

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

CUSTOMS APPEAL NO.55047 of 2023

[Arising out of Order-in-Appeal No.CC(A)CUS/D-II/Prev/1498/22-23 dated 10/13.03.2023 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.]

HIRA SINGH,S/o RAMDHARI SINGH,

....APPELLANT

R/o- WA-200, Shakarpur,
New Delhi-110 092

Vs.

**COMMISSIONER OF CUSTOMS
PREVENTIVE- NEW DELHI**

.....RESPONDENT

Near I.G.I, Airport, New Delhi-110 037.

Appearance:

Present for the Appellant : Shri Gaurva Prakash, Advocate for the Appellant

Present for the Respondent: Shri Vishwa Jeet Saharan, Authorised Representative

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50850/2025

Date of Hearing :21/05/2025

Date of Decision :05/06/2025

BINU TAMTA:

1. Challenge in the present appeal is to the order-in-appeal no. CC(A)CUS/D-II/Prev/1498/22-23 dated 10/13.03.2023, whereby the Commissioner (Appeals) upheld the confiscation of foreign origin Cigarette under Section 111(d) and imposed penalty under Section 112(b) (i) of the Customs Act, 1962¹.

¹ Act 1962

2. Acting on specific intelligence, the DRI officer kept surveillance on 21.12.2018 around the area near the Appellant premises i.e godown of M/S Star Express Enterprises. The DRI officers intercepted one mini truck (Swaraj Mazada) having Registration No.UP 21 BN 5207 outside the godown of M/s Star Express Enterprises on 21.12.2018. It was found that some cartons loaded on the said truck were unloaded and were stored in the aforesaid godown. On intercepting the truck, three persons were found supervising the unloading . On being questioned about the contents of the carton loaded on the impugned truck, the driver and helper produced one e-way bill bearing date 20.12.2018 with description of goods as metal planter. However, on randomly checking of the few cartons, cigarettes of 'GUDANG GARAM' brand were found. During the examination of the impugned goods, the Appellant arrived and introduced himself as owner of transport company i.e M/s Star Express Enterprises. In the premises, few more cartons containing miscellaneous goods such as electronic goods and iron dustbins/ planters and 33 cartons containing different brands origin cigarettes were found. The truck and cartons were taken to DRI Delhi Zone Office as godown premise did not have enough light. After detailed examination of the impugned goods, 21,60,000 foreign origin cigarettes sticks of different brands were found from 150 cartons loaded in truck. Further 3,41,000 foreign origin cigarettes sticks of different brands were found from 33 cartons found in transport company premises. Besides this, 134 numbers of metal planters were found loaded in truck.

3. Foreign origin cigarettes were also recovered from the residence of the Appellant. Total Rs.25,01,200/- (Rs.21,60,000 + Rs.3,41,000) foreign

origin cigarettes sticks were found. None of the recovered cigarettes conformed to conditions laid down in "The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003" and the Legal Metrology Act, 2009. The Appellant could not produce valid documents for licit import and transport of the said goods. The cigarettes were seized under Section 110 of the Act, 1962. The Mini truck was also seized under Section 111 of the Act. As per the availability and survey of market, the market value was ascertained @Rs. 14 per stick and total value of the foreign origin cigarettes worked out to be Rs.3,50,16,800/-

4. As per e-way bill, M/s Dynamite Traders was supplier of the metal planter and M/s. Vaishnavi Enterprises was receiver. Sh. Mubarak Khan of M/s Dynamite Traders stated that he had arranged metal planter and their transportation on the direction of the appellant after receiving the cash and issued E-way bill. Sh. Sunil Kumar Jha of M/s Vaishnavi Enterprises stated that he did not know the Appellant and had never given any order to M/s Dynamite Traders for metal planters.

5. The statements of Sh. Nazakat (Mini truck driver), Sh. Suman Patel (Helper of mini truck), Sh. Salman (person who loaded the goods in mini truck) were recorded under Section 108 of the Act, whereunder they, *inter alia*, admitted that they were carrying illegally smuggled cigarettes of foreign origin.

6. Statement of the appellant was recorded under Section 108 of Act whereunder he stated that Sh. Hamid Bhai regularly sent him the foreign origin Cigarettes which were stored in his godown and further supplied to

the different transporters on the direction of Sh. Mohd. Asif (Manager of Sh. Hamid Bhai). He further stated that he received the consideration and expenditure from the "Angadiya" (Hawala Operator) by showing the photo of one rupees or ten rupees note received from Hamid Bhai. He stated that he was fully aware of the fact the foreign origin cigarettes were smuggled cigarettes. The panchnama dated 21.12.2018 was shown to the Appellant and he agreed with the contents of the panchnama. The Appellant along with other three persons was arrested on 21.12.2018 under Section 135 of the Act.

7. Show cause notice was issued, *inter alia*, proposing confiscation of seized cigarettes and penal actions on several persons including the Appellant. The issue was adjudicated whereby, seized smuggled cigarette were confiscated under Section 111(d) of the Act and penalty of Rs. 25,00,000/- was imposed upon the Appellant under Section 112(b) (i) of the Act and penalty of Rs.10,000/- on Nazakat, Suman Patel & Salman. Being aggrieved the appellant preferred an appeal which has been rejected by the impugned order. Hence the present appeal.

8. Heard Shri Gaurav Prakash, learned counsel for the appellant and Shri Vishwa Jeet Saharan, Authorised Representative for the respondent.

9. Shri Gaurav Prakash, the learned Counsel for the appellant has seriously challenged the Panchama and pointed-out glaring deficiencies such as:

- (i) The Panchnama does not specify how the premises of M/s Star Express Enterprises was identified.
- (ii) The godown premises was not identified or authenticated by panch witnesses.

- (iii) As per the Panchama, surveillance was kept at the godown premises from 11 PM, however, the arrival or the movement of the Mini truck was not seen. Panchama does not states who opened the godown premises and whether it was found open or locked or the DRI officials broke open the locks.
- (iv) Panchama does not state that the witnesses saw any unloading of cartons from Swaraj Mazda to the godown or vice versa. "
- (v) It is not even stated from where the appellant came to the site and whether he was present in the godown when the alleged unloading started.
- (vi) No details are found, who sat in which vehicle when the trucks were brought to the DRI office and who loaded the 33 cartons of cigarettes in the Minna truck.
- (vii) The names or details of the labourers involved in loading or unloading were not recorded.
- (viii) The godown premises was not properly searched. It was not stated that search authorisation under section 105 of the Act was obtained before entering and inspecting the premises of M/s. Star Enterprises.
- (ix) No details are provided about the tempo on which 33 cartons were loaded or the details of the vehicle number, owner or driver was recorded.
- (x) It was not stated as to who was supervising which vehicle when the goods were brought to the DRI office, and whether the panch witnesses were split between the vehicles or they sat together.

10. To consider the arguments of the learned Counsel, it is necessary to reproduce the Panchnama dated 21.12.2018, which reads as under: -

**PANCHNAMA DATED 21.12.2018 DRAWN AT STARTING FROM
PREMISES OF STAR EXPRESS SERVICES,14, BAGEECHI
MADHODAS, NEAR LALQUILA, DELHI-110006 TO 9Th FLOOR, PT.
DEENDAYAL ANTYODAYA BHAWAN, CGO COMPLEX, NEW DELHI-
10003**

Panch 1 Shri Vicky Nand Kishor, Age 29 years, S/o Nand Kishor R/o. 1210, Gali Sangat, Rashan Main Bazar, Pahar Ganj, New Delhi-110055.

Panch 2 Shri Tinku Kumar, Age 29 years, S/o Ramphal, R/o. R-1/15, Mohan Garden, Uttam Nagar, New Delhi-110059

On being called upon by one person who introduced himself to us as Sh. Rajeev, Intelligence Officer, Directorate of Revenue Intelligence, Delhi Zonal Unit, 6th and 9th floor, Antayodya Bhawan, CGO Complex, New Delhi (DRI), by showing his identity card at around 10.40

P.M ON 20.12.2018. He then introduced us to the other officers namely Shri Manoj kumar, Senior Intelligence Officer, Nakul Dev, Intelligence Officer, Dhirender Kumar Dhiraj, Intelligence Officer, Vineet Dahiya, Intelligence Officer, Ajay Kumar, Head Hawaldar, DRI,DZU. The DRI officer informed us that they had received a specific intelligence thjat one Mini truck(Swaraj Mazda) having registration Number UP21 BN 5207 carrying illegally smuggled foreign cigarettes would be offloaded at godown of M/s Star Express Services having address 14, Bageechi Madhudas, near Red Fort, Delhi-06, and that they require to intercept the said truck. The DRI officer requested us to remain present as independent witnesses to witness the whole proceedings, to which we the panchas readily agreed.

