CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70006 of 2023

(Arising out of Order-in-Appeal No.310-313-Cus/Appl/LKO/2022 dated 02/05/2022 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Mr. Subhash Prasad, **.....Appellant**
(Bharmi, Bagheli, Siddharthnagar)

VERSUS

Commissioner of Customs (Pre.), **....Respondent**

(5th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

WITH

Customs Appeal No.70045 of 2023

(Arising out of Order-in-Appeal No.310-313-Cus/Appl/LKO/2022 dated 02/05/2022 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Mr. Reshikant Yadav, **.....Appellant**
(Devkathia, Rasoolpur, Gazipur)

VERSUS

Commissioner of Customs (Pre.), **....Respondent**

(5th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

APPEARANCE:

Absent on call, for the Appellants
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NOs.70534-70535/2025

DATE OF HEARING : 21 April, 2025
DATE OF DECISION : 21 April, 2025

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Appeal No.310-313-Cus/Appl/LKO/2022 dated 02/05/2022 passed by

Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

> *"In view of the above findings and judicial pronouncements, I am of the considered view that the impugned goods was smuggled from Nepal into India through off-route illegally and Shri Subhash Prasad, the appellant No.1 was actively involved in the said smuggling activity. Therefore, the adjudicating authority had rightly confiscated the impugned goods & the vehicle and imposed appropriate penalty upon Shri Subhash Prasad, the appellant No.1.*
>
> *I notice that Shri Rishikant Yadav, the appellant No.2 is the owner/driver of the said vehicle and was hired by Shri Subhash Prasad in transporting the impugned goods by his said truck. There is no evidence available to show his connivance with Shri Subhash Prasad in the said smuggling activity. He just engaged his truck for freight of Rs.5,000/-. Neither he nor Shri Subhash Prasad in their respective statements stated anything about his involvement in the smuggling of the impugned goods. Therefore, I do not find him guilty of the said offence and vacate the penalty imposed upon him under Section 112(b) of the Customs Act, 1962.*
>
> *------------------------*
>
> *Now, I come to the departmental appeal filed in the present case. It is a settled fact that the owner of the goods is required to pay the applicable duty and other charges along with redemption fine imposed on the confiscated goods in lieu of confiscation. Here in this case, the adjudicating authority had appropriated the security amount of Rs.74,880/- deposited by its owner against the redemption fine. Therefore, Shri Subhash Prasad, the appellant No.1 & the owner of the said goods was also required to pay the applicable duty and other charges on*

the impugned goods. I agree with the departmental view-point in this regard and allow the departmental appeal.

The impugned order is modified to the above extent. The appeals filed by the appellants as well as the departmental appeal are disposed of accordingly."

2.1 Police officers, Thana Kolhui intercepted a truck Regd. No. UP61 AT 0717 near Kolhui on 16.10.2019, which was found loaded with 520 bags of Peas weighing 24960 Kgs valued at Rs.7,48,800/-. Shri Subhash Prasad, the appellant No.1; Shri Rishikant Yadav, the appellant No.2 and Shri Girija Yadav were in the said vehicle. Police officials handed over these persons along with the said goods and vehicle to the Customs officials.

2.2 Appellant No.1 in his statement dated 16.10.2019 admitted the ownership of the said goods and stated that he purchased the same from Nepal on cash payment without any bill and got it loaded into the said vehicle. He intended to sell the said goods at Kolhui market.

2.3 Appellant No.2 in his statement dated 16.10.2019 stated that he is the owner and driver of the said vehicle. He got the said goods loaded into his truck on the direction of Shri Subhash Prasad, the owner of the said goods and was moving to Kolhui.

2.4 Shri Girija Yadav in his statement 16.10.2019 stated that he is only a labour, Shri Subhash Prasad hired him for loading and unloading of the said goods.

2.5 On reasonable belief that the goods detailed in table below were liable for confiscation under Section 111 of Customs Act. They were seized and provisionally released to their respective owners on bond and security deposit:-

S.No.	Particulars of the goods	Quantity	Anticipated price of the goods. (Rs.)
1.	Peas smuggled from Nepal	520 gunny bags (24,960 kgs)	7,48,800/- (Rs. 30 per kg.)
2.	Truck registration No. UP 61AT- 0717.	One	20,00,000/-
		Total	27,48,800/-

2.4 A show cause notice dated 04.03.2020 was issued to the appellants asking them to show cause as to why:-

"10(क), अतः श्री सुबाष प्रसाद पुत्र श्री टासे निवासी ग्राम भरमी, पो० बघेली, जिला सिद्धार्थनगर (अभिग्रहीत मटर के स्वामी) को एतद्वारा यह आहूत किया जाता है कि वह अपर आयुक्त, सीमा शुल्क (निवारक) आयुक्तालय, पंचम तल, केन्द्रीय भवन, सेक्टर- एच, अलीगंज, लखनऊ को इस कारण बताओ सूचना के प्राप्ति के 30 दिनों के अन्दर कारण बताये कि क्यों न

(i) अभिग्रहीत 520 बोरी (24960 कि० ग्रा०) मटर जिसका कुल सीजर मूल्य ₹7,48,800/- को सीमा शुल्क अधिनियम, 1962 की धारा 111 (बी) के अन्तर्गत अधिहरण कर लिया जाये? और;

(ii) उन पर सीमा शुल्क अधिनियम, 1962 की धारा 7(1) (c) के अन्तर्गत जारी अधिसूचना सं० 83/94-Cus (NT) दिनांक 21.11.1994 का उल्लंघन करने के कारण उसी अधिनियम की धारा 112 (b) के अन्तर्गत जुर्माना लगाया जाये?

10(ख) अतः श्री ऋषिकांत यादव पुत्र स्व० मोती यादव निवासी ग्राम देवकठिया, पो० बेलवा रसूलपुर, जिला गाजीपुर (अभिग्रहीत ट्रक रजि० सं० UP-61-AT-0717 के स्वामी) को एतद्वारा यह आहूत किया जाता है कि वह अपर आयुक्त, सीमा शुल्क (निवारक) आयुक्तालय, पंचम तल, केन्द्रीय भवन, सेक्टर- एच, अलीगंज लखनऊ को कारण बताये कि अवैध तरीके से नेपाल से भारत में आयात की गयी अनिग्रहीत 520 बोरी (24960 कि० ग्रा०) मटर को ढोने में इस्तेमाल की गई वाहन ट्रक रजि० सं० UP-61-AT-0717 मूल्य ₹20,00,000/- को क्यों न-

(i) सीमा शुल्क अधिनियम, 1962 की धारा 115(2) के अन्तर्गत अधिहरण कर लिया जाये? और,

(ii) *उक्त अवैध कार्य को पूर्ण करने के लिए साधन उपलब्ध कराने तथा चालक के रूप में सहयोग करने के कारण उसी अधिनियम की धारा 112(b) के अन्तर्गत जुर्माना लगाया जायें?"*

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 04.06.2021, wherein following has been held:-

"आदेश

(क) मै अभिग्रहीत 520 बोरी (24960 कि०ग्रा०) मटर को मूल्य रू 7,48,800/- (रुपया सात लाख अड़तालीस हजार आठ सी मात्र) है, को सीमा

शुल्क अधिनियम 1962 की धारा 111 (b) के अन्तर्गत अधिग्रहीत (Confiscate) किये जाने का आदेश देता हूँ। मैं अभिग्रहीत (Confiscated) 520 बोरी (24900 कि०ग्रा०) मटर मूल्य रू 7,48,800/-, पर रू 74,880/- (रूपया चौहत्तर हजार आठ सौ अस्सी मात्र) का विमोचन शुल्क (Redemption fine), अधिग्रहण (Confiscation) के विरुद्ध, लगाये जाने का आदेश करता हूँ। चूंकि उत्त्क बरामद मटर को रू 74,880/- प्रतिभूति राशि सरकारी कोष में जमा करने एवं उक्त मटर के सीजर मूल्य रू 7,48,800/- के बराबर का बन्ध पत्र प्रस्तुत करनें पर दिनांक 19.10.2019 को उसके विधिक स्वामी के पक्ष सामयिक उन्मुक्ति कर दी गयी। अतः मै उक्त धनराशि रु० 74,880/- को भारत सरकार के खाते में समायोजित करने का आदेश देता हूँ।

(ख) मैं अभिग्रहीत ट्रक रजि० सं० UP 61AT-0717 मूल्य रू 20,00,000/- (रूपया बीस लाख मात्र), को भी इसी अधिनियम की धारा 115 (2) के अन्तर्गत अधिग्रहीत (Confiscate) किये जाने का आदेश देता हूँ, एबम अधिकृत बाहन स्वामी पर रु०. रू 2,00,000/- (रु० दो लाख मात्र) का विमोचन शुल्क लगाता हूँ। चूंकि उक्त अभिग्रहीत बाहन रजि० संख्या UP 61AT-0717 की सामायिक उन्मुक्ति रु० 2,00,000/- की नगद प्रतिभूति जमा करने एवम् वाहन के अभिग्रहण मूल्य के बराबर बांड निष्पादित करने पर वाहन स्वामी के पक्ष में कर दी गयी थी। अतः मैं सामयिक उन्मुक्ति की उक्त राशि रू 2,00,000/-को वाहन के विमोचन शुल्क के एवज में भारत सरकार के खाते में समायोजित करने का आदेश करता हूँ।

(ग) मैं श्री सुबाष प्रसाद पुत्र श्री टांसे निवासी ग्राम भरमी. पो० बघेली, जिला सिद्धार्थनगरपर सीमा शुल्क अधिनियम 1962 की धारा-112 (b) के अन्तर्गत रू० 2,00,000/- (रूपया दो लाख मात्र) जुर्माना/अर्थदण्ड लगाये जाने का आदेश करता हूँ।

(घ) मैं श्री ऋषिकांत यादव पुत्र स्व० मोती यादव निवासी ग्राम देवकठिया, पो० बेलवा रसूलपुर, जिला गाजीपुरपर सीमा शुल्क अधिनियम 1962 की धारा-112 (b) के अन्तर्गत रू0 1,00,000/- (रूपया एक लाख मात्र) जुर्माना/अर्थदण्ड लगाये जाने का आदेश करता हूँ।

(ड़ा) मैं श्री गिरिजा यादव पुत्र स्व० तिलकधारी यादव निवासी ग्राम देवकठिया, पो० बेलवा रसूलपुद, जिला गाजीपुर पर सीमा शुल्क अधिनियम 1962 की धारा-112 (b) के अन्तर्गत रू० 50,000 (रूपया पचास हज़ार मात्र) जुर्माना/अर्थदण्ड लगाये जाने का आदेश करता हूँ।"

2.6 Aggrieved appellants and revenue filed appeals before Commissioner (Appeals) which hav been disposed as per the impugned order referred in para 1 above.

2.7 Aggrieved appellants have filed these appeals.

3.1 Appellant is absent on call. This matter has been listed earlier on 05.02.2025, 13.03.2025 and for today. In terms of proviso to Section 129B (1A) of the Customs Act, following has been held:-

> *"[(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*
>
> *Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."*

3.2 I heard Shri Santosh Kumar Authorized Representative appearing for the revenue. Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Order-in-Original records the findings as follows:-

> *"520 बोरी (24960 कि०ग्रा०) मटर सीजर मूल्य रू0 7,48,800/- का सीमा शुल्क अधिनियम 1962 की धारा 111 (b) के अंतर्गत अधिग्रहण (confiscation):*
>
> *इस प्रकरण से सम्बंधित दस्तावेजों के अवलोकन से मैं यह पाता हूँ कि पुलिस थाना कोल्हुई के अधिकारियों ने दिनांक 16.10.2019 को एक ट्रक रजि० सं० UP 61AT-0717 एवं उस पर लोड 520 बोरी (24960 किला०) नेपाल से अवैध तरीके से लागी गयी मटर के साथ उपरोक्त तीनो व्यक्तियों को सीमा शुक्छ अधिनियम के प्रावधानों के अन्तर्गत कार्यवाही हेतु सीमा शुल्क (निवारक) मण्डल नीतनयां के अधिकारियों को सौंपा। तत्पश्चात सीमा शुल्क (निवारक) मण्डल नौतनवां के अधिकारियों ने उपरोक्त बरामद 520 बोरी (24900 कि०ग्रा०) जी कि सीमा शुल्क अधिनियम, 1962 की थारा 111 (बी) के अन्तर्गत अभिहरण(confiscation) योग्य है एवं उक्त मटर को कोने में प्रयुक्त वाहन ट्रक रवि० सं० UP 61AT-0717*

उसी अधिनियम की धारा 115(2) के अन्तर्गत अधिहरण confiscation) योग्य है, को अधिनियम की धारा 110 के अन्तर्गत अभिग्रहीत (seize) कर लिया।

मैं यह पाता हूँ कि श्री सुबाष प्रसाद ने सीमा शुल्क अधिनियम, 1962 की धारा 108 के अन्तर्गत दिये अपने बयान में बताया कि उक्त पकड़ी गयी 520 बोरी (24980 कि०ग्रा०) मटर उसी का है जिसे पकडे गये ट्रक रजि० सं० UP 61AT-0717 पर लाद कर श्री गिरिजा यादव (मजदूर) एवं श्री ऋषिकांत यादव (वाहन स्वामी एवं चालक) के साथ लोटन होते हुए कोल्हुई बाजार जा रहे थे कि तभी रास्ते में पुलिस थाना कोल्हुई के अधिकारियों ने उन तीनों को पकड़ लिया; यह कि उसने उक्त मटर को नेपाल के किराना मण्डी से नगद भुगतान करके खरीदा था और इसका कोई रसीद / बिल नहीं लिया था। इसी प्रकार श्री त्रऋषिकांत यादव (अभिग्रहीत ट्रक के स्वामी एवं चालक) ने दिनांक 16.10.2019 को सीमा शुल्क अधिनियम, 1962 की धारा 108 के अन्तर्गत दिये अपने बयान में बताया कि उसने उक्त पकड़ी गयी 520 बोरी (24960 कि०ग्रा०) मटर को उसके स्वामी श्री सुबाष प्रसाद के कहने पर रू0 5,000/- भाडे पर लाद कर, श्री सुबाष प्रसाद (माल मालिक) एवं श्री गिरिजा यादव (मजदूर) के साथ पहुंचाने जा रहा था कि तभी रास्ते में पुलिस थाना कोल्हुई के अधिकारियों ने उन्हें पकड़ लिया और उसने यह कार्य पैसों के लालच में आकर किया हैं। इसी प्रकार श्री गिरिजा यादव ने दिनांक 18.10.2019 को सीमा शुल्क अधिनियम, 1962 की धारा 108 के अन्तर्गत दिये अपने बयान में बताया कि गाड़ी में माल लोड करनें के बाद वह माल मालिक श्री सुबाष प्रसाद एवं वाहन चालक श्री ऋषिकांत यादव के साथ ट्रक में बैठ कर कोल्हुई जा रहे थे कि तभी रास्ते में पुलिस थाना कोलाई के अधिकारियों ने उन्हें पकड़ लिया

उपरोक्त से स्पष्ट है कि उपरोक्त अभिग्रहीत 520 बोरी (24960 कि०ग्रा०) मटर जिसका कुल सीजर मूल्य रू0 7,48,800/- आंका गया है, को श्री सुबाष प्रसाद (अभिग्रहीत मटर के स्वामी) द्वारा सीमा शुल्क अधिनियम, 1962 की धारा 7 (1) (सी) के तहत जारी अधिसूचना सं० 63/94 दिनांक 21.11.94 के प्रावधानों का उल्लंघन कर अनाधिकृत मार्ग से अवैध तरीके से नेपाल से भारत में लाकर भारत-नेपाल सीमा के पास स्थित ठोठरी के पास एक बगिया में इकट्ठा किया गया और श्री ऋषिकांत यादव (अभिग्रहीत ट्रक रजि० सं० UP 61AT-0717 के स्वामी एवं चालक) तथा श्री गिरिजा यादव (मजदूर) ने भाडे एवं मजदूरी के लालच में यह जानते हुए भी कि उक्त अवैध तरीके से नेपाल से लाये हुए मटर को वाहन में लोड कर अन्य जगह ले जाना सीमा शुल्क अधिनियम के प्रावधानों का उल्लंघन एवं दण्डनीय अपराच हैं. उन्होने (माल स्वामी, वाहन स्वामी एवं चालक तथा मजदूर ने) जानबूझ

कर उक्त अभिग्रहीत मटर को ट्रक रजि० सं० UP 61AT-0717 पर लोड कर कोल्हुई बाजार लाभ पर बेचने के उद्देश्य से ले जा रहे थे। अतः अभिग्रहीत 520 बोरी (24960 कि०ग्रा०) मटर जिसका कुल सीजर मूल्य रू0 7,48,800/- आंका गया है, सीमा शुल्क अधिनियम, 1962 की धारा 111 (बी) के अन्तर्गत अधिहरण (confiscation) योग्य है

18. अभिग्रहीत 520 बोरी (24960 कि०ग्रा०) मटर को ढोने में प्रयुक्त वाहन संख्या UP 61AT-0717 का अधिनियम की धारा 115 (2) के अंतर्गत अधिग्रहण (confiscation) :-

इस विषय पर पंचनामा, अभिग्रहीत वाहन UP 61AT-0717 के चालक एवं पंजीकृत स्वामी के बयानों के जवलोकन से मैं यह पाता हूँ कि अधिकारियों ने उक्त बाहनों से अनधिकृत रूप आयातित 520 बोरी (24960 कि०ग्रा०) मटर को बरामद किया। उक्त बरामद मटर के आयात से सम्बंधित कोई भी प्रपत्र वाहन चालक नहीं दिखा सके |

मै यह पाता हूँ कि श्री सुबाष प्रसाद (अभिग्रहीत मटर के स्वामी) ने सीमा शुल्क अधिनियम, 1962 की धारा 108 के अन्तर्गत दिये अपने बयान में बताया कि उक्त पकडी गयी 520 बोरी (24960 कि०ग्रा०) मटर उसी का है जिसे पकडे गये ट्रक रजि० सं० UP 61AT-0717 पर लाद कर श्री गिरिजा यादव (मजदूर) एवं श्री ऋषिकांत यादव (वाहन स्वामी एवं चालक) के साथ लोटन होते हुए कोल्हुई भाजार फो रहे थे कि तभी रास्ते में पुलिस थाना कोल्हुई के अधिकारियों ने उन तीनों को पकड़ रिस्या, यह कि उसने उक्त मटर को नेपाल के किराना मण्डी से नगद भुगतान करके खरीदा था और इसका कोई रसीद/बिल नहीं लिया था, कि उसके साथ पकडे गये श्री गिरिजा यादव एक मजदूर हैं श्री ऋविकांत यादव जो कि ट्रक रजि० सं० UP 61AT-0717 के स्वामी एवं चालक हैं से उक्त मटर को रू० 5,000/-भाड़ा तय कर ले जा रहा था कि उसने उक्त 520 बोरी (24960 कि०ग्रा०) मटर को अपने बचत के पैसों से कुल रू0 7,00,000/- में खरीदा था और उसे कोल्लूई के छोटे-छोटे दुकानों पर घूम-घूम कर बेच देता जिससे उसे लगभग रू0 30,000/- का लाभ प्राप्त हो जाता, कि उसे इसकी जानकारी है कि अनाधिकृत मार्ग से अवैध तरीके से कोई भी सामान नेपाल से भारत में लाभा या भारत से नेपाल ले जाना सीमा शुल्क अधिनियम के प्रावधानों का उल्लंघन एवं दण्डनीय अपराध हैं, लेकिन उसने यह कार्य पैसों के लालच में आकर किया हैं, जिसके लिये उसने अपना अपराध स्वीकार किया है।

श्री ऋषिकांत यादव (अभिग्रहीत ट्रक के स्वामी एवं चालक) ने दिनांक 16.10.2019 को सीमा शुल्क अधिनियम, 1962 की धारा 108 के अन्तर्गत दिये अपने बयान में बताया कि वह अभिग्रहीत ट्रक रजि० सं० UP 61AT-0717 का पंजीकृत स्वामी एवं चालक हैं; कि उसने उक्त पकडी गयी 520 बोरी (24960 कि०ग्रा०) मटर को उसके स्वामी श्री सुबाष प्रसाद के कहने पर रू० 5,000/- भाडे पर लाद कर, श्री सुबाष प्रसाद (माल मालिक) एवं श्री गिरिजा यादव (मजदूर) के साथ पहुंचाने जा रहा था कि तभी रास्ते में पुलिस थाना कोल्हुई के अधिकारियों ने उन्हें पकड़ लिया कि उसे इसकी जानकारी है कि अनाधिकृत मार्ग से अवैध तरीके से नेपाल से लाये गये सामानों को वाहन पर लाद कर ले जाना सीमा शुल्क अधिनियम के प्रावधानों का उल्लंघन एवं दण्डनीय अपराध हैं; लेकिन उसने यह कार्य पैसों के लालच में आकर किया है।"

4.3 Impugned order records the findings as follows:-

"Shri Subhash Prasad, the appellant No.1 has submitted that the seized Peas were of Indian origin. He tendered his statement under duress & pressure. There is no evidence to show that the seized goods were of Nepali origin. Shri Rishikant Yadav, the appellant No.2 has pleaded that he was not aware about the nature of the said goods. Shri Girija Yadav, the appellant No.3 has submitted that he is not concerned with the seized goods and was also not aware that the seized goods was illegally imported from Nepal. He is innocent and has not committed any offence.

I find that the Police officials, Kolhui intercepted the said truck at Kolhui situated near Indo-Nepal border loaded with the impugned goods. At the time of interception, Shri Subhash Prasad, the appellant No.1; Shri Rishikant Yadav, the appellant No.2 and Shri Girija Yadav, the appellant No.3 were found present in the said vehicle. Shri Subhash Prasad, the appellant No.1 in his statement dated 16.10.2019 admitted that he purchased the impugned goods from Nepal on cash payment without any bill and intended to sell the same at Kolhui market. Shri Rishikant Yadav, the appellant No.2 in his statement dated 16.10.2019 stated that he is the owner/driver of the said *vehicle and got the said goods loaded into nis truck on the direction of Shri Subhash Prasad. Shri Girija Yadav, the appellant No.3 in his statement 16.10.2019 stated that he is only a labour and Shri Subhash Prasad hired him for loading/unloading of the said goods.*

Shri Subhash Prasad, the appellant No.1 has taken a plea that the seized Peas were of Indian origin. I find that at the time of interception of the said vehicle, no document was found available with the said consignment of the impugned goods. Shri Subhash Prasad also could not produce any purchase bill with respect to the said goods showing that he procured the impugned goods from the local market. Hence, his said claim is not supported by any documentary evidence. It is clearly an afterthought on his part to cover-up his said smuggling activity. Further, he himself admitted in his said statement that he purchased the impugned goods from Nepal on cash payment without any bill.

It has been held in catena of judgments that the statements recorded under Section 108 of the Act are in the nature of substantive evidence and culpability of the offence by the concerned persons can very much be relied upon on such statement. In the case K.I. Pavunny vs Asstt. Collector (HQ) Central Excise Collectorate, Cochin [1997 (90) ELT 241 SC), the Hon'ble Supreme Court held-

> *"Confessional statement of accused, if found to be voluntary, can form the sole basis for conviction. If retracted, Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. If found to be voluntary and truthful, inculpatory portion of retracted confession could be relied upon to base conviction."*

In the casc Illias vs Collector of Customs, Madras [1983(13) ELT 1487(SC)], another Constitution Bench had held that-

> *"Even though the Customs officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognizable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them."*

Further, in the case of Assistant Collector of Central Excise, Rajamundry vs Duncan Agro Industries Ltd. & Ors. [2000(7) SCC 53), referring to Section 108 of the Customs Act, the Apex Court observed-

> *"The inculpatory statement made by any person under Section 108 is to non police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinized by the court in the same manner as confession made by an accused person to any non-police personnel."*

4.4 From the entire case, I find nothing put on record to show that the peas seized and confiscated were of Nepali origin. It is a matter of common knowledge that peas grown in large quantity within India also and in the ratio from where this seizer has been acted, no examination or expert opinion has been obtained to certify that the peas were of Nepali origin.

4.5 I am concern with the case of seizure of peas and not gold, an item not notified under Section 123 of the Customs Act. In such a situation, it was incumbent upon the revenue authorities to establish the Nepali origin of the seized peas which has not been discharged.

4.6 Admittedly, Customs officers are vested with power to record statement under Section 108 of the Customs Act and these statements are admissible as evidence in any proceedings relating to goods imported illicitly into India. However, it is settled law that the reliance on the statement could be only to the extent it establishes the facts of the case and is corroborated by the other evidences. In absence of any investigation with regards to the foreign smuggled nature of peas the impugned order holding that these seized and confiscated peas are of Nepali origin cannot be upheld.

4.7 In similar case, I find that Kolkata Bench of this Tribunal in the case of Shri Rahul Kumar & others Final Order No.75955-75959/2025 dated 23.04.2025 have held as follows:-

> *"15. Admittedly, when the truck and the car were intercepted, the truck was found to be loaded with 6718.5 kgs of Black Pepper and 3918 kgs of Peas, without any proper documents. Also admittedly the interception and seizure took place at Muzaffarpur, that is well within the Indian region in Bihar.*
>
> *16. The statutory provision enabling the Customs Officials to intercept, check, verify, detain, seize are all guided by Section 123 of the Customs Act 1962. It would be important to go through the relevant provisions, which are extracted below :*
>
> *Section 123 in the Customs Act, 1962*
>
> > *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, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

17. A careful reading of the above provisions clarifies that the goods in question pertain to,

(a) Gold

(b) Watches

(c) Any other class of goods which the Central Govt may notify,

the officials, can have a reasonable belief and take up the further proceedings. In these cases, the burden to prove the non-foreign nature of the goods is on the person from whose possession the goods are recovered.

18. On the other hand, if the goods in question are not notified by the Central Govt., then the burden entirely shifts to the Customs Officials so as to prove that the goods are of foreign origin.

19. On a specific query from the Bench to the Revenue as to whether Black Pepper and Peas have been so notified, the Ld A R makes the following submissions :

Indo Nepal Treaty of Trade 2009 , issued by Ministry of Commerce and Industry.

ll. With Reference to Article II

1- lt is understood that all goods of Indian or Nepalese origin shall be allowed to move unhampered to Nepal or India respectively without being subjected to any quantitative restrictions, licensing or permit system with the following exceptions:

(a) Goods restricted for export to third counties,

(b) Goods subject to control on price for distribution or movement , within the domestic market, and (c) Goods prohibited for export to each other's territories to prevent deflection to third countries

The said consignment was intercepted on 28.05.2019 near lndo- Nepal border

In this regard, reference is relied upon the written reply given in the Lok Sabha by the Minister of Commerce and Industry Shri Piyush Goyal, as per press release dated 03.07.2019, wherein he has categorically stated, interalia that :

"India is not importing pepper from Bangladesh Bhutan and Nepal. The various steps taken up by the Government to curb import of pepper from Vietnam and Srilanka is as follows ……"

Further, reference is relied upon the written reply given in the Lok Sabha by the Minister of Commerce and Industry Shri Piyush Goyal, as per press release dated 04.12.2019, he has categorically stated, inter-alia that :

In order to reduce the import of pepper and to stabilize the domestic price of pepper, Government has fixed the CIF value of Rs.500 per kg. as the Minimum Import Price (MIP) for black pepper vide Notification of Directorate General of Foreign Trade (DGFT) dated 6/12/2017. Subsequently, an *amendmentwas brought in the MIP notification by making import of pepper at or above Rs. 500 per kg. free and import below Rs. 500 per kg prohibited vide DGFT Notification dated 21/3/2018. Some representations regarding smuggling of low priced black pepper from other origin to Indio through Nepal and Bangladesh border were received. In this regard, the field formation of Customs and Directorate of Revenue Intelligence have been alert and made vigilant at the point of entry in the port to detect and prevent entry of inferior quality pepper, from other counties to India. Customs has booked several cases of attempted smuggling of pepper in the recent past*

Source: DGCI&S Kolkata/DLI from Customs provided by the Spices Board of India

20. The above details provided by the Revenue only go on to show that some restrictions have been placed on the Minimum Import Price and the situation is being monitored to curb smuggling of low quality Pepper into India from these countries. In order to attract the provisions of Section 123, and to fasten the burden on the person possessing the goods, the items in question, that is the Black Pepper and Peas should have been properly Notified by the Government, which does not seem to be the case here. The statement of the Minister in the Parliament and Press Conference briefings not carry any statutory weight unless the goods are notified. Thus, I take the view that the Black Pepper and Peas are not covered by any Notification and hence they are not subject to the provisions of Section 123.

21. Therefore, the onus to prove that the goods are of foreign origin, is on the Customs Officials. From the Show Cause Notice and Order in Original, it is seen that the Picture of the Gunny / Woven bags are reproduced with *the printed matter of "Rose Brand 5MM Jumbo" and "Sanchit Black Pepper 5MM Best Quality". Obviously, these are the Brand Names. The Bags do not carry any details of the manufacturer's name, their address etc. In such a case no assumption can be made about the foreign origin of these goods. There is nothing to suggest that the Customs Officials have made any enquiry to know as to who the owner of these Brands is and where the factories are located. Another way of ascertaining the origin would be to get the goods tested by approved / empanelled Testing Agency to check the quality of the goods to prove as to whether such goods are of Indian or are of foreign origin. I do not see any such attempt has been made by the Customs officials.*

22. The next thing to be considered is the place of interception and seizure. Admittedly, the goods were seized at Muzaffarpur. On checking the map and location, I find that Muzaffarpur is located at a distance of about 216 KMs from Bhimnagar [the alleged town via which the smuggling is taking place]. Further, it is stated that the goods have been loaded from a godown at Bhimnagar. As to whether the goods were initially smuggled from Nepal to Bhimnagar, and as to who undertook this work, is not coming out clearly in the proceedings. Even from the recorded statements of various persons including some of the noticees / appellants herein, there is no admittance from their side that the goods have been procured illegally from Nepal. Therefore, I take a considered view that the Revenue has not been able to prove conclusively that the goods are of foreign origin.

23. Since the Revenue has not been overcome the test of bringing in conclusive proof towards the foreign origin of the goods, going into the detailed investigation process and allegations and findings given in the impugned order would be more of academic interest. Admittedly, prima *facie, the documentary evidence brought in by the appellants have been found to be doubtful. But the point in the present case is, unless it is proved that the goods are of foreign origin, the anomalies found in the transactions cannot implicate the appellants under Customs Act provisions, though they might get implicated under other statutory provisions. Illegality or otherwise of other statutory provisions will have no bearing on the Customs Act provisions and hence they cannot come to the rescue of the Revenue in the present case."*

4.8 Similar view has been taken by this Tribunal in the following case of Mr. Bajrangi Agrahri Final Order No.70341 of 2025 dated 20 May, 2025.

4.9 As I hold against confiscation of the peas, the order confiscating the truck also needs to be set aside. Interestingly, while upholding confiscation of the truck Commissioner (Appeals) has set aside the penalty on the owner of the truck (appellant-2) who was driving the same when intercepted.

4.10 As confiscation itself is set aside the demand of duty as per the order of Commissioner (Appeals) also needs to be set aside along with the penalties imposed on the appellant-1.

4.11 Thus, I do not find any merits in the impugned order.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp