

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70033 of 2024**

(Arising out of Order-in-Appeal No.1024-CUS/APPL/LKO/2022 dated 11.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

**Shri Surendra Kumar Jain,**  
(S/o Sri Laddu Lal, R/o-Vill.-Nalbari,  
Town ward No.1, P.S.-Nalbari,  
Neela-Nalbari, Assam, PIN-781365,  
Through Prop. M/s A.K. Enterprises)

**.....Appellant**

*VERSUS*

**Commissioner of Customs (Preventive),  
Lucknow**

**....Respondent**

(5<sup>th</sup> 7 11<sup>th</sup> Floor Kendriya Bhawan,  
Aliganj, Lucknow-226024)

**APPEARANCE:**

Shri Anuj Agarwal, Advocate for the Appellant  
Shri A. K. Choudhary, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.- 70815/2025**

DATE OF HEARING : 10.09.2025  
DATE OF PRONOUNCEMENT : 27.11.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.1024-CUS/APPL/LKO/2022 dated 11.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow.

2. Briefly stated, the facts of the case are that upon information the Officers of Customs (Preventive) Division Gorakhpur intercepted a truck No.HR 38 U 0636 near Basti toll plaza during transit between Assam to Delhi and recovered 8890 kgs of betel nuts on 18.09.2019. On initial checking of the vehicle, the officials found betel nut kept in jute sacks. On being asked to show the documents in respect of Betel Nuts loaded on

the vehicle, the driver Shri Brajesh Singh showed the tax invoices and two copies of E-way bill dated 11.09.2019 and some other documents as per which M/s A. K. Enterprises, N.T. Road, Nalbari, Assam. The documents showed that the goods are being transported from Assam to Delhi. The Customs officials entertained a view that seized betel nuts were of foreign origin and the samples were shown to the local vendors of betel nuts who mentioned that the betel nut does not appear to be of Indian origin. On the basis of the above market survey and reasonable belief, it was construed that the betel nuts are of foreign origin. The entire consignment totaling 8890 kgs (127 bags) was seized. The Appellant had stated that on 03.10.2019, he had purchased the seized betel nuts from the traders of betel nut Mandi of Nalbari. He also mentioned that he had paid Mandi Cess. The Show Cause Notice<sup>1</sup> was adjudicated vide the Order-in-Original and the Adjudicating Authority confiscated the seized betel nuts with an option to redeem on payment of redemption fine of Rs.5,25,000/-. The vehicle carrying the betel nuts was also seized and option to redeem was given on payment of redemption fine of Rs.1,00,000/-. Penalty of Rs.4,00,000/- was imposed on Shri Surendra Kumar Jain, Proprietor of M/s A. K. Enterprises under Section 112 of the Customs Act, 1962.

3. Being aggrieved, the Appellant filed appeal before the first Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-in-Appeal upheld the confiscation of the impugned goods and imposition of penalty upon the Appellant. Hence, the present appeal before the Tribunal.

4. Learned Counsel for the Appellant submits that tax invoices and other documents show indigenous origin of the goods; goods under seizure are of Assam/Mizoram origin, purchased from local market/sellers; reports of the Agricultural and Processed Food Products Export Development Authority<sup>2</sup> and Directorate of Areca Nut and Spices Development, Ministry of

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<sup>1</sup> SCN

<sup>2</sup> APEDA

Agriculture, both Government of India indicate that Assam is the 3<sup>rd</sup> highest and Mizoram is the 8<sup>th</sup> highest producer of betel nuts in India. Learned Counsel submits that the grounds of confiscation are frivolous. Samples were not drawn in presence of the owner of the goods and as such violative of provisions of Section 144 of the Customs Act, 1962. Further, the Tribunal held that in absence of any evidence that confiscated goods were illegally smuggled into India, same cannot be confiscated merely based on local market opinion. Learned counsel further submits that betel nuts are agricultural products, grown and sold by the small farmers in Mizoram; tribal people involved in Mizoram are illiterate and cash transactions are not recorded by the small growers; moreover, they are located in remote parts of Mizoram. He further submits that it is not the problem of the Appellant if the Department cannot verify the claim. It is for the Department to prove the allegations. Further, in the context of topography in Mizoram, precise address and contact number of the tribal sellers located in remote areas is ill conceived. It is also submitted that betel nuts are used other than for direct consumption (chewing) also; low variety are used in making Pan Masala/Gutkha after processing and removing any fungal infestation; more damaged betel nuts are used in making ply wood, coloring dye etc.; therefore, it is ill conceived to conduct *suo motu* food test without considering its use.

5. Learned Counsel for the Appellant relies upon the following decisions in support of his submissions:-

- Laltanpuii vs. CC (Prev.) Shillong 2022 (383) E.L.T. 716 (Tri.-Kolkata).
- Chhiteshwar Prasad vs. CC (Prev.), Patna 2018 (364) E.L.T. 570 (Tri.-Kolkata).

6. Learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

7. Heard both the sides and perused the appeal records.

8. The issue for consideration in the present appeal is to see whether Revenue has established the allegation that the seized betel nuts are of foreign origin and are smuggled. On going through the records of the case, it is seen that Revenue bases its case on the local market opinion and the fact that the owners could not establish the Indian origin of the betel nuts. I find that the evidence collected by investigation could establish a reasonable doubt as to the origin of betel nuts. But the same is not enough to prove the smuggled nature of the betel nuts. I find that investigation was only in the direction to conclude that there was no proof for indigenous and licit procurement of betel nuts seized and that the claim of the Appellant cannot be verified in some cases. I find that the betel nuts are not notified under Section 123 of the Customs Act, 1962 and therefore, the burden of proof lies with the Department to prove the same. It is not just enough to prove by negative inference. Allegation requires to be proved by cogent and positive evidence. I find that no such positive evidence has been put forth by the Department. There is not even a reference or narration as to how and wherefrom the impugned goods are smuggled. I find that the Tribunal in the case of Dharmendra Kumar Jha - 2016 (344) E.L.T. 264 (Tri.-Kol.) held that betel nuts are not a notified commodity under Section 123 of the Customs Act, 1962 and the onus is on the Department that seized goods were in fact smuggled into India. I find that the Department has not discharged its burden. Since betel nuts are also produced in India. In the absence of any evidence that confiscated goods were illegally smuggled into India, the same cannot be confiscated merely based on local market survey/opinion.

9. I find that the betel nuts being non-notified goods; burden to prove fact of smuggled goods lies on the Department and the same has not been discharged. I hold that the goods are neither imported nor proved to be smuggled and hence, no confiscation is warranted. In view of the above discussions, seizure of

impugned betel nuts is not justified and needs to be set aside. The penalty of Rs.4,00,000/- imposed on the Appellant under Section 112 of the Customs Act, 1962 is set aside. Since the confiscation has been set aside the redemption fine is also set aside.

10. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on - **27.11.2025**)

**Sd/-  
(P. K. CHOUDHARY)  
MEMBER (JUDICIAL)**

*LKS*