



## ***ALO Law Office- IDT Tax / Arbitration / Litigation***

**Date: 24.04.2025**

### **CESTAT Kolkata Sets Aside Seizure of Black Pepper & Green Peas**

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata Bench – Court No. 2, has allowed a batch of six appeals related to the alleged smuggling of black pepper and green peas from Nepal into India, holding that the Revenue failed to prove the foreign origin of the goods and that the seizures conducted at Muzaffarpur constituted "town seizures" without sufficient statutory backing.

#### **Case Background:**

- Based on intelligence reports, officers of the Directorate of Revenue Intelligence (DRI) intercepted a truck and escort car at Hajipur, Bihar on 28.05.2019.
- The truck was found carrying 6,718.5 kg of black pepper and 3,918 kg of peas.
- The Revenue alleged these goods were smuggled from Nepal through Bhimnagar border and lacked legal documentation.

#### **Departmental Action:**

- Issued show cause notices citing provisions of Section 111(b), 111(h), and 115(2) of the Customs Act, 1962.
- Imposed redemption fines and penalties on the appellants, including:
  - Rs. 30 lakh for black pepper
  - Rs. 60,000 for peas
  - Rs. 4.14 lakh for the truck and Rs. 75,000 for the escort car
- Relied on circumstantial evidence, e-way bills issued post-interception, and markings on bags such as "Rose Brand" and "Sanchit Black Pepper."

### Appellants' Arguments:

1. Goods not notified under Section 123, hence burden of proof lies on Customs.
2. Invoices under GST were available and payments were made through banking channels.
3. No direct evidence of goods entering India illegally from Nepal.
4. Similar case law precedents support their claim:
  - Shanti Biswas v. Commissioner of Customs (Preventive), Lucknow
  - Laltanpuii v. Commissioner of Customs (Preventive), Shillong
  - R. Lalmawizuali & Others v. Commr. of Customs (Preventive), Shillong

### Revenue's Position:

- Relied on statements made under Section 108.
- Toll plaza records and inconsistencies in GST registration and e-way bills cited.
- Claimed brand markings and sourcing pattern proved third-country origin.

### Tribunal Findings:

- Black pepper and peas are not notified under Section 123, thus burden of proof lies with the Department.
- No forensic or chemical testing was done to determine origin.
- Bags did not contain manufacturer's name or address.
- No direct evidence or statutory notification proving goods were smuggled.
- Seizure made 216 km away from Indo-Nepal border, considered a "town seizure", which weakens the assumption of smuggling.

### Final Verdict:

- Confiscation, penalties, and redemption fines were quashed.
- The appeals were allowed with consequential relief to the appellants.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Kolkata**

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**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA  
REGIONAL BENCH – COURT NO.2**

**Customs Appeal Nos. 75964-75968 of 2021**

(Arising out of Order-in-Appeal Nos. 75-80/Pat/Cus/Appeal/2021-22 dated 22.09.2021 passed by Commissioner of CGST & Central Excise, Patna.)

**1. M/s Rahul Kumar,**

**2. M/s Rohit Kumar Alisas Sonu, (Prop. Of M/s Balaji Sales),**

(S/O- shri Anand Prasad Gupta, At- 3<sup>rd</sup> Floor,  
Sagar Market Bakerganj, Gola Road, Patna-800004.).

**3. M/s Gautam Keshri, (Proprietor of Keshri Bothers)**

(Haladi Patti, Marufganj, Patna),  
S/O Shri Amarnath Keshri, Mohalla- Dalhatta, Devi  
Asthan, Post-Marufganj, Patna City Patna-800008)

**4. M/s Abhishek Kumar Jha, (S/O- Shri Tribhuwan Nath  
Jha),**

(At- Nala Par, Behind Udyog Bhawan, Bakerganj,  
Post- Bankipur, Patna-800004)

**5. M/s Nashant Kumar (Proprietor of Jay Maa Kali  
Marketing Company),**

(North Market Road, Upper Bazar, Ranchi), S/O Shri Ashok Kumar Baranwal, Resident  
of 989, Baranwal Niwas, Suryapuri, Near Kiran Apartment, Devi Mandap Road, Hezal,  
Hehal, Ranchi-834005.)