Then, we the above named panchas accompanied the DRI officers in their named vehicle from CGO Complex at about 11.00 PM on 20.12.2018. On the basis of specific information kept surveillance of the area near the godown having address 14, Bageech, Mathodas, near Lalquila, Delhi for around 1 and half hours. Around 01.00 AM(21.12.2018), A Mini truck (Swaraj Mazda) having registration No. UP21BN5207 was located outside the aforesaid godown and upon reaching the sopt it was found that the some cartons loaded on the said mini truck of Swaraj Mazda make were unloaded and were stored in the aforesaid godown.

Thereafter the DRI Officers, in the presence of we panchas, intercepted the aforesaid Mini truck where three persons were found supervising the said unloading. On enquiry about the identity of the persons from the said persons, the persons identified themselves as Sh. Nazakat, the driver of the aforesaid Mini truck(Swaraj Mazda), Suman Pal, the helper in the truck and Sh. Mohd. Salman as agent of the supplier and stated that the goods have been brought from Moradabad. On being questioned about the contents of the carton loaded on the Mini truck (Swaraj Mazda) the driver and the helper produced one E-way Bill bearing SI No. 4910 4193 9631 dated 20.12.2018 with description of good as metal Planter. They also produced Challan No. DT-005/18-19 Dated 20.12.2018 of Delhi Haryana Transport Co., Moradabad. Then the officers randomly checked a few cartons wherein Cigarettes of GUDANG GARAM brand of Indonesia was found. On demand the said three persons, supervising the unloading, could not produce any valid documents for carriage or possession of the said Cigarettes. Meanwhile one person arrived near the said truck who on query by the officer introduced himself as Hira Singh and informed that he is the owner of the transport company M/s Star Express Enterprises. He further informed that truck No. UP21BN5207 has arrived from Moradabad carrying Gudang Garam Cigarettes of Indonesia and some planters. On demand he could not produce any valid documents for the Cigarettes of foreign origin loaded on the truck. In the premises of M/s Star Express Enterprises few more cartons containing miscellaneous goods such as electronic goods and iron dustbins/planters but 33 cartons were found to contain different brands of foreign origin cigarettes for which Sh. Hira Singh could not produce any valid documents for licit possession. As the place was not having enough light and there were security concerns as

well, the officers asked us the panchas and the three occupants of the said truck as well as Hira Singh proposed to carry out the detail examination and inventorization of goods at the office premises of DRI, Delhi Zonal Unit located at 9th floor, Antyodaya Bhawan, CGO Complex, New Delhi for which we all consented readily.

Thereafter all the cartons containing cigarettes of foreign origin lying in the premises were loaded on one hired arranged by Hira Singh with the help of labours and the said temp along with the Swaraj Mazda mini truck having registration No. UP21BN5207 of foreign origin Cigarettes were taken to the DRI office, located at CGO Complex in Lodhi Road, New Delhi.

All the four persons namely Sh. Hira Singh, Sh. Nazakat, the Driver, Suman pal, the helper of truck driver and Sh. Mohd. Salman, the agent of supplier were served summons under Section 108 of the Customs Act, 1962 by the SIO, DRI, DZU who was part of the team of DRI Officers, to present themselves at DRI,DZU office located at 6th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi, 110003 to give evidence.

The truck, the tempo and the government vehicle along with Nazakat, Suman Pal, Mohd salman, Hira Singh and we panchas reached the CGO Complex at about 03.30 AM of 21.12.2018. All the cartons in the mini truck an hired tempo were shifted to a room on the 9th Floor of Pt. Deendayal Antyodaya Bhavan, CGO, Complex, New Delhi and a detailed examination of the said cartons was conducted by the officers of DRI in the presence of us the panchas and the said four persons. Upon examination, each of the cartons was found to contain Cigarettes of foreign origin, of various brands, neatly packed in cardboard boxes. A few cartons were also found to contain metal planters of two types (cone shaped and oval shaped). A detailed inventory of the Cigarettes and metal planters recovered was made and annexed to this pachnama as Annexure-A (from Swaraj Mazda mini truck having registration No. UP 21 BN 5207), and. A detailed inventory of the Cigarettes recovered from the godown at 14, Madhods Bageecha, near Red Fort, Delhi-110006 was also made and is annexed to this pachnama as Annexure-B.

Samples in triplicate of all brands of Cigarettes recovered were drawn for use in further investigations.

