CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. II

Customs Appeal No.70688 of 2024

(Arising out of Order-in-Appeal No.232-CUS/APPL/LKO/2024 dated 22/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Mr. Gulab Gupta S/o

Shri Harihar Gupta, ...Appellant

(Village- Sabaya Siswa, Maharajganj, UP)

VERSUS

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

(7th Floor, Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow-226024)

<u>APPEARANCE:</u>

None for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70857/2025

DATE OF HEARING : 12 August, 2025
DATE OF DECISION : 12 August, 2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.232-CUS/APPL/LKO/2024 dated 22/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow. By the impugned order Commissioner (Appeals) has rejected the appeal of the appellant and uphold the Order-in-Original, wherein following has been held:-

"आदेश

(i) उपरोक्त अभिग्रहीत मटर बजन 17375.00 किग्रा. मूल्य रु. 6,95,000/- (छः लाख पचानवे हज़ार मात्र), सीमा शुल्क अधिनियम 1962 की धारा 111 (b) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ उक्त अभिग्रहित मटर को रु. 1,00,000/- (एक लाख मात्र) विमोचन शुल्क Redemption fine तथा सीमा

शुल्क रु.4,36,113/- (चार लाख छतीस हजार एक सौ तेरह मात्र) जमा करने के पश्चात् उक्त अभिग्रहित वस्तुओं के विधिक स्वामी को विमोचित करने का विकल्प देता है। चूंकि उक्त अभिग्रहित बस्तुओं की सामयिक उन्मुक्ति आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति, सीमा शुल्क और अभिग्रहित बस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही की जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी कुरा धरोहर राति रु.5,36,113/- (पांच लाख छत्तीस हजार एक सौ तेरह मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता है।

(ii) पिकअप रजि० सं० यू०पी० 56 एण्टी-0759 गीजर मूल्य रु.5,60,000/- (पाच लाख साठ हजार मात्र) का सीमा शुल्क अधिनियम 1962 की धारा 115 (2) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ एवं उक्त अभिहित बाहन को रु. 56,000/- (छप्पन हजार मात्र) विमोचन शुल्क Redemption fine जमा करने के पश्चात् उक्त अभिग्रहित बाहन के विधिक स्वामी को विमोचित करने का विकल्प देता हूँ। चूंकि उक्त अभिवहित वर्णित बाहन की सामयिक उन्मुक्तिः आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति और अभिग्रहित वस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही कि जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी धरोहर राशि रु. 56,000/- (छप्पन हजार मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता है।

(iii) पिकअप रजि० सं० पू०पी० 56 ए०टी०-1559 सीजर मूल्य रु. 6,00,000/- (छः लाख मात्र) का सीमा शुल्क अधिनियम 1962 की धारा 115 (2) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ एवं उक्त अभिग्रहित वाहन को रु. 50,000/- (साठ हजार मात्र) विमोचन शुन्त Redemption fine जमा करने के पश्चात् उक्त अभिग्रहित वाहन के विधित स्वामी को विमोचित् करने का विकल्प देता हूँ। चूँकि उक्त अभिग्रहित वर्णित वाहन की सामयिक उन्मुक्ति आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति और अभिग्रहित वस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही कि जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी धरोहर राशि रु. 60,000/- (साठ हज़ार मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता हूँ।

(iv) ट्रक रजि० सं० यू०पी० 53 डी०टी० 8117 सीजर मूल्य रु. 13,00,000/- (तेरह लाख मात्र) का सीमा शुल्क अधिनियम 1962 की धारा 115 (2) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ एवं उक्त अभिग्रहित वाहन को रु.

1,30,000/- (एक लाख तीस हजार मात्र) विमोचन शुल्क Redemption fine जमा करने के पश्चात् उक्त अभिग्रहित बाहन के विधिक स्वामी को विमोचित करने का विकल्प देता हूँ। चूंकि उक्त अभिग्रहित वर्णित वाहन की सामयिक उन्मुक्ति आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति और अभिग्रहित वस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही कि जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी धरोहर राशि रु. 1,30,000/- (एक लाख तीस हज़ार मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता हूँ।

