

(2023) 12 ATPMLA CK 0005

Appellate Tribunal Under Prevention Of Money Laundering Act**Case No:** MP-PMLA-12456/MUM/2023, FPA-PMLA-6270/MUM/2023

M/S Gorgeous Apparels

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: Dec. 14, 2023**Acts Referred:**

- Prevention Of Money Laundering Act, 2002 - Section 8(1), 17, 17(1), 17(1)(a), 17(4), 26, 50

Hon'ble Judges: Munishwar Nath Bhandari, Chairman; Rajesh Malhotra, Member**Bench:** Division Bench**Advocate:** Naveen Malhotra, Ritvik Malhotra, Mrinal Kumar**Final Decision:** Dismissed

Judgement

1. This appeal has been preferred under section 26 of the Prevention of Money Laundering Act, 2002 (in short, the Act of 2002) to challenge the

order dated 10.05.2023 passed by the Adjudicating Authority whereby the application filed by the appellant for impleadment was dismissed.

2. The brief facts are that a case was registered by the C.B.I/ A.C.B Nagpur on the directions of the High Court of Bombay, Nagpur bench in a

public interest litigation (P.I.L.) by Mehboob M.K. Chinthanwala "The crux of the FIR was that unscrupulous traders in connivance of various

public servant are indulged in smuggling of sub-standard betel nuts of Indonesia origin falsely claiming it to have originated from SAPTA-SAARC. It

was using fake certificate of origin , bogus and under valued bills. The false custom clearance was made for the aforesaid.

3. An ECIR was thereafter recorded and the proceeding was initiated by the Directorate of Enforcement. A search was conducted under section

17(1) of the Act followed by freezing of betel nuts under 17 (1) (A) of the Act. A notice u/s under section 8 (1) of the Act of 2002 was issued

thereafter. The appellant was not impleaded as defendant despite the proprietor of betel nuts seized by the respondent. The appellant accordingly

moved an application under section 17 (4) of the Act for impleadment. The application was dismissed and thereby the appellant was not impleaded as

defendant by the Adjudicating Authority. It was not taken to be affected party to the freezing of the betel nuts.

4. In this case, search was conducted on various premises and M/s Goyal Cold Storage & Ice Plant Pvt. Ltd on 01.12.2022. Therein total 4188 bags

of betel nuts of different weight totaling 290 metric tonnes (approx.) were found. The statement of Sh. Vishal Palandukar, the storekeeper of Goyal

Cold Storage & Ice Plant Pvt. Ltd was recorded during the search. The name of the parties stored the betel nuts was given.

5. The freezing order was issued on 01.12.2022 under section 17(1) (A) of the Act of 2002. Prakash Goyal, owner of the Goyal Cold Storage & Ice

Plant Pvt. Ltd. had verified the details of the seized betel nuts and did not raise any objection rather confirmed the details given by the store keeper

Shri Vishal Palandukar. Shri Prakash Goyal, vide his letter dated 06.02.2023 furnished the details of the persons / entities who had stored the betel

nuts in the cold storage. He did not name appellant M/s Gorgeous Apparels. Accordingly, appellant was not made party to the proceedings under

section 17 followed by section 8 (1) before the Adjudicating Authority.

6. An application for impleadment was filed by the appellant. The communication and documents of Shri Vijay Mohan claiming to be the proprietor of

the appellant company were filed to claim 1691 bags of betel nuts out of 1801 stored by M/s Prestige Exports and Imports. It was stated that the bags

were belonging to the appellant as it was stored through Ikram Hazi of M/s Prestige Exports and Imports. The statement of Ikram Haji Jaroon Jada

was recorded under section 50 of the Act of 2002 who did not disclose storage of betel nuts by the appellant at Goyal storage and Ice Plant Pvt Ltd.

7. It was also found that the bills of entries and E-Way bills were having discrepancies not only in regard to the weight of betel nuts but the number of

bags and place of storage. The Adjudicating Authority did not find appellant to be the necessary party and accordingly application for implement was dismissed.

8. The learned counsel for the appellant submitted that the betel nuts seized by the respondent were belonging to the appellant. The proprietor of the appellant company, Shri Vijay Mohan claimed that the betel nuts seized at Goyal Cold Storage and Ice Plant Private Limited were stored by his company. The appellant was yet not impleaded as defendant to provide hearing by the Adjudicating Authority.

9. The prayer for it was made even before the respondent. however, no decision on the prayer was taken and appellant's application was erroneously dismissed by the Adjudicating Authority. Thus, the appellant was left with no option but to challenge the order passed by the Adjudicating Authority.

10. We have gone through the impugned order and the material on record. We find that ECIR was recorded on 30.09.2022. It was after registration of the FIR on 05.03.2021 by the CBI/ ACB Nagpur. The FIR was registered pursuant to the order dated 25.02.2021 passed by the Bombay High Court, bench at Nagpur in P.I.L. no. 5/ 2016. It was alleged that the traders in connivance with the public servants are indulged in smuggling sub-standard Betel Nuts/ Areca Nuts from Indonesia origin, falsely claiming it to be originating from the countries of South Asia under Preferential Trading Agreement and South Asia Free Trading Agreement. It is by using fake certificate of origin, bogus and undervalued bills/invoices and forged clearance certificate causing evasion of custom duty to the tune of Rs. 15,000 crores annually.

11. In pursuant to the FIR registered by the CBI/ACB, the Directorate of Revenue intelligence, (DRI) probed illegal import of betel nuts suspected to be of foreign origin and smuggled via Indo Myanmar border at Mizoram, Manipur and Assam. It was then transported to Nagpur and Gondia, Districts of Maharashtra. The show cause notice were issued thereupon and one of the show cause notice was for illegal import of betel nuts of Indonesian origin stored at Goyal Warehouse owned by Prakash Goyal.

12. During the course of preliminary investigation, the details of the persons involved in the illegal transportation and storage of Indonesian betel nuts were collected and after recording reasons to believe that entities/ persons are committing act of smuggling and generating proceeds of crime by selling the betel nuts, the searches were conducted at eighteen (18) premises on 01.12.2022.

13. In the search, the betel nuts stored at Goyal Cold Storage & Ice Plant Pvt. Ltd. were freezed. Sh. Prakash Goyal, the proprietor of the Goyal Cold Storage & Ice Plant Pvt. Ltd. failed to produce the documents required to be maintained for storage of the goods.

14. After an order under section 17 of the Act of 2002, the Directorate of Enforcement received an application dated 03.02.2023 from Shri Vijay Mohan, the proprietor of the appellant company claiming ownership of 1691 bags of betel nuts. In pursuance to the application, summons were issued on 10.02.2023 to Shri Vijay Mohan and M/s Sharel Enterprises for appearance before the respondent. Both the summons were returned undelivered with the postal remarks, "No such Addressee". Shri Vijay Mohan subsequently intimated that address of the appellant and company has been changed as it has shifted its office.

15. On the receipt of the aforesaid communication through email dated 22.02.2023, the summons were again issued on 10.03.2023 to Shri Vijay

Mohan for his appearance. Shri Vijay Mohan did not appear before the Competent Authority. However, some documents were sent through Shri C.

Pramod which were received in the office on 27.03.2023. Shri Vijay Mohan did not appear before the office pursuant to summon issued to him, the

respondent still made scrutiny of the documents sent by Shri Vijay Mohan, the proprietor of the appellant Company. On scrutiny, it revealed the E-

Way bills produced by the appellant were to store betel nuts at M/s Farmico Cold Storage. It was however stated that subsequently the betel nuts

were stored at Goyal Cold Storage, but no documents were produced to show transportation of betel nuts from M/s Farmico Cold Storage to Goyal

Cold Storage. The appellant even failed to submit any supporting document such as e-way bill/ delivery note to prove that betel nuts freezed at the

premises of Goyal Warehouse & Cold Storage were purchased from M/s Sharel Enterprises and are the same.

16. The owner of the Prakash Cold storage and his Manager did not disclose that betel nuts freezed were belonging to the appellant and in view of the above, when no material could be produced to prove ownership of the betel nuts freezed by the respondent, the appellant was not found to be a necessary party.

17. We further find that the claim of the appellant was even rejected by the Directorate of Enforcement after analysing bills of entries and E-ways submitted by Sh. Vijay Mohan through its representative. The discrepancies were found even in the weight and number of bags apart from place of storage. According to the bills submitted by the appellant for 1691 bags, it is said to have been imported at Chennai and sent to Nagpur.

The E-Ways Bills were showing transportation of betel nuts from Chennai to Nagpur delivered at M/s Farmico Cold Storage.

Thereby, if the appellant had purchased betel nuts and transported it to Nagpur, the storage of those betel nuts were at M/s Farmico Cold Storage and not Goyal Cold Storage so as to claim the ownership and thereby to accept the impleadment.

18. It is also a fact that Prakash Goyal, owner of Goyal Cold Storage has not confirmed betel nuts to be of the appellant company rather appellant's name was not disclosed while the name of other entities, stored the betel nuts were disclosed and accordingly action was initiated against them pursuant to the registration of ECIR. According to the appellant, the betel nuts were stored through Ikram Hazi of M/s Prestige Exports and Imports. The statement of Ikram Haazi was recorded under section 50 of the Act of 2002. He did not disclose name of the appellant for storage of betel nuts at M/s Goyal Cold Storage and Ice Plant Pvt. Ltd.

20. In the light of the discussion made above, we do not find any illegality in the impugned order and accordingly, appeal fails and is dismissed.