**..Appellant**

*VERSUS*

**Commissioner of Customs (Port), Patna,**  
(C. R. Building, Bir Chand Patel path, Patna-800001)

**...Respondent**

..  
**APPEARANCE :**

Shri Amit Kumar, Advocate for the Appellant

Shri Sourab Chakraborty, Authorized Representative for the Respondent

**CORAM:**

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

**Final Order No...75955-75959/2025**

DATE OF HEARING : 13.02.2025

DATE OF PRONUOUNCEMENT: 23.04.2025

**PER R. Muralidhar:**

On the basis of specific information received by the department that a huge consignment of 3<sup>rd</sup> country origin Black Pepper and Green Peas have been smuggled from Nepal into India through Bhimnagar Indo-Nepal border and further loaded on a truck bearing registration Number BR-01GG/7778, which was piloted by a car and destined to

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Patna via Sitamarhi-Darbhanga-Samastipur Musharigharari-Hajipura, the officers of DRI, Muzaffarpur and Hajipur Police intercepted the car and Truck loaded with Black Pepper and Green Peas alleged to be of 3rd country origin at 10.30 hrs on 28.05.2019 at Hajipur .The driver of the intercepted car, Shri Abhishek Kumar Jha,in his statement under Section 108 of the Customs Act, 1962 stated Peas was coming from Bhimnagar Border upto its destination at Patna. As per instruction over phone by Rohit Kumar he met the driver of the said truck near Phulparas, he escorted the truck by the car.

2. The driver of the truck could not produce any licit documents related to import of black pepper. He produced a copy of Bill of Supply bearing invoice no GST/3/2019-20 dated 27.06.2019 issued by M/s Balaji Sales (Noticee no.2 represented by Proprietor Rohit Kumar), Supaul in favour of M/s Ivanka Traders, Gaya for sale of 10,000 Kgs of peas. Thereafter, the consignment of the alleged smuggled Black Pepper and Green Peas of country origin and the truck & car were seized on reasonable belief that contraband black pepper and green peas being transported.

3. Thereafter a Show Cause Notice dated 19.11.2019 was issued against seven persons including Rohit Kumar(Noticee No.2) in terms of provisions of Notification 09/96, Cus [N.T) dated 22.01.1996 and section 7,11, 46 and 47 of the Customs Act, 1962 on the reasonable belief that the goods were liable to confiscation under Section 111(b) & 111(h) and the truck under section 115(2 )

5. In the Order-in-Original dated 31.12.2020, the Adjudicating Authority observed that Rohit Kumar(Noticee No.2) has consciously and wilfully engaged in illicit import/carrying/transporting of smuggling of Black Pepper and Green Peas of 3rd country origin through Nepal to India. He ordered for confiscation of Green Peas, black pepper and

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vehicles under section 111(b) & 111(h) and section 115(2) respectively, but gave an option of Rs.30,00,000/- for redemption fine (inclusive of duty) for black pepper & Rs. 60,000/- for peas and redemption fine for truck of Rs. 4,14,000/- & for car for Rs. 75,000/- under Section 125 ibid and imposed penalty of upon the Noticee no. 1,2,3,4,5& 6. For Provisional release, cash security of 70% of seizure value of black pepper ie. Rs 23,51,475/- was made by the Noticee No.2. The Adjudicating authority appropriated this amount against the confirmed demands.

8. Being aggrieved with the Order in Original, the appellants filed their appeal before the Commissioner (Appeals), where it came to be dismissed by him. Hence, the appellants have filed the present appeal before the Tribunal.

9. The Ld Advocate representing the appellants [Noticee No.2 to 6], makes the following submissions:

(1) The Department has not brought in conclusive evidence to the effect that the goods are of foreign origin.

(2) The goods in question, i.e. Black Pepper and Peas are not notified goods under Section 123 of the Customs Act 1962

(3) The goods have been seized at Muzzafarpur, Bihar on the allegation that the goods were being smuggled from Nepal via Bhimngar. Since the Muzzafarpur is quite far away from the Indo-Nepal border, this is a mere town seizure. Hence, the allegation of smuggling cannot be assumed without proper evidence, which the Department has failed to produce.

(4) The appellants have provided documentary evidence to the effect the goods have been bought under normal GST paid invoice, which has not been considered by the Dept.

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(5) The quantity of 6000 Kgs of Peas and 4000 Kgs of Black Pepper was available with Rohit Kumar [Prop of Balaji sales - Noticee No.2). They have supplied the Peas to M/s Sapna Traders, situated below Central Bank of India at Pupri in the district of Sitamarhi.

(6) In view of the supply of the peas Pupri, Noticee 2 has unloadedd the Peas and 4 Tons of Black Pepper was loaded in the same truck in the morning of 14.04.2019.

(7) Invoice No. 1 dated 27.05.2019 from Keshari Brothers had been issued toRohit and vide this invoice he has sold Black Pepper to M/s Balaji Sales, Patna(Noticee No.2).

10. The Ld Advocate relies on the following case laws :

(a) R. Lalmawizuali @Amawii ,MD Samim Uddin , Shri Amit Kumar Jaiswal Vs Commissioner of Customs (Preventive) Shilong reported in CESTAT Final order no. 75582-75584/2024.

(b) Maa Lilori Bhandar Vs. Commissioner of Customs (Preventive) , Kolkata in CESTAT final order no. 75169-75170/2023 dated 27.03.2023.

(c) Shanti Biswas Vs. Commissioner of customs (Preventive), CGST & Central excise Lucknow reported in CESTAT Final order no. 70177 dated 20.10.2023

11. As per the Learned Advocate, in view of the above submissions on factual details and the cited case laws, the impugned Order is liable to be set aside and the appeals filed by the appellants may be allowed.

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12. The Ld. A R, appearing on behalf of the Revenue makes the following submissions:

(1) The driver of truck could not produce any licit documents related to import of black pepper and peas rather he produced a computerized copy of Bill of Supply bearing invoice no GST/3 /2019-20 dated 27.05.2019 issued by M/s Balaji Sales (Noticee no.2), Supaul in favour of M/s Ivanka Traders, Gaya for sale of 10,000 Kgs of peas, valued at Rs.5,00,000/

(2) No documents like invoice /consignment note/ away Bill could be produced for transportation of Black Pepper and Peas of third country origin.

(3) In the course of examination of the bags of Black Pepper, on 251 bags out of 275 bags of Black Pepper, "ROSE BRAND 5 MM JUMBO" was found written and on the rest 24 bags "SANCHIT BLACK PEPPER 5 MM BOLD BEST QUALITY" GROSS WEIGHT 25.20 K.G., NET WEIGHT 25.00 KG, PACKED DATE 03i03/2019, EXPIRY DATE 01/0312022'was found written

(4) Shri Ankit Kumar of M/s. Gaurav Roadways, Patna in his statement dated 18.07.2019 tendered under Section 108 of the Customs Act, 1962 in answer to question No. 10 stated that the truck bearing Regn No.BR-01GG/7778 loaded a consignment of biscuits on 27.05.2019 at Britannia Industries and unloaded the consignment of biscuits at Arafia on 27.05.2019 and thereafter the driver went from Araria to Bhimnagar for loading a consignment of peas for its delivery at Patna with his consent. He further in reply to question No. 15, 16 & 17 clearly stated that the invoices dated 27.05.2019 and e-way bills dated 28.05.2019, issued by M/s. Keshri Brothers, Marufganj, Patna City and by M/s. Balaji Sales, Patna on which truck bearing Regn No.BR-01GG17778 is mentioned as mode of transport from Patna to Supaul, are false and fabricated. Later he submitted copy of Toll

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tax receipt which evidences that the truck bearing Regn No.BR-01GG/7778 crossed Haribara Toll Plaza at Araria at 20.17 P.M. on 27.05.2019 and it crossed Asanpur Toll Plaza (Koshi Bridge, Supaul) at 02.06 A.M. and Raje Toll Plaza (Jhanjharpur) at 3.32 A.M. on 28.05.2019. This documentary Evidence not only confirms the statement dated 18.07.2019 of Shri Ankit Kumar but also contradicts the claims of Rohit Kumar @ Sonu and Gautam Keshri Proprietor M./s. Keshri Brothers

(5) Besides the above, it also falsifies the genuineness of the invoices dated 27.05.2019 and e-way bills dated 28.05.2019, issued by M/s. Keshri Brothers, Marufganj, Patna City and by M/s. Balaji Sales, Patna regarding purported purchase / sale and transportation of the seized goods from Patna to Supaul.

(6) Further, invoice No. GST/ 3 / 2019-20 dated 27.05.2019 issued by M/s. Balaji Sales, Patna GSTIN 10COUPK0231F2ZO issued for STOCK TRANSFER to. M/s. Balaji Sales, Supaul GSTIN 10COUPK0231F2ZO does not appear legal and proper as on the date i.e. 27.05.2019, there was no principal or additional place of business mentioned against GSTIN-10COUPK0231F2ZO of Balaji Sales at Patna (Bihar). In an afterthought to cover-up the smuggling activity, there was an amendment made by way of adding additional place of business in Supaul, Bihar by the GSTIN-10COUPK0231F2ZO on 22.06.2019.

(7) Moreover, e-way bill No. 871053823658 dated 28.05.2019, was found issued by M/s. Keshri Brothers, Marufganj, Patna City was found issued at 03.07 P.M. i.e. about 05 hours after interception of the vehicle. Likewise, e-way bill No.811053849544 dated 28.05.2019, issued by M-/s. Balaji Sales Patna was found to have been issued at 04.49 P.M. i.e. more than 06 hours after interception of the vehicle.

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(8) Keshari Brothers has already issued invoices from SI. No. 1 to 53 for their sales on earlier occasions from 01.04.2019 but again they issued invoice No. 1 dated 27.05.2019. 20.

(9) The Adjudicating authority found that Black Pepper & Peas are agricultural products and are grown in India, but Bhimnagar in Supaul District of Bihar is neither known for growing, whole sale trading and marketing of Black Pepper and Green Peas nor directly connected with any area known for growing, trading or marketing of Black Pepper rather it is connected to the Indo-Nepal border. The seized vehicle was intercepted by the DRI Patna team on 28.05.2019.

(10) As per statement of Shri Abhishek Kumar Jha (Notice No. 2), the consignment of third country origin Black Pepper and Peas were loaded at Bhimnagar which is situated near Indo-Nepal Border and he admitted that the said consignment of foreign origin and has been brought into India from Nepal and the same was being piloted by him as a driver of Honda Amaze car no. BRO1BV/9922.

(11) It was analysed that the importers of Nepal had imported Black Pepper and Peas from third countries through CD import in huge quantities which is excess than the consuming capacity of Nepal. The said seized consignment of Black Pepper and Peas of third country origin is nothing but a part of the said consignment diverted into India through porous off routes of Indo Nepal border. From above it is established that the said seized Black Pepper and Peas are of third country origin.

13. The Ld AR relying on the details, submits that sufficient evidence has been brought in by the Revenue to the effect that the goods were being smuggled from Nepal and hence he justifies the confiscation and penalties imposed on the appellants. He prays that the appeals may be dismissed.

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14. Heard both the sides. Perused the Appeal papers and the written submissions made by both the sides.

15. Admittedly, when the truck and the car were intercepted, the truck was found to be loaded with 6718.5 kgs of Black Pepper and 3918 kgs of Peas, without any proper documents. Also admittedly the interception and seizure took place at Muzaffarpur, that is well within the Indian region in Bihar.

16. The statutory provision enabling the Customs Officials to intercept, check, verify, detain, seize are all guided by Section 123 of the Customs Act 1962. It would be important to go through the relevant provisions, which are extracted below :

**Section 123 in the Customs Act, 1962****123. Burden of proof in certain cases.**

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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(2)This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

17. A careful reading of the above provisions clarifies that the goods in question pertain to,

- (a) Gold
- (b) Watches
- (c) Any other class of goods which the Central Govt may notify,

the officials, can have a *reasonable belief* and take up the further proceedings. In these cases, the burden to prove the non-foreign nature of the goods is on the person from whose possession the goods are recovered.

18. On the other hand, if the goods in question are not notified by the Central Govt., then the burden entirely shifts to the Customs Officials so as to prove that the goods are of foreign origin.

19. On a specific query from the Bench to the Revenue as to whether Black Pepper and Peas have been so notified, the Ld A R makes the following submissions :

**Indo Nepal Treaty of Trade 2009 , issued by Ministry of Commerce and Industry.**

II. With Reference to Article II

1- It is understood that all goods of Indian or Nepalese origin shall be allowed to move unhampered to Nepal or India respectively without being

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subjected to any quantitative restrictions, licensing or permit system with the following exceptions:

(a) Goods restricted for export to third countries,

(b) Goods subject to control on price for distribution or movement, within the domestic market, and (c) Goods prohibited for export to each other's territories to prevent deflection to third countries

The said consignment was intercepted on 28.05.2019 near Indo- Nepal border

In this regard, reference is relied upon the written reply given in the Lok Sabha by the Minister of Commerce and Industry Shri Piyush Goyal, as per press release dated 03.07.2019, wherein he has categorically stated, inter-alia that :

"India is not importing pepper from Bangladesh Bhutan and Nepal. The various steps taken up by the Government to curb import of pepper from Vietnam and Srilanka is as follows ....."

Further, reference is relied upon the written reply given in the Lok Sabha by the Minister of Commerce and Industry Shri Piyush Goyal, as per press release dated 04.12.2019, he has categorically stated, inter- alia that :

In order to reduce the import of pepper and to stabilize the domestic price of pepper, Government has fixed the CIF value of Rs.500 per kg. as the Minimum Import Price (MIP) for black pepper vide Notification of Directorate General of Foreign Trade (DGFT) dated 6/12/2017. Subsequently, an amendment was brought in the MIP notification by making import of pepper at or above Rs. 500 per kg. free and import below Rs. 500 per kg prohibited vide DGFT Notification dated 21/3/2018.

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Some representations regarding smuggling of low priced black pepper from other origin to India through Nepal and Bangladesh border were received. In this regard, the field formation of Customs and Directorate of Revenue Intelligence have been alert and made vigilant at the point of entry in the port to detect and prevent entry of inferior quality pepper, from other countries to India. Customs has booked several cases of attempted smuggling of pepper in the recent past

**Source: DGCI&S Kolkata/DLI from Customs provided by the Spices Board of India**

20. The above details provided by the Revenue only go on to show that some restrictions have been placed on the Minimum Import Price and the situation is being monitored to curb smuggling of low quality Pepper into India from these countries. In order to attract the provisions of Section 123, and to fasten the burden on the person possessing the goods, the items in question, that is the Black Pepper and Peas should have been properly Notified by the Government, which does not seem to be the case here. The statement of the Minister in the Parliament and Press Conference briefings not carry any statutory weight unless the goods are notified. Thus, I take the view that the Black Pepper and Peas are not covered by any Notification and hence they are not subject to the provisions of Section 123.

21. Therefore, the onus to prove that the goods are of foreign origin, is on the Customs Officials. From the Show Cause Notice and Order in Original, it is seen that the Picture of the Gunny / Woven bags are reproduced with the printed matter of "*Rose Brand 5MM Jumbo*" and "*Sanchit Black Pepper 5MM Best Quality*". Obviously, these are the Brand Names. The Bags do not carry any details of the manufacturer's name, their address etc. In such a case no assumption can be made about the foreign origin of these goods. There is nothing to suggest that the Customs Officials have made any enquiry to know as to who

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the owner of these Brands is and where the factories are located. Another way of ascertaining the origin would be to get the goods tested by approved / empanelled Testing Agency to check the quality of the goods to prove as to whether such goods are of Indian or are of foreign origin. I do not see any such attempt has been made by the Customs officials.

22. The next thing to be considered is the place of interception and seizure. Admittedly, the goods were seized at Muzaffarpur. On checking the map and location, I find that Muzaffarpur is located at a distance of about 216 KMs from Bhimnagar [the alleged town via which the smuggling is taking place]. Further, it is stated that the goods have been loaded from a godown at Bhimnagar. As to whether the goods were initially smuggled from Nepal to Bhimnagar, and as to who undertook this work, is not coming out clearly in the proceedings. Even from the recorded statements of various persons including some of the noticees / appellants herein, there is no admittance from their side that the goods have been procured illegally from Nepal. Therefore, I take a considered view that the Revenue has not been able to prove conclusively that the goods are of foreign origin.

23. Since the Revenue has not been overcome the test of bringing in conclusive proof towards the foreign origin of the goods, going into the detailed investigation process and allegations and findings given in the impugned order would be more of academic interest. Admittedly, prima facie, the documentary evidence brought in by the appellants have been found to be doubtful. But the point in the present case is, unless it is proved that the goods are of foreign origin, the anomalies found in the transactions cannot implicate the appellants under Customs Act provisions, though they might get implicated under other statutory provisions. Illegality or otherwise of other statutory provisions will have

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no bearing on the Customs Act provisions and hence they cannot come to the rescue of the Revenue in the present case.

24. Now, I take a look at some of the case laws wherein the goods were not notified in terms of Section 123 by the Central Government.

**Commissioner of Customs (Port), Patna VERSUS Shri Pankaj Kumar Sharma**

**FINAL ORDER NO.....76402-76403/2023 Dated : 03 .08.2023 – CESTAT Kolkata**

8. It is case booked by the revenue against the respondents that they have smuggled betel nut through truck which was intercepted and was found parked adjacent to a petrol pump, namely, Akharaghat Service Station, Kolhan Dadar, before Zero Mile on Muzaffarpur Sitamarhi Road and the same is smuggled one, but we find that the betel nut in question is neither notified items under Section 123 of the Customs Act, 1962. Therefore, the onus lies on the Revenue to prove that the impugned goods are smuggled one from where and which is the country of origin and how they were transported into India. The Revenue has failed to produce any evidence to that effect and in this regard.

9. The Id.Commissioner (Appeals) has recorded his findings, which are as under :

8. I find that there is not a iota of evidence to prove the third country origin of the impugned goods i.e. Betel Nuts. The whole proceedings started on the presumption that the impugned goods were of third county origin and have been smuggled into India. This is despite the fact that these are neither notified, prohibited nor specified goods. The burden of proof in such situation is on the department and cannot be shifted. Further appellant did produce the documents including market regulatory fees at, jalpaiguri, which was never rejected or investigated by the deptt. Ld. Adjudicator has completely disregarded the legal and

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factual position of the case and went on confiscating the goods & trucks and penalizing the appellants. Since there is no evidence of doing so, the impugned order is set aside completely.”

10. We do agree with the fact that the Revenue has failed to discharge their obligation to prove that the impugned goods are of smuggled in nature with any cogent evidence.

11. In that circumstances, we do not find any infirmity in the impugned order and the same is upheld and the appeals filed by the Revenue are dismissed. (Operative part of the order was pronounced in the open court

2022 (382) E.L.T. 716 (Tri. - Kolkata)

LALTANPUII Versus

COMMISSIONER OF CUS. (PREVENTIVE), NER, SHILLONG

12. In view of the above, we find the betel nut being non notified goods; burden to prove the fact of smuggling lies on the department and the same has not been discharged; the report of ADRF, Mangalore cannot be relied upon. On the issue of goods being held to be unfit for human consumption, we hold that as the goods are neither imported nor proved to be smuggled, no action by Customs is warranted.

13. In view of the above discussions, seizure of impugned betel nut is not justified and needs to be set aside. Therefore, nothing survives in the case and appeal is liable to be allowed. We allow the same with consequential relief, if any, as per law.

**Affirmed by the High Court of Meghalaya**

2022 (382) E.L.T. 592 (Meghalaya)

C.C. (PREVENTIVE), NER REGION, SHILLONG

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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 (Patna).

5. After hearing the Learned Counsel appearing for the respective parties and after going through the impugned judgment and order, we find no error in the findings given by the Tribunal. The said findings, in our opinion are supported by reasons and therefore, we are not inclined to interfere in this appeal. Appeal has no merit and is accordingly dismissed.

**Shanti Biswas VERSUS Commissioner of Customs (Preventive)  
Lucknow  
FINAL ORDER NO.70177/2023 Dated 20 October, 2023 – CESTAT  
Allahabad**

4.2 At the outset it is observed that the impugned goods i.e. Betel Nuts and Black Pepper are not the goods specified or notified under Section 123 of the Customs Act, 1962. Thus the burden to prove the smuggled nature of these goods lies on the Custom Authorities as held by the Tribunal in the case of Baboo Banik [2004 (174) E.L.T. 205 (Tri.- Kolkata)]. Tribunal in the case of Bijoy Kumar Lohia [2006 (196) E.L.T. 215 (Tri.-Kolkata)] has held that the local trade opinion cannot take the place of the legal evidence.. No case has been made out for the seizure and confiscation of the Black Pepper or Betel Nuts is made out as no evidence has been placed on record to establish the foreign origin of these goods, or of illegal importation of the same. These goods were seized when they were being transported within the country via SLR No. 05853 of Train No. 15909 (Awadh Assam

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Express) which do not cross any international border from the place of origin to destination.

4.11 I do not find any merits in the impugned order of Commissioner (Appeals).

25. In the present case, the goods are not notified in terms of Section 123. The Revenue has not brought in any evidence towards the foreign origin of the goods. The goods have been seized within the territory of India in Muzaffarpur and are not a seizure at the border but is in the nature of Town seizure. All these factual details would lead to the conclusion that the ratio of the cited case laws would be squarely applicable.

26. Applying this ratio of these case laws, I hold that the confiscation, consequent redemption fine and penalties are not warranted. Therefore, I set aside the impugned order respect of the Six appeals and allow the same. The appellants would be eligible for the consequential relief, if any, as per law.

(Pronounced in the open court on...23.04.2025.)

Sd/-  
**(R. Muralidhar)**  
**Member (Judicial)**

Tushar Kr.