(v) पिकअप रजि० सं० पू०पी० 56 ए०टी०-0424 सीजर मूल्य रु. 5,50,000/- (पांच लाख पचास हजार मात्र) का सीमा शुल्क अधिनियम 1962 की धारा 115 (2) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ एवं उक्त अभिग्रहित वाहन को रु.55,000/- (पचपन हजार मात्र) विमोचन शुल्क Redemption fine जमा करने के पश्चात् उक्त अभिग्रहित बाहुन के विधिक स्वामी को विमोचित करने का विकल्प देता हूँ। चूंकि उक्त अभिग्रहित वर्णित वाहन की सामयिक उन्मुक्ति आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति और अभिग्रहित वस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही कि जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी धरोहर राशि रु. 55,000/- (पचपन हजार मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता है।

(vi) पिकअप रजि० सं० यू०पी० 56 ए०टी०- 1082 सीजर मूल्य रु. 5,70,000/- (पांच लाख सत्तर हज़ार मात्र) का सीमा शुल्क अधिनियम 1962 की धारा 115 (2) के अंतर्गत अधिहरण किये जाने का आदेश देता हूँ एवं उक्त अभिग्रहित बाहुन को रु. 57,000/- (सत्तावन हुज़ार मात्र) विमोचन शुल्क Redemption fine जमा करने के पश्चात् उक्त अभिग्रहित वाहन के विधिक स्वामी को विमोचित करने का विकल्प देता हूँ। चूंकि उक्त अभिग्रहित वर्णित वाहन की सामयिक उन्मुक्ति आदेश संख्या 05/21-22 दिनांक 12/08/2022 के तहत उपर्युक्त प्रतिभूति और अभिग्रहित वस्तुओं के मूल्य के बराबर बन्ध पत्र देने के पश्चात् पूर्व में ही कि जा चुकी है अतः इसकी सामयिक उन्मुक्ति के समय रखी गयी धरोहर राशि रु. 57,000/- (सत्तावन हजार मात्र) को इसी अधिनियम कि धारा 126 के अंतर्गत सरकार के पक्ष में समायोजित किये जाने का आदेश देता है।

(vii) में श्री राजेश पुत्र श्री सर्वजीत, निवासी ग्राम बरगदवा, नगर पंचायत निचलौल, जिला- महाराजगंज, वाहन चालक, सीमा शुल्क अधिनियम 1962 की

धारा 112 (b) के अंतर्गत रु. 50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(vii) मैं श्री शहनवाज अली पुत्र श्री गुलजार अली निवासी–ग्राम जिला महराजगंज, वाहन चालक सीमा शुल्क अधिनियम 1962 की धारा 112(b) के अंतर्गत रु.50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(ix) मैं भी इम्तियाज अहमद पुत्र स्व. बिस्मिल्लाह, निवासी बाबा जिला कुशीनगर, गोदाम स्वामी सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु. 50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश है।

(x) मैं श्री कैलाश पुत्र श्री लल्लन निवासी 165, भेविया देउरहा, जिला महाराजगंज, बाहन स्वामी एवं चालक सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु. 50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता हूँ।

(xi) मैं श्री सतेन्द्र यादव पुत्र श्री प्रभु निवासी ग्राम अलवरिया, पोस्ट ओडवनिया, निचलौल जिला महाराजगंज, वाहन चालक, सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अतर्गत रु. 50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(xii) में श्री गुलाब गुप्ता पुत्र श्री हरिहर यादव निवासी ग्राम सवय, जिला महाराजगंज, वाहन स्वामी सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु.3,00,000/- (तीन लाख मात्र) की शास्ति लगाये जाने का आदेश देता है।

(xiii) में श्री राजेंद्र यादव पुत्र श्री कमल यादव, निवासी ग्राम व पोस्ट छितौना, जिला महाराजगंज, वाहन स्वामी एवं चालक सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु.50,000/-(पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(xiv) मैं श्री महेश यादव पुत्र श्री कमल यादव, निवासी ग्राम लोहिया नगर वार्ड 11 जिला महाराजगंज, वाहन स्वामी सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत र.50,000/- (पचास हज़ार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(xv) मैं श्री आलोक कुमार गुप्ता पुत्र श्री बनारसी लाल गुप्ता, निवासी गहौरा बाजार, जिला महाराजगंज, वाहन स्वामी सीमा शुल्क अधिनियम 1962 की धारा

112 (b) के अंतर्गत रु 50,000/- (पचास हजार मात्र) की शास्ति लगाये जाने का आदेश देता है।

(xvi) मैं श्री बनारसी लाल गुप्ता पुत्र श्री राम औतार, निवासी राहौर बाज़ार, जिला महाराजगंज, प्रतिनिधि वाहन म्वामी सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु. 50,000/-(पचास हजार मात्र) की शान्ति लगाये जाने का आदेश देता है।

(xvii) मैं श्री गिरिजादेवी पत्नी श्री ओमप्रकाश, निवासी तारामंडल सिद्धार्थ एन्क्लेव जिला गोरखपुर वाहन स्वामी सीमा शुल्क अधिनियम 1962 की धारा 112 (b) के अंतर्गत रु. 50,000/-(पचास हजार मात्र) की शान्ति लगाये जाने का आदेश देता है।"

1.2 Though the order in original is in respect of number of persons, it appears that none person other than the appellant had filed any appeal before the first appellate authority as the impugned order disposes of only one appeal that was filed by the appellant. Further I do not find other appeal filed in these proceedings leading to confiscation of allegedly smuggled peas and imposition of penalty on many appellant.

2.1 On 02.08.2021, the police officers of Khadda Police Station intercepted five drivers alongwith trucks/pickups loaded with 695 sacks of smuggled peas totally weighing 17,375 Kg. valued at Rs. 42,75,000/- illegally being imported from Nepal to India through off routes and handed over to the officers of the Customs (P) Division, Gorakhpur. The drivers of the trucks in their respective statements recorded under Section 108 of the Customs Act, 1962 stated that the owner of the said peas in the appellant. They stated that the said peas were brought into India from Nepal illegally in Pickups and were being loaded in trucks on the direction of the appellant when the police intercepted them.

2.2 Appellant in his statement dated 07.08.2021 recorded under Section 108 of the Customs Act, 1962 accepted that he is the owner of the seized peas and the said peas were brought from Nepal but he does not have any valid document in respect of import of seized goods.

2.3 Thus, on a reasonable belief that the recovered peas was illegally brought into India through unauthorized routes in violation to the provisions of Notification No. 63/94(N.T.) dated 21.11.1994 under Section 7(1)(c) of the Customs Act, 1962, the same are liable for confiscation under Section 111(b) Customs Act, 1962 and vehicles loaded with said goods were also liable for confiscation under Section 115(2) of the Act and the same were seized under Section 110 of the Act.

2.4 After inquiry, a show cause notice was issued to the appellant alongwith other related persons proposing therein confiscation of the said seized goods along with the seized vehicles under Section 111(b) and 115(2) of the Act respectively. Penalties were also proposed to be imposed on the appellant and related persons under Section 112 of the Act.

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 31.01.2023 referred in para-1 above.

2.6 Aggrieved appellant have filed appeal before the Commissioner (Appeal), which have been disposed off as per the impugned order.

2.7 Aggrieved appellants have filed this appeal.

3.1 During the hearing I observe that the notice send to the appellant has been returned undelivered and the notice copy send to the Advocate on record has not been returned back, 'presumably delivered'. Inspite of notice, appellant is absent on call. I have heard the learned Authorised Representative appearing for the revenue.

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

4.2 Impugned order records the findings as follows:-

> *"5.2 From the records, I find that the recovery of the smuggled peas from the vehicle No. UP-31/AT-3854 has not*

been disputed as all the drivers of the intercepted trucks in their respective statements recorded under Section 108 of the Customs Act, 1962 have categorically admitted that owner of the seized peas is the appellant and the seized peas was of foreign origin and illegally brought into India through off routes in violation to the provisions of the Customs Act, 1962 and they never shown retraction from their statements. The appellant also in his statement dated 07.08.2021 recorded under Section 108 of the Customs Act, 1962 accepted that ownership of the seized peas the said peas was brought into India on his direction through off routes from Nepal into India without any valid documents.

5.3 I would also like to refer to a judgment of Hon'ble Supreme Court of India in this regard passed in the case of 'Naresh J. Sukhawani Vs. Union of India 1995 (11) TMI 106 SUPREME COURT OF INDIA wherein Hon'ble Supreme Court ruled that"-It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine." collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the

Thus, in view of statements of the appellant and the drivers of the seized vehicles recorded under Section 108 of the Customs Act, 1962, it is apparent that the appellant is the *owner of seized peas which was illegally brought into India from Nepal through off routes in violation to the provisions of the Customs Act, 1962. Thus, I find that the appellant has committed an offence for which the goods were rightly ordered for confiscation and imposed penalty upon the appellant.*

5.4 Also, the appellant has contended that he had legally imported the said goods from Nepal under proper import documents. In this context, I find that however the appellant has claiming that he legally imported the said peas but he has failed to produce the import documents in respect of said import either at the time of adjudication proceedings or before me in the instant appeal. Thus, the said contention of appellant is not sustainable.

5.5 In view of above, I find that the adjudicating authority has rightly ordered for confiscation of the said goods and vehicle and imposed penalty upon the appellant for violation of the provisions of the Act to which I do not wish to interfere.

5.6 Thus, in view of above, I hold the impugned order as legal and proper and reject the appeal filed by the appellant."

4.3 Appellant has challenging the impugned order stated following grounds:

8- Because in the above case it is a humble request that the applicant is owner of confiscate of Indian peas. The statement of the applicant was recorded under Section 108 by Customs, Gorakhpur on 07.8.2021. In relation to the said statement, the applicant states that the said peas were purchased from regional farmers and traders and some goods were sent to Customs, Division Nautanwa. Provisional release of dry green peas seeded from small traders was done. The applicant/pea owner had purchased the said green dry peas which are as follows-

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Sr. no	*Name of the goods owner*	*weight =*	*date of release*
1	*Ajay son of Shri Sudama*	*2625 Kg/ Dry Green Peas*	*27.7.2021*
2	*Ved Prakash Pandey*	*3000 kg/dry green peas*	*28.7 2021*
3	*Manoj Yadav son of Vechai*	*3000 Kg./ Dry Green Peas*	*28.7.2021*
4	*Virendra son of Shri Shivmangal*	*4450 Kg./ Dry Green Peas*	*30.7.2021*
5	*Ashish s/o Shri Chokat*	*15000 Kg/ Dry Green Peas*	*31.7.2021*
6	*Arvind s/o Shri Sukhram*	*2890 Kg/ Dry Green Peas*	*01.8.2021*
	Total weight =	*17465 Kg*	

10- Because dry green peas of the applicant were caught by the police officers of P.S. Khadda on 03.8.2021 and while catching the peas, all the above purchased forms were shown to the concerned police officers but it has been revealed by the police of Khadda Police Station that they said We are showing the goods as Nepal peas on our records and all of you have to mention in your statement that the said peas were brought from Nepal, failing which we will send you to jail. Applicant police station-Khadda, District Kushinagar due to fear of police, fear of going to jail and seized the peas.

11- Because the applicant Provisional release for peas had given a wrong statement at that time due to fear, panic and fear. The applicant was under a lot of pressure at that time and the applicant was apprehensive that if the applicant took the names of all the people who had purchased seasonal immunity peas from small traders, then the Customs would include them all in the said case, hence the applicant Could not mention the correct facts in the statement given on 07.8.2021. Whereas in the said seized 17375 kg of Indian peas were purchased from local traders and farmers.

12- Because in the above circumstances, the statement given by the applicant/pea owner dated 07.8.2021 is refuted and the details of legal peas purchased by the applicant/pea owner are being submitted by attaching it with this application. In view of the above, it is a humble *request to you to kindly drop the seizure of 17375 kg of peas of the applicant.*

13- Because the appellant is reputed trader of grain with its own shop situated at Sabaya Dhala Siswa District. Maharajganj Appellant has his own godown along with his shop and appellant is generally purchasing rice and wheat at his shop from local farmers and supplied that grains to the others big markets in UP like Kanpur and Lucknow Mandi. Appellant had purchased the seized green pea at his shop from some local vendors who had received the seized green pea from the office of Customs Preventive Division Nautanwa after paying redemption fine and personal penalty imposed on seized green pea before few days of the seizure of seized green pea and appellant had also received the copy of release order from that vendors and appellant had mad cash payment regarding aforesaid purchase. After the purchase of said green pea appellant had shifted the seized green pea to his another godown situated at Khadda for sorting and packing before forwarding it to the nearest market of Gopalganj Bihar for sale on seized vehicles and suddenly Police Staff of the P /S Khadda came to the godown of appellant and seized the same in suspicion of smuggled goods without any reason and at that appellant was in Lucknow for his treatment and appellant staff had showed the papers of Customs Division Nautanwa related to the seized goods to the police officers but they did not considered that documents and handed over this case to the Customs Division Gorakhpur Appellant had also submitted the documents of purchase and release orders of Customs Division Nautanwa through advocate on the email of Customs Division Gorakhpur but the officers of Customs Division Gorakhpur did not acknowledge that documents and forcibly recorded the statement of appellant , drivers and owners of seized vehicles and made the case of smuggled green pea . Later on appellant had submitted *these facts ad papers before adjudicating authority but the adjudicating authority had conformed the version the Customs Division Gorakhpur.*

14- Because the conduct of the respondent authority is open violation of the provisions of the Customs Act 1962 and open harassment of the legal trade of the appellant.

15- Because the respondent authorities "Reason to believe that the seized Areca-nuts are of foreign origin and liable for confiscation under the provision of Customs Act 1962 is baseless and not correct in the eye of law.

16- Because the order in original regarding. appellant consignment is not sustainable and failed place reliance tc prove it corrects.

17- Because the case of respondent is fully based on assumption and presumption.

18- Because the reason to believe for confiscating the goods is statutory requirement which is totally absent in the present case.

19- Because the respondent authorities have miserably failed to discharge their onus to prove under section 111 of the Customs Act in case of non-notified goods.

20- Because the respondent authorities cannot act under the Customs Act over a non-notified item and that too, in a non- notified area.

21- Because the applicability of the Customs Act and the jurisdiction of the respondent authorities are under challenge.

22- Because the seizure has been done not on any personal reason to believe of the seizing officer, rather it is based upon the belief of the local traders.

23- That the reason to believe for confiscating the goods is statutory requirement which is totally absent in the present case.

24- Because the respondent authorities have miserably failed to discharge their to prove under section 111 of the onus Customs Act in case of non-notified goods.

25- Because the respondent authorities cannot act under the Customs Act over a non-notified item and that too, in a non- notified area and green pea is not notified under the provisions of section 123 Customs Act 1962.

26- Because when the very seizure itself is challenged, there is no requirement for the petitioner to submit to the jurisdiction of the Custom authorities

27- Because at any rate the order in appeal is not sustainable in the eve of law and may be set aside and cash security deposited at the time of provisional release may be returned back to the appellant and personal penalty imposed on the appellant may also be returned back to the appellant

28- Because the show cause notice was not issued and not -served to the appellant within specified time limit.

4.3 I find that the goods under confiscation were intercepted by the police officers of Police Station Khadda, on 02.08.2021 along with two persons namely Shri Rajesh Sarvajeet R/o Village Bargadba, Nagar Panchayat Nichlol District Maharajganj and Shri Shanabaz Ali S/o Shri Gulzar Ali R/o Village Sikathiya Pipra Bazar, Nichlol Maharajganj. Details of the vehicles and the peas intercepted from each vehicle is reproduced bellow

S No	Vehicle No		Peas Smuggled from Nepal		
	Number	Value	Bags	Weight ‘Kgs	Value
1	UP56AT-1082	570000	120	3000	120000
2	UP56AT-0424	550000	120	3000	120000
3	UP56AT-0759	560000	120	3000	120000
4	UP56AT-1559	600000	95	2375	95000
5	UP53DT-8117	1300000	240	6000	240000
	Total	3580000	695	17375	695000

Both the persons intercepted along with the peas admitted in their statement recorded under Section 108 that the impugned pea loaded in these Vehicle was the pea smuggled from Nepal through unauthorized routes and was loaded in their vehicles by the Appellant from a godown located in Lakhuwa Lukhai Khadda. On the basis of the above and under reasonable belief that the impugned peas were illegally brought into India, the peas were put under seizure. The vehicles used for transportation were also seized. During the course of investigations statement of the appellant and many other persons were recorded under Section 108 of Customs Act, 1962. As per the jist recorded in order in original appellant has in his statement recorded 07.08.2021 stated as follows:

> "उक्त बयान में बताया कि अभिग्रहीत कुल 695 बोरी मटर का वह स्वामी है। उक्त मटर को उसने नेपाल के नवल पंरासी बाजार से रू0 30/- प्रति कि०ग्रा० की दर से खरीदा था और उसे मजदरों के द्वारा कई बार में भारत में झुलनीपुर में लाकर पिकअप वाहनों के द्वारा लखुवा लखुईं बड्डा स्थित श्री इम्तियाज के मकान में किराय पर लिये गये गोदाम में इकट्ठा किया था, जिसका उसके पास खरीद एबं आयात 'से सम्बन्धित कोई भी वैध कागजात नहीं है। उसने 240 बोरी मटर जो पहले से मंगाकर उक्त गोदाम में रखवाया था, वहीं मटर ट्रक रज०मं०यू०पी० 53 डी०टी०-8117 पर लोड हो रहा था तथा पकडे गये उक्त चारो पिकअप में लोड मटर उसी ट्रक में लोड होना शेष था वह उक्त मटर को लाभ पर बेचने के उद्देश्य से गीडा, गोरखपुर ले जाता और वहां पर कनबेसिंग एजेन्टों के माध्यम से उसे जहां भी ज्यादा रेट मिलता उक्त माल को वहीं पर बेच देता उसने उक्त गोदाम को दिनांक 25.07.2021 को रू. 5000/. प्रति माह किराये पर मौखिक रूप से लिया था, जिसका कोई एग्रीमेन्ट नहीं किया गया था। पुलिस अधिकारियों द्वारा छापा मारे जाने के दौरान उनकी तबियत खराब होने के कारण उन्होंने ही श्री इम्तियाज से गोदाम खोलकर ट्रक में माल लोड करवाने के लिये कहा था। आगे उसने यह भीं स्वीकार किया है कि उसे इस बात की जानकारी है कि नेपाल से अबैध मार्ग से तस्करी कर मटर को भारत में जाकर अधिक दाम पर बेचना सीमा शुल्क अधिनियम के प्रावधानों का उल्लघन एवं दण्डनीय अपराध है।"

After completion of investigations the show cause notice was issued to the appellant and others proposing confiscation of seized peas and the seized vehicles. Though the show cause notice was issued to number of persons other than the appellant but none of them except appellant filed any reply or attended the personal hearing. After considering the submissions the order in original referred in para 1 above was passed. None other than appellant filed any appeal except for the appellant before Commissioner (Appeal) except the appellant.

4.5 In absence of any challenge by any other person who was involved in the handling and transportation of the illicitly imported peas, I am not in position to admit the challenge made by the appellant in respect of the confiscation of peas. It would lead to situation where the vehicles used for transporting the illicitly sized peas are held liable for confiscation, and the impugned peas are contrarily held not liable for confiscation. Impugned order takes note of all the statements recorded under Section 108 of Customs Act, 1962 whose evidentiary value has been upheld by the Hon'ble Supreme Court in series of decisions as follows:

- Surjit Singh Chabbra [1997 (89) E.L.T. 646 (S.C.)]
- Naresh J Sukhwani [1996 (83) E.L.T. 258 (S.C.)]
- K I Pavunny [1997 (90) E.L.T. 241 (S.C)]

It is also noted that none of the statement was retracted by any person including the appellant, nor have been discredited by way of cross examination in any proceedings.

4.6 Impugned order also records that the appellant has taken contrary stands in respect of the seized peas even in the reply filed to the show cause notice. On one hand appellant states that the seized peas are imported peas for which there are valid documents and on the other hand it is stated that the seized peas were procured by the appellant from local farmers. Thus by relying on the decision of the Hon'ble Supreme Court in case of System and Components (P) Ltd. [2004 (165) ELT 136 (SC)] the seized peas were held liable for confiscation under Section 111 (b) of the Customs Act, 1962. After confiscation the peas have been allowed to be released against redemption fine of Rs 1,00,000/-.

4.6 Peas are grown in huge quantity in India and in the appellant have in his initial statement claimed to have purchased the same from local farmers. Appellant has in his sought to show that he purchased the said pea from the local farmers, and have given some details in para 9 of the appeal reproduced above. However the details given do not tally with the details of the peas under seizure. The from the table in para 9 of the appeal it is evident that appellant has claimed to purchase 30,965 Kgs of peas from 6 persons. However except for bald assertion nothing concrete has been stated no document in respect of purchase has been purchased, nor any document in respect of the payments made has been placed on record. I do not find much support from the said submission.

4.7 Now coming to the penalty imposed upon the appellant upon the appellant under Section 112 (b) of the Customs Act, 1962. I find that the said section becomes applicable only when mens-rea in the actions of appellant could have been established. Neither the impugned order nor the order-in-original record any finding to establish mens-rea on the behalf of the appellant. Appellant is trader engaged in sale and purchase of 'Kirana'. I have upheld the confiscation of the seized peas for the reason that non other than appellant has challenged anything recorded during the investigation at anytime. But that go on to prove the existence of mens-rea on the part of the appellant, which would lead to imposition of penalty upon him under Section 112 (b). Thus I set aside the penalty imposed upon the appellant under section 112 (b).

4.8 Thus in absence of any appeal filed by any other person, involved in the case while I uphold the order of confiscation of peas, I set aside the penalty imposed upon the appellant

5.1 Appeal is partly allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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