The seized Cigarette packets were found not conforming to "The Cigarettes and the Tobacco Products(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act, 2003" , which says Cigarette packets should have health warning covering 85% of the principal display area of the package(60% pictorial warning and 25% textual health warning).

Also, as per the Legal Metrology (Packaged Commodity) Rules 2011, the name and address of the manufacturer/importer or packer, quantity of the product, month ad year of manufacturing and retail sale

price are mandatory. These were absent on the packets. On a reasonable belief that the entire consignment was liable for confiscation under Section 111(b), 111(d) and 111 (o) of the Customs Act, 1962, the foreign origin Cigarettes and metal planters as detailed in Annexure-A and B were seized under Section 110 of the Customs Act, 1962.

This panchnama running into 03 pages was drawn by one of the DRI officers as per our say and the contents of this pachnama have been explained to all of us in vernacular which we have fully understood and put our dated signatures in token of it being correctly drawn. After inventory proceedings, all the cartons of Cigarettes were packed in the carton boxes from which they had been recovered. Thereafter the said cartons were wrapped in white markin cloth and sealed with DRI Lac seal having paper slips bearing the signatures of all the signatories of this panchnama. The proceedings were concluded in peaceful and cordial environment and no harm to any goods/person was caused during the proceeds. Religious feelings of all were respected. The panchnama was read over to all of us in our vernacular and we understood the same. All signatories of this panchnama put our dated signature in token of having perused and it was as per our say. The proceedings were concluded on 12.20 pm on 21.12.2018 and we remained present throughout the proceedings.”

11. From the perusal of the Panchama, I find that all the basic and relevant information required at that stage were duly incorporated. The time and place of calling the panch witnesses, the identity of the officer has been clearly mentioned, the purpose of the whole proceedings was duly intimated. The further details of accompanying the officers at the site in question at the time and place and specific details of the nature of the truck and its registration number which was intercepted have been mentioned in the Panchama. The next important step was the identification of the three persons, who were found supervising the unloading of the main truck, the driver, the helper and agent of the supplier. Further, the production of the E-way bill with serial number 491041939631 dated 20.12 .2018 describing the goods as metal planter and on being checked randomly, cartons of cigarettes of foreign origin with brand name of Indonesia was found. Similarly the search of the godown resulted in the recovery of foreign origin cigarettes,

however, none was able to produce valid documents for carriage or possession of the said cigarettes. What has been stated with regard to the presence of the appellant is that he had arrived near the truck and on query by the officer, introduced himself as Hira Singh, owner of the transport company, M/s. Star Express Enterprises. The details of carrying the cigarettes to the CGO Complex for examination, have also been specified to be in the truck, the tempo arranged by the appellant and the government vehicle along with Nazakat, Suman Pal, Mohammed Salman, Hira Singh and the Panchas were shifted on the ninth floor at around 3:30 AM has been specified. The details of the inventory of the cigarettes recovered from the truck and also from the godown and the metal planters was made and was annexed as Annexure A and B. Samples were drawn and the goods were seized. The Panchama was read over to all in vernacular and signatures were obtained of having perused it. Specifically stated that they were present throughout the proceedings which concluded at 12.20 p.m. on 21.12.2018. The Panchnama has been accepted and signed by the appellant. Having admitted, it is now not open to the appellant to challenge the contents of the Panchama. Moreover, the grounds raised by the appellant for challenging the Panchama are frivolous and untenable. The unnecessary and minute details which the appellant is pointing to be missing in the Panchama are not really practical, as such details are irrelevant. The appellant is unnecessarily trying to stretch the contents of the Panchama so as to challenge its veracity. Panchnama is basically the details of factum of what is seized at the site in question which is witnessed by the Panchas. The learned Counsel for the appellant has also relied on certain decisions:

1. **Commissioner of Central Excise Vs. Mukesh Industries**²
2. **Commissioner of C.EX and ST Vs. Anand Kumar**³
3. **CCE Vs. Mahalaxmi Dyeing Mills** ⁴
4. **Kuber Tobacco Products Ltd. Vs. CCE**⁵

12. In the case of **Mukesh Industries**, it was noticed that the adjudicating authority himself has held that Panchama so recorded cannot be relied upon as the same was found to be recorded by unfair means, which is not the case here. In that case, it was held that if the drawal of the Panchama was itself doubtful, the entire case booked by the Preventive Branch cannot be allowed to stand on its own legs. Such is not the case here and moreover, it is not apparent from the order as to the nature of defects or deficiencies found in the Panchnama. In the case of **Anand Kumar**, it is the Department who filed the appeal against the order of the Commissioner (Appeals) who had found the panchnama to be doubtful. The present case is entirely different, and hence no reliance can be placed on the said decision. Similarly, in the case of **Mahalaxmi Dyeing Mills**, the High Court of Gujarat was considering the appeal filed by the Revenue and in that context had observed that the Tribunal found discrepancies in the entries of the diary as well as in the Panchama drawn by the Department, which the Department could not reconcile. As observed, the nature of discrepancy in a Panchnama is a factual matter and has to be based on the facts of that particular case, which I find is not clear from the order of the High Court and hence no reliance can be placed on it. In the case of **Kuber Tobacco Products Ltd.**, the Panchama along with the annexure has been quoted in the order,

² 2008 SCC Online CESTAT 418

³ 2015 SCC Online CESTAT 3811

⁴ 2015 SCC Online Guj 6623

⁵ 2012 SCC Online CESTAT 3253

and various discrepancies have been pointed out. However, comparing the contents of the Panchnama in that case with that of the present case, it is obvious that it does not lack in the material details. Rather, the observations made in the decision is that a Panchama is a record of the things visually perceived or actually experienced by the Panchas in the course of investigation. If it is a search Panchama, obviously it should record everything that takes place in the course of search. The Panchama as quoted above, clearly sets out the entire procedure of the search and seizure, leading to the recovery of smuggled cigarettes for which the applicant was not able to produce any legal documents. In light of the said principle, the Panchama drawn by the Department satisfies the criteria of recording the material information relating to the search and there is no infirmity.

In the context, it is relevant to take note of the decision of the Apex Court in **State of Haryana versus Raj Mal & Anr** ⁶, which relied on the earlier decision of the Apex Court in **Radha Kishan versus State of UP** ⁷, holding that an illegal search does not vitiates the seizure of the articles. The only requirement of law in such cases is that the court has to examine carefully the evidence regarding the seizure and beyond this no further consequences ensue. Following the said principle, no error was found to have been committed by the courts below in proceeding with the material collected. There is no guidance or prescription about the contents of the Panchama under the CRPC or any other statute. Therefore, even assuming, that there were some discrepancies in the Panchnama as pointed out by the learned counsel for the appellant, the same does not vitiate the seizure of articles. It has been the settled principle of law that “when the test of

⁶ 2011(14) SCC 326

⁷ 1963 (Supp (1) SCR 408

admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search and seizure is not liable to be shut out". Further, the test laid down by the Apex Court in **Balbir Singh**⁸ was that if the provisions of the Act have not been complied with, the Court has to consider whether as a result thereof any prejudice has been caused to the accused.

13. In view of the settled principle that illegal search and seizure, would not be rejected but requires to be examined carefully, I am of the firm opinion that the so-called deficiencies made out by the appellant are not required to be part of the Panchnama and, therefore, does not affect the reliability of the Panchama.

14. Before parting with the challenge to the Panchama, I may consider the last submission made in this regard, the seizure memo at S No.5, while giving the details of goods seized, stated as per enclosure Annexure A, B, C & D, however, no such annexure D has been found to be annexed nor copy thereof has been supplied to the appellant. The plausible explanation given by the learned Authorised Representative that it appears to be a typographical error, seems to be acceptable, more so as it is neither apparent from the records nor has it been pointed out by the appellant that Annexure D has anywhere been relied upon by the Department and consequently, no prejudice seems to have been caused to the appellant. Hence the objection raised by the appellant has no merits.

⁸ 1994 (3) SCC 299

15. The next submission of the learned counsel is based on the statements recorded under section 108 of the Act being without any corroboration and having been recorded under a threat and coercion is inadmissible. Statement of the appellant was recorded under Section 108 of the Act on 21.12.2018, where he admitted that his work was to receive the consignment of cigarettes sent by one Hamid Bhai and he used to store them in his godown from where the distribution of cigarettes to different transporters was undertaken as per the details shared by Mohd Asif and for which he used to receive a fixed commission of Rs.100/- per carton. The appellant also disclosed that the payments were made through Hawala operators whereby they used to send him the photo of one rupee or Ten rupee note and used to ask him to collect the payments. In the course of his statement, the appellant had not only admitted the current consignment of smuggled cