



Serial No. 07
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 192 of 2023

Date of Decision: 27.06.2024

Smt. Laltanpuui, D/o Zadowla Khiangte,
Aged about 35 years, Sole Proprietor of
Two Brothers, T4, T Section, Edentharr,
Aizawl, Mizoram – 796007,
Mobile :- +91-8729880982

:::Petitioner

-Vs-

1.Union of India, represented by the
Secretary of Revenue, North Block,
New Delhi 110001

2.The Commissioner of Customs
(Preventive), North Eastern Region,
CUSTOM HOUSE, 110, M.G. Road,
Shillong – 793001, Meghalaya

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Dasgupta, Adv. with
Mr. S.D. Upadhyaya, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.



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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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Oral:

1. The brief facts of the case are that the goods of the petitioner namely betelnuts weighing 32 MT had been seized by the respondent No. 2, on 28.10.2017. The petitioner thereafter had prayed for provisional release of the goods under Section 110A of the Customs Act 1962, which however was not granted. On an appeal by the petitioner before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) Kolkata, the learned Tribunal by order dated 09.12.2020, set aside the impugned seizure and allowed the appeal. The said order of the CESTAT on an appeal by the respondent No. 2, was then affirmed by a Division Bench of this Court vide order dated 28.10.2021, and was further affirmed by the Supreme Court vide order dated 31.10.2022, wherein the SLP against the order dated 28.10.2021, of this Court was dismissed. However, the orders passed by the Tribunal, which have been affirmed by this Court and the Supreme Court, were not implemented by the respondent No. 2, and in the meanwhile the seized goods had been destroyed during the pre-trial stage. Being aggrieved thereby the



petitioner by way of the instant writ petition is praying for refund of value of the seized goods and for other appropriate orders.

2. Mr. N. Dasgupta, learned counsel for the petitioner has submitted that the respondent No. 2, by destroying the seized betelnuts are liable to refund the value of the goods, which were assessed at the time of seizure at Rs. 88 Lakhs along with interest, as may be decided by this Court, from the date of the order passed by the learned Tribunal (CESTAT) Kolkata, i.e. 09.12.2020. In support of his case, the learned counsel has relied upon various decisions of the High Court of Calcutta and Delhi, wherein it has been held that department was bound to pay the value of goods assessed at the time of seizure. He therefore submits that the petitioner is therefore entitled to similar relief.

3. Dr. N. Mozika, learned DSGI assisted by Ms. A. Pradhan, learned counsel for the respondents has submitted that the betelnuts were destroyed inasmuch as, it was unfit for human consumption and as per the Disposal Manual of the Customs Department, Commissioners have full powers to order destruction of goods, such as food stuff, spices and other goods which are unfit for human consumption amongst others. He submits that as the State Public Health Laboratory had found the same unfit for human consumption vide a report dated 11.12.2017, the betelnuts were destroyed, and therefore could not be provisionally



released to the petitioner. He further submits that the petitioner on 24.09.2018, had requested for provisional release of the seized 32 MT betelnuts, for non-consumption used and has prayed for reduction of price of the damaged seized betelnuts at Rs. 96 per kg, and as such, was fully aware about their value and condition, and therefore the amount as claimed is untenable. He lastly contends that in the instant case, the goods were destroyed and were not disposed of by way of sale auction, and the respondents have not received any revenue by disposing off the said goods by way of destruction.

4. Having heard the learned counsel for the parties. The only issue to be decided is the amount of refund, the petitioner would be entitled to in the facts and circumstances of the case. This issue on an earlier occasion had been deliberated upon by this Court and by order dated 24.04.2024, had directed the learned DSGI to obtain instructions on the amount that would be acceptable to the respondents. However, as no specific instructions were forthcoming, and the respondent No. 2 maintaining their stand, without further dwelling on any other aspect, the order dated 24.04.2024, which is reproduced herein below, will serve to dispose of this matter.



Serial No. 29
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 192 of 2023

Date of Order: 24.04.2024

Smti. Laltanpuui

Vs. The Union of India & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. Dasgupta, Adv.
Mr. S.D. Upadhya, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.

1. The only question to be decided in the present writ petition is with regard to the quantum of refund, that the respondents are liable to afford the writ petitioner. This is view of the fact that, the order of the Tribunal, wherein it was found that the goods were neither imported nor proved to be smuggled, though assailed before the Division Bench of this Court, and ultimately before the Hon'ble Supreme Court, the case of the respondents was dismissed.



2. *In the course of hearing, on the quantum of refund, the learned DSGI has referred to the order of the Commissioner dated 06.06.2019, wherein he submits that the writ petitioner themselves in the said proceedings had prayed for reduction of price of the damaged betel nuts at Rs.96 per kilo, which however, were not released provisionally. He submits that if any refund is to be made to the writ petitioner, the condition of the goods which is stated to be not fit for human consumption, should be taken into account.*

3. *However, Mr. N. Dasgupta, learned counsel for the petitioner in reply has submitted that the same is not up for consideration any longer, in view of the findings of the Tribunal, which had been upheld both by the Division Bench of this Court, as also the Hon'ble Supreme Court, and at the most, the refund should be at the rate of the value at the time of seizure and as recorded in the Tribunal order, at Rs.88 Lakhs.*

4. *Having heard the learned counsel for the parties, and as observed earlier that the hearing is only on the quantum of the refund, Mr. N. Dasgupta, learned counsel at this stage and at the suggestion of the Court concedes that considering the long time period taken for the refund, that the writ petitioner will be willing to settle for an amount of Rs.60 Lakhs, which is Rs.28 Lakhs, less than*



the value of the 32 thousand kilos of betel nuts, at the time of the seizure.

5. Accordingly, Dr. N. Mozika, learned DSGI is to obtain instructions and report back to this Court on the next date.

6. List this matter on 13th May, 2024.

Judge

Sd/-

5. Accordingly, in terms of the order dated 24.04.2024, the respondent No. 2 is directed to refund the amount of Rs. 60 Lakhs to the writ petitioner on sufficient proof of identity being provided, within a period of 8(eight) weeks from the date this order is presented before the respondent No. 2, and if the respondent No. 2, fails to comply, interest on the expiry of the said 8(eight) weeks shall be payable on the refund amount at the rate of 12% per annum.

6. As ordered above, this writ petition is allowed to the extent as indicated above and is accordingly disposed of.

Judge

Meghalaya
27.06.2024
"D.Thabab-PS"