believe" may have arisen, the revenue authorities were obligated to conduct an enquiry and/or verification if the goods had originated from outside the country. Here, no material existed to doubt the origin of Aercanuts from within the country. Thus, revenue has failed to discharge its burden."

22. From the discussions hereinabove and by applying the ratio of the decisions cited supra, we hold that in this case, the Revenue has failed to discharge their burden of proving that the goods in question are smuggled one. In these circumstances, the said goods cannot be held liable for confiscation on the basis of assumptions and presumptions. Therefore, we set aside the order of confiscation of the goods in question. Consequently, we also hold that no penalty is imposable on the appellants.

23. In these terms, the impugned order is set aside and appeals are allowed, holding that no penalty is imposable on the appellant.

(Order Pronounced in Open court on 15.10.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP