**Serial No. 01**
**Regular List**

# HIGH COURT OF MEGHALAYA
# AT SHILLONG

WP(C) No. 162 of 2020

Date of order: 15.12.2020

Rajesh Lapang Vs. The Commissioner of Customs (Preventive), North Eastern Region, Shillong.

**Coram:**
**Hon'ble Mr. Justice Biswanath Somadder, Chief Justice**
**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

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

For the Respondent(s) : Dr. N. Mozika, Sr. Adv. With
Ms. K. Warjri, Adv.

**JUDGMENT: (per Hon'ble the Chief Justice) (Oral)**

1. The instant writ petition is based on the claim of the writ petitioner, namely, Shri Rajesh Lapang, that he was the owner of certain goods (betel nuts), which were seized by the Customs authorities and later publicly auctioned. Based on such claim, he has approached this Court by filing the instant application under Article 226 of the Constitution of India seeking a mandatory direction upon the concerned Customs authorities to release the auction sale proceeds of the seized goods based on his refund application dated 22nd December, 2017. The seized goods (betel nuts) were confiscated by the Commissioner of Customs (Preventive), Shillong, and sold in public auction. The sale proceeds amounts to Rs.66,51,40/-. This amount is lying deposited with the State Bank of India, Guwahati.

2. An Order-in-Original was passed by the Commissioner of Customs (Preventive) dated 3rd January, 2017, which was subsequently set aside by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, in terms of its order dated 1st December, 2017. The records reveal that the writ petitioner had earlier approached this Court by filing a writ petition, being WP(C) No. 131 of 2018. In that writ petition also, the writ petitioner had applied for refund of sale proceeds of the confiscated goods which were later sold in public auction. The earlier Division Bench of this Court, while rendering its order dated 16th November, 2018, was pleased to observe, inter alia, as follows:-

> "3. Petitioner in effect seeks implementation of the order of CESTAT for which he has efficacious remedy by laying motion before the CESTAT. Writ petition, as such, is not worth to be entertained is accordingly dismissed with liberty to the petitioner to seek implementation of the order of CESTAT by laying proper motion before the CESTAT.
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> 4. Writ petition is accordingly dismissed."

3. The same Division Bench on that date took up a statutory appeal filed by the Customs authorities under section 130 of the Customs Act, 1962, being Customs Appeal No. 3 of 2018, in respect of the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 1st December, 2017. It appears that an issue was raised before that Bench by the respondent (being the writ petitioner herein) to the effect that the learned Tribunal had not returned any finding regarding genuineness of the claim of the

so-called owner. The Division Bench in paragraph 9 of its order proceeded to observe as follows:

> "9. Appeal under Section 130 of the Act of 1962 has to be maintained only when substantial questions of law will arise for determination. The contention of learned counsel for the respondent that the learned Tribunal had not returned the finding regarding genuineness of the claim of the so called owner is in the realm of evidence so cannot be looked into in this appeal because it does not constitute substantial question of law".

4. From the records it appears that the writ petitioner once again approached the learned Tribunal praying for a suitable order directing the respondent authorities to refund the sale proceeds of the seized betel nuts to him. The learned Tribunal, in terms of its order dated 18th October, 2019, was pleased to observe, inter alia, that the adjudicating authority had confiscated the seized goods absolutely and imposed penalty on the applicant. However, the adjudicating authority had not passed an order on the ownership of the seized goods as the seized goods were absolutely confiscated. The Tribunal on perusal of its earlier order dated 1st December, 2017, came to the conclusion that it had not made any observation on the ownership of the goods and that the sale proceeds of the seized betel nuts must be returned by the department of the goods after identifying the owner. Based on such observations, the learned Tribunal in terms of its order dated 18th October, 2019, gave liberty to the applicant (being the writ petitioner herein) to approach the Commissioner for consequent relief, if any, arising out of the Tribunal order dated 1st December, 2017, with a direction upon the Commissioner to consider

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the prayer of the applicant in accordance with law. Consequently, the writ petitioner approached the Commissioner of Customs (Preventive), North Eastern Region, Shillong, who passed an order on 29th May, 2020. From a plain reading of the order dated 29th May, 2020, it appears that the Commissioner of Customs (Preventive), North Eastern Region, Shillong, carefully considered the claim of the applicant (being the writ petitioner herein) with regard to ownership of the seized goods (betel nuts). Observations made in paragraphs 8.6 and 8.7 of the order dated 29th May, 2020, passed by the Commissioner of Customs (Preventive), North Eastern Region, Shillong, are relevant in this context and thus reproduced hereinbelow:

> "8.6 Rajesh Lapang had submitted copy of certificate No. ST/RBD/MVAT/R-3064 dated 10-12-2015 having validity up to 31-12-2015 issued by the Supt of Taxes, Govt. of Meghalaya, Ri Bhoi District along with his claim petition dated 18.10.2019. He had also submitted copies of three invoices at the time of investigations, which according to him were not considered at the time of adjudication.
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> The certificates of the Meghalaya Government Taxation Department were examined and it was seen that these are certificates to the effect that M/s Lapang Eco Products was registered with the Taxation Department for dealing in dried supari/betel nuts and was authorised for transporting supari/betel nuts through the Byrnihat Taxation Check Gate and the same was valid upto 31.12.2015. The fact that the said certificate was not renewed M/s Lapang Eco Products nor a fresh certificate/NOC was applied after 31.12.2015 was verified by the Superintendent of Taxes, Ri-Bhoi, Nongpoh Meghalaya vide his letter No. ST/RBD/MVAT/R-15/447 dated 04.05.2016. Such certificates/document, as above, only establishes that Ms/ Lapang Eco Products was engaged in supari/betel nut business and this is not a conclusive proof of rightful ownership of the betel nuts under question.

8.7 The aforesaid three invoices No. 004, 005 and 006 all dated 13.011.2015 *[sic]* were examined. It was noticed that as per the details in the invoices, the supari in two trucks with Regn. Nos. WB-51A-4936 & WB-41F-2694 were consigned to Rafique Traders, Purnea, Bihar through transporters M/s P.L. Logistics. The Superintendent of Taxes, Ri-Bhoi, Nongpoh, Meghalaya was requested to verify these invoices. Vide letter ST/RBD/MVAT/R-170/2020/4277 dated 20.03.2020, the Superintendent of Taxes informed that the transactions covered by the said three invoices were not reflected in the books of accounts and no records were found to prove any sale to Rafique Traders, Purnea, Bihar.

In this regard, Shri Rajesh Lapang in his further letter dated 17.03.20290 *[sic]* stated that theses said three tax invoices issued by him were not subjected to VAT Return as sale of the goods were not materialized during the seizure and the his Godown is beyond the Byrnihat Check Gate towards Guwahati and therefore goods purchased beyond the said check gate would not fine in movement record of Byrnihat Check Gate. In this regard, the fact that the goods were without any documents at the time of interception of the trucks cannot be overlooked. Hence, these said three tax invoices do not per se prove the rightful claim of ownership of the betel nuts but the ownership issue has to be looked at taking into account the facts of the case".

5. In paragraph 8.8, the Commissioner of Customs (Preventive), North Eastern Region, Shillong, dwelt at length upon such facts and statements, which contradicted the ownership claim of the writ petitioner with regard to the seized betel nuts and the same is therefore reproduced hereinbelow:

"8.8 There are facts and statements which contradict the ownership claim of the seized betel nuts by Rajesh Lapang.

i) No invoices or any other documents in respect of the betel nuts were accompanying the goods. The drivers of the trucks could not produce any invoices or any other documents at the time of interception of the trucks and the seizure of the betel nuts. The drivers stated in their statements stated that the goods were bound for Falakata, West Bengal. The drivers also stated the trucks were arranged by Barun Chakraborty

of M/s Barun Transport. Shri Barun Chakraborty stated in his statement that he had arranged the trucks for transportation of betel nuts to West Bengal on the instruction of one Gupta. The owners of the trucks stated that trucks were hired to take consignments to Alipurduar, West Bengal. Whereas, the purported three invoices of the betel nuts submitted by Shri Rajesh Lapang, in support of his claim, shows that the goods were for delivery to Rafique Traders, Purnea, Bihar through M/s P.L. Logistics. Hence, it is seen that the facts of the case do not match with the (belated) claim of Shri Rajesh Lapang.

ii) In his statement dated 11.04.2016 Shri Rajesh Lapang had stated that the trucks were arranged by his Manager Shri Sanjeev Dhar, a resident of Rehabari, Guwahati, Kamrup Metro, Assam. No such person could be found during the investigation. The Summons issued to him was also returned by the Postal Department with the remark “Not Found”.

Later, 02.05.2019 one Sanjit Dutta, in response to summons subscribed a statement under Section 108 of the Customs Act, 1962. He identified himself as an employee of Shri Rajesh Lapand, and claimed to have arranged the trucks. He stated that his business associate Om Prakash Gupta had arranged the two trucks from one Barun Chakraborty of Beltola, Guwahati and he had paid the required fees. It is not tenable that Shri Rajesh Lapang could not remember the name of his manager properly. The claim of Shri Sanjit Dutta that on one hand he is an employee of Shri Rajesh Lapang and on another hand he a business associate of Om Prakash Gupta is also contradictory in itself.

iii) Shri Rajesh Lapang had claimed that he had rented part of the shed/godown of M/s Meghalaya Ispat Ltd. for storing supari. This was found to be false as M/s Meghalaya Ispat Ltd. denied renting the shed/godown to Shri Rajesh Lapang or his firm. The said sub-lease godown agreement was made with one Mr. Om Prakash Gupta of Siliguri, West Bengal and the lease valid till 31.10.2016. Shri Rajesh Lapang on his part produced a sub lease agreement made with one Anup Deb of Silchar which was not examined in respect to the ownership of the premises which the truck drivers had identified. However, this cannot be a conclusive proof of rightly claim of ownership by Shri Rajesh Lapang in the face of undisputed facts of the case

contradicting his ownership claim of the goods which were loaded in the seized truck with Regn. Nos. WB-51A-4936 and WB-41F-2694.

iv) The seizure was made on 15.01.2016. Shri Rajesh Lapang did not come forward to claim ownership of the seized goods. Therefore, a valid question arises as to why he did not come forward to claim the goods if the goods belonged to him, as claimed (belatedly). He also did not claim ownership of the goods in response to the Import Notice dated 22.01.2016. He submitted a belated claim citing the reason that he was unwell and not aware of the seizure. This was highly improbable. Had the goods actually belonged to him, would not the truck owners or the truck drivers or the transport broker or all of them have informed Shri Rajesh Lapang or his Manager of the seizure of the goods by the Customs. In fact, none of these persons mentioned the name of Shri Rajesh Lapang or his firm M/s Lapang Eco Products as the owner of the goods or even tangentially in any manner connected with the seizure. Was it tenable that a businessman whose goods worth over Rs. 60 lakh were seized would be unaware of the seizure and that too for over eighty-one or more days? Was it tenable that his Manager or employee would not be aware of the seizure by the Customs and not informed his employer?

I find the reason cited by him of being not well and hence being not aware of the seizure to be unplausible. For argument's sake if it is accepted that he was unwell during those eighty-one days or more, but not agreeing to it, was it possible that the owner of goods worth over Rs. 60 Lakh would not be informed of the seizure of his goods by his Manager/employee. Or even if he was not informed of the seizure, for argument's sake but not agreeing to it, would he not be worried that he had not received any news about his goods for more than eighty-one days? How was it possible that Shri Rajesh Lapang or his manager or employee did not make any enquiry regarding the delivery status of his goods for over eighty-one days?"

6. In conclusion, the Commissioner of Customs (Preventive), North Eastern Region, Shillong, recorded the following findings:

> "8.9 The investigating officer had examined the ownership claim of Shri Rajesh Lapang during the investigation and his claim was found to be not acceptable. Accordingly, this was mentioned in the SCN and Shri Rajesh Lapang was called upon to show cause before the Adjudicating Authority as to why penalty should not be imposed on him under Section 114AA of the Customs Act, 1962 for making false claims and trying to mislead the investigation with the intention to gain unlawfully for him. The Adjudicating Authority examined the claims of Shri Rajesh Lapang and found his claim to be false. Accordingly, as proposed in the SCN the Adjudicating Authority imposed penalty on Shri Rajesh Lapang under Section 114AA.
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> 9. The orders of the CESTAT and Hon'ble High Court were on the legality of confiscation of the betel nuts under Section 111 (b) & (d) of the Customs Act, 1962. **The CESTAT and Hon'ble High Court had not interfered with the findings of the Adjudicating Authority with regard to the ownership claim of the betel nuts made by Shri Rajesh Lapang.** In view of the facts and discussion in preceding paragraphs, I do not find anything substantial or any new facts to disagree with the findings of the original Adjudicating Authority with regard to the ownership claim of the betel nuts by Shri Rajesh Lapang.
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> 9.1 With regard to consequential relief, if any, arising out of the Final Order dated 01.12.2017 of CESTAT, the CESTAT had left it to Shri Rajesh Lapang to approach the Commissioner [of Customs] for consequential relief, if any, arising out of the Final Order. Therefore, Shri Rajesh Lapang was required to substantiate his claim of ownership of the betel nuts to justify his demand for releasing/refunding the sale proceeds of the betel nuts. The onus was on Shri Rajesh Lapang to proof his claim of ownership of the betel nuts in order to justify release of the sale proceeds to him.

9.2 The CESTAT has directed the Commissioner [of Customs] to consider the prayer of the applicant in accordance with law. Therefore, Shri Rajesh Lapang was given the opportunity to substantiate his claim before the present Commissioner of Customs (Prev.), N.E.R., Shillong. The Commissioner has, accordingly, examined the whole facts of the case, the documents submitted by Shri Rajesh Lapang and the submissions made by him.

9.3 In view of facts of the case and discussion in preceding paragraphs, I do not find merit in the present petition of Shri Rajesh Lapang to release the sale proceeds to him as he has failed to prove that the betel nuts under question belonged to him. Hence, the only consequential relief to Shri Rajesh Lapang arising out of the Final Order dated 01.12.2017 is the penalty of Rs. 5, 00, 000 imposed on him under Section 144AA of the Customs Act, 1962 vide the Order-in-Original dated 03.01.2017.

9.4 The claim of Shri Rajesh Lapang is therefore found to be false. No other person has claimed ownership of the betel nuts under question. Therefore, the sale proceeds of the betel nuts is cannot be released to Shri Rajesh Lapang or any other person.

9.5 In view of above, I pass the following order.

**ORDER**

10. I reject the Petition dated 18.10.2019 of Shri Rajesh Lapang requesting to release the sale proceeds of Rs. 66,51,140."

7. After examining all the relevant facts of the instant case and the orders passed from time to time by the adjudicating authority, the learned Tribunal (CESTAT) as well as this Court, it is palpably evident that the writ petitioner has failed to establish his ownership with regard to the seized goods (betel nuts). Merely because no one else came forward to claim ownership of the seized betel nuts does not

*ipso facto* establish the writ petitioner's ownership or his right, title and interest over the betel nuts. This Court, under Article 226 of the Constitution of India, cannot go into the factual question of deciding ownership or whether the writ petitioner had absolute right, title and interest over the betel nuts. At every stage of the proceedings before the adjudicating authority as well as before the learned Tribunal, the writ petitioner could not establish his claim of ownership over the seized goods (betel nuts) with irrefutable evidence. Rather, it is evident from the order dated 29th May, 2020, rendered by the Commissioner of Customs (Preventive), North Eastern Region, Shillong, that the writ petitioner attempted to produce a certificate dated 10th December, 2015, issued by the Superintendent of Taxes of Meghalaya, Ri Bhoi district, in order to claim his rightful ownership of the betel nuts under question. This claim of the writ petitioner was clearly negated by the Commissioner of Customs (Preventive), North Eastern Region, Shillong, with the observation that such certificate/document only establishes that M/s Lapang Eco Products was engaged in supari/betel nuts business and this was not a conclusive proof of rightful ownership of the betel nuts under question.

8. In such circumstances, as stated above, we are unable to grant such relief to the writ petitioner as prayed for. However, the writ petitioner is always at liberty to approach a competent civil forum in order to establish his claim of rightful ownership in respect of the

seized betel nuts, which were later publicly auctioned. In the event, the writ petitioner is able to obtain a decree from a competent Civil Court, it will be open to the writ petitioner to approach the Customs authorities seeking release of the sale proceeds of the seized betel nuts in terms of his refund application dated 22nd December, 2017, in accordance with law.

9. Writ petition stands disposed of accordingly.

**(H. S. Thangkhiew)**
**Judge**

**(Biswanath Somadder)**
**Chief Justice**

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