CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70168 of 2024

(Arising out of Order-in-Appeal No. 482-CUS-APPL-LKO-2023, dated - 05/07/2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Buddhsagar Yadav Aheer **.....Appellant**
(S/o Shri Fagu Aheer R/o Ward No.-3,
Gunda Chauraha, Gram Panchayat- Mayadevi,
District-Rupandehi, Nepal)

VERSUS

Commissioner, Customs, Lucknow **....Respondent**
(Hall No.3, 5th & 11th floor,
Kendriya Bhawan, Sector-H, Aliganj
Lucknow, Uttar Pradesh 226024)

<u>APPEARANCE:</u>
Shri Anuj Agarwal, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO<u>.-70285/2025</u>

DATE OF HEARING : 06.05.2025
DATE OF DECISION : 06.05.2025

<u>SANJIV SRIVASTAVA:</u>

This Appeal is directed against the Order-in-Appeal No. 482-CUS-APPL-LKO-2023, dated 05/07/2023 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow. By the impugned order following has been held:-

"06. I have gone through the case records and find that the previous appeal of the appellant against denial of PR had been rejected by the undersigned for the reasons recorded in the order and also that the appellant had never appeared in person either before the Customs at any stage of investigation or before the undersigned during the course of the personal hearing of the case even after offering ample opportunities for his appearance so that bonafide of his existence and claim could be ascertained and confirmed.

> *Further, I find that the appellant has failed to adduce any new fact or document on record which could substantiate the claim of the appellant regarding the ownership over the seized goods.*
>
> *In view of the above, I find that the appellant has not been able to prove its claim over the absolutely confiscated Silver granules and I hold that the appellant does not have any locus-standi in the present case of seizure. The appeal filed by the appellant is thus rejected being devoid of any merit."*

2.1 The Sashastra Seema Bal (SSB) officers, Kakrahawa on 29.07.2021 recovered a bag containing silver in granular form weighing 39.955 kg of 99.9% purity valued at Rs.27,94,852/-. There was no claimant for the said bag. The bag was handed over to the Customs Officers, Kakrahawa who seized the same on 30.07.2021 under a belief that the same has been smuggled into India from across the border and is liable for confiscation in terms of Section 111(b) of the Customs Act, 1962.

2.2 The Appellant vide their application dated 25.08.2021 claimed ownership of the seized goods and requested for provisional release in their favour. The said request was rejected by the Additional Commissioner, Lucknow vide Order dated 07.01.2022 for failing to establish their ownership of the seized goods.

2.3 After completion of the investigation a Show Cause Notice dated 07.01.2022 was issued stating as follows:-

> *"6. उपरोक्त से ऐसा प्रतीत होता है कि उपरोक्त अभिग्रहीत सामान को नेपाल के ओडवलिया गाँव होते हुए नो मेंस लैंड के रास्ते नेपाल से भारत आयात का प्रयास किया जा रहा था। उपरोक्त रास्ता अधिसूचना सं. 63/94- सीमा शुल्क (एन.टी.) दिनांक 21.11.94 में उल्लिखित मार्गों में नहीं है। इसलिए अभिग्रहीत चांदी ग्रेन्यूल्स (Silver Granules), वजन 39.955 किग्रा.. मूल्य रु. 27,94,852/-, सीमा शुल्क अधिनियम 1962 की धारा 111 (b) व (d) के अंतर्गत अधिहरणीय प्रतीत होती है तथा उपरोक्त वर्णित धाराओ एवं अधिसूचना के उल्लंघन के लिए उपरोक्त "जिस किसी से सम्बंधित हो" (नोटिसी सं. 1) सीमा शुल्क अधिनियम 1962 की धारा 112 के अंतर्गत दंड के पात्र है।*
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> *7. अतः उपरोक्त नोटिसीज "जिस किसी से सम्बंधित हो" को एतद् द्वारा यह आहूत किया जाता है कि वह संयुक्त आयुक्त, सीमा शुल्क*

(निवारक) आयुक्तालय, लखनऊ, पंचम तल, केन्द्रीय भवन सेक्टर-एच, अलीगंज, लखनऊ को इस कारण बताओ सूचना की प्राप्ति के 30 दिनों के अन्दर कारण बताये कि क्यों न :-

(i) उपरोक्त अभिग्रहीत चांदी ग्रेन्यूल्स (Silver Granules) वजन 39.955 किग्रा., मूल्य रु.27,94,852/- को सीमा शुल्क अधिनियम 1962 की धारा 111 (b) के अंतर्गत अधिहरण कर लिया जाये।

(ii) और "जिस किसी से सम्बंधित हो" पर उपर्युक्त अधिनियम एवं अधिसूचना के प्रावधानों का उल्लंघन करने के कारण इसी अधिनियम की धारा 112 के अंतर्गत जुर्माना लगाया जाये।"

2.4 After the issuance of the Show Cause Notice, Appellant again filed their application dated 23.03.2022 again claiming the ownership of the said seized goods and requested for provisional release in his favour which was again rejected by the Additional Commissioner, Customs (Preventive), Lucknow vide Order dated 31.05.2022 reiterating the same grounds recorded in his previous order.

2.5 Aggrieved Appellant filed a petition before the Hon'ble High Court Lucknow Bench. The Hon'ble Court directed the Appellant to take a course of statutory remedy of appeal under Section 128 of the Customs Act. The Appellant thereafter filed an appeal before the Commissioner (Appeals) which have been rejected vide Order-In-Appeal No.73/Cus dated 26.09.2022. Hence this Appeal.

3.1 I have heard Shri Anuj Agarwal, Advocate for the Appellant and Smt. Chitra Srivastava, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that

- the Appellant is a resident of Nepal and is engaged in the business of making jewelries of gold and silver through artisan in Nepal.
- the silver was legally procured by him from various sources in Nepal for which he has produced the documents such as purchase ledgers etc., to claim the ownership of

the said silver on the date when the goods were recovered unclaimed by the officers of the SSB.

- Silver had been left by his Manager Mr. Praveen Jaiswal on the boarder (No man's land) fearing action from SSB which was being taken again by certain labourers.
- As to claim his ownership he within one month of the seizure made claim before the Customs Authority. However, he was not able to respond to the summons issued for the reason that due to Covid during that period people were not allowed to move across the border. As being the legal claimant of the silver the same should have been released to him.

3.2 Learned Departmental Representative for the Revenue reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 I find that the Order-In-Original records as follows for not considering the Appellant's claim as the legal owner of the silver:-

"6. विवेचना एवं निष्कर्ष

मैंने वाद से सम्बंधित सभी कागजात, कारण बताओ नोटिस और श्री बुध्दसागर यादब, अहीर द्वारा दिए गए लिखित जबाब एबं उपलब्ध दस्ताबेजों का ध्यान पूर्वक एवं विधिवत अवलोकन किया है। इस प्रकरण में निम्न बिन्दुओं पर अधिनिर्णयन किया जाना है कि क्या-

1. *उपरोक्त अभिग्रहीत चांदी ग्रेनयूल्स (Silver Granules) वजन 39.955 किग्रा. मूल्य र.27,94,852/- सीमा शुल्क अधिनियम 1962 की धारा 111 (b) के अंतर्गत अधिहरण किया जा सकता है।*
2. *जिस किसी से सम्बंधित हो पर उपर्यंक्त अधिनियम एवं अधिसूचना के प्रावधानों का उल्लंघन करने के कारण इसी अधिनियम की धारा 112 के अंतर्गत जुर्माना लगाया जा सकता है।*

6.1 मैं यह पाता हूं कि इस केस में अधिकारियों ने वृहद जांच कर कारण बताओ नोटिस जारी की है और नोटिसी के खिलाफ आरोप तय किए हैं। उक्त केस में

नोटिसी "जिस किसी से सम्बंधित है" को बनाया गया है और उक्त द्वारा कोई जबाब नहीं दिया गया और श्री बुध्दसागर यादब, अहीर ने उक्त सामान पर अपने स्वामित्व के लिए जो तर्क प्रस्तुत किए हैं, उनके आधार पर एक संतुलित निर्णय लेने का प्रयत्न करूंगा। मैं देखता हूं कि अधिकारियों ने निम्नलिखित सबूत प्रस्तुत कर यह साबित करने का प्रयास किया है कि नोटिसी ने एक सुनियोजित षडयंत्र के तहत अवैध रूप से चांदी का आयात किया है। अतः मै उपरोक्त के आधार पर अब प्रत्येक बिंदुपर क्रमवार चर्चा करता हूँ।

6.2 अभिलेखों के अध्ययन से मैं यह पाता हूँ कि उक्त चांदी को अज्ञात व्यक्तियों द्वारा सीमा शुल्क अधिनियम 1962 की धारा 7(1)(C) के अंतर्गत जारी अधिसूचना सं. 63/94- सीमा शुल्क (एन. टी.) दिनांक 21.11.94 तथा सहपठित विदेश ब्यापार (विकास एवं नियमन) अधिनियम, 1992 की धारा 3 (3) एवं वाणिज्य मंत्रालय भारत सरकार द्वारा जारी बिदेश ब्यापार नीति 2015-20 के प्राबधानों/ प्रतिबंधों का उल्लंघन करके नेपाल से भारत लाया गया, जो कि सीमा शुल्क अधिनियम 1962 की धारा 111 (b) व (d) के अंतर्गत अधिहरण करने योग्य है । अतः अधिकारियों ने उक्त बरामद चांदी ग्रेन्यूल्स (Silver Granules), दो निष्पक्ष गवाहों की उपस्थिति में इसी अधिनियम की धारा 110 के अंतर्गत दिनांक को 30.07.2021 अभिग्रहीत कर लिया ।

6.3 मैं सीमा शुल्क अधिनियम, 1962 की धारा 123 का जिक्र करना चाहूंगा जो कि कहता है:

> *Section 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.*
>
> *(2) This section shall apply to gold, Silver bullion & Cigarettes added by Notification No. 103/2016 Customs (N.T.) [dated) 25.07.2016) land manufactures thereof), watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

6.4 मै उपलब्ध दस्तावेजों के आधार पर यह पाता हूं कि उपरोक्त अभिग्रहीत चांदी भारतीय सीमा के अन्दर बरामद की गयी थी तथा बाद में उपरोक्त बरामद चांदी पर श्री बुध्दसागर यादव अहिर ने उपरोक्त पत्र के द्वारा स्वामित्व सिद्ध करने का प्रयास किया है। श्री बुद्ध सागर यादव अहिर, श्री प्रबीण जैसबाल और न ही उनके वकील अथवा कोई अन्य प्रतिनिधि उपरोक्त दिए गए सम्मन के अनुपालन में उपस्थित हुए और ना ही उक्त तिथियों पर अभिग्राहित सामान के स्वामित्व से सम्बंधित कोई वैध कागजात प्राप्त करा सके। उपरोक्त सामान सीमा शुल्क अधिनियम, 1962 की धारा 123 के अंतर्गत अधिसूचित वस्तु की श्रेणी में आता है अतः अभिग्रहित चांदी का स्वामित्व सिद्ध करना श्री श्रीबुद्ध सागर यादब अहीर का सीमा शुल्क अधिनियम, 1962 की धारा 123 के अंतर्गत दायित्व है। श्री बुध्दसागर यादव अहिर द्वारा उक्त अभिग्रहीत चांदी के स्वामित्व के संबंध में प्रस्तुत दस्तावेज उक्त चांदी के स्वामित्व को उनके पक्ष में साबित करने में पूर्णतया असमर्थ और अपर्यास है अतः सीमा शुल्क अधिनियम, 1962 की धारा 123 के अंतर्गत, श्री बुध्दसागर यादव अहिर उक्त स्वामित्व को सिद्ध करने में असफल रहे है और उक्त दावे के सम्बन्ध में साक्षयों की पुष्टि न करा पाने कारण श्रीबुद्ध सागर यादव अहिर का उक्त चांदी के स्वामित्व का दावा तथ्यों के विपरीत और अस्वीकार्य है । इस संबंध में उपरोक्त सामयिक उन्मुक्ति आदेश के द्वारा उनकी स्वामित्व से सम्बंधित दावेदारी को पहले भी अस्वीकार किया जा चुका है। मैं उपरोक्त विवेचना के आधार पर यह पाता हूँ कि उक्त अभिग्राहित सामान सीमा शुल्क अधिनियम 1962 की धारा 7(1)(C) के अंतर्गत जारी अधिसूचना सं. 63/94- सीमा शुल्क (एन. टी.) दिनांक 21.11.94 तथा सहपठित विदेश ब्यापार (विकास एवं नियमन) अधिनियम, 1992 की धारा 3 (3) एवं वाणिज्य मंत्रालय मारत सरकार द्वारा जारी बिदेश ब्यापार नीति 2015-20 के प्राबधानों/ प्रतिबंधों का उल्लंघन करके नेपाल से भारत लाया गया, जो कि सीमा शुल्क अधिनियम 1962 की धारा 111 (b) व (d) के अंतर्गत अधिहरण करने योग्य है।

4.3 I also observe that it is not the case that the Appellant's ownership was not considered, however, after considering the same it was rejected. The matter went up to the Hon'ble High Court who directed taking recourse to Section 128 of the Customs Act. The claim to ownership was again rejected by the Commissioner (Appeals) in appeal filed under Section 128 of Customs Act, 1962 and direction contained in the order of the Hon'ble High Court. Nothing has been placed on record to show that the said order of the Commissioner (Appeals) has been made subject matter of any appeal or proceeding before this Tribunal or any other Authority. Hence that order rejecting the claim to ownership of the impugned goods have acquired finality.

4.4 Appellant on again making claim to the seized silver in these proceedings which have been initiated against "to whom so ever it may concern" on the same grounds which have been already rejected by the proper order of the Appellate Authority made under Section 128 as per the directions of Hon'ble High Court cannot be held to be proper and is in contravention of the earlier order of the Appellate Authority. In para 3 of the impugned order following has been recorded:

> *"03. The appellant vide their application dated 25.08.2021 claimed the ownership of the said seized goods and requested for its provisional release in their favour, which was rejected by the Additional Commissioner, Customs (Prev.) Commissionerate, Lucknow vide order dated 07.01.2022 for failing to establish their ownership of the said seized goods. Subsequent to the issuance of show cause notice dated 27.01.2022 in the present case, the appellant vide their application dated 23.03.2022 again claimed the ownership of the said seized goods and requested for its provisional release in his favour, which was again rejected by the Additional Commissioner, Customs (Prev.) Commissionerate, Lucknow vide order dated 31.05.2022 reiterating the reason as mentioned in his previous order. Feeling aggrieved, the appellant filed a petition before the Hon'ble High Court, Lucknow Bench. The Hon'ble Court directed the appellant to take recourse to the statutory remedy of appeal available under Section 128 of the Customs Act, 1962. Subsequently, the appellant has filed appeal before the Commissioner (Appeals), Customs, CGST & Central Excise Lucknow who vide Order-In-Original No. 731-Cus/Appl/ LKO/2022 dated 26.09.2022 rejected the appeal of the appellant for the reasons that the appellant has failed to prove his ownership over the seized goods.*

> *Later. the case was decided vide impugned order and the seized goods were ordered for absolute confiscation."*

4.5 The claim is made without any challenge to the earlier order of Commissioner (Appeal) rejecting the claim to ownership made by the Appellant, is barred in terms of principals of *res-judicata* which is very essential for transparency of action and judicial proceedings.

4.6 Also I do not find any merits in the claim made and also observe that such a claim did not lie before the Customs Authority without even a proper FIR filed before the relevant Police Authority for the lost goods, the action of the Customs Authority cannot be faulted with.

5.1 I do not find any merits in the appeal. Accordingly, appeal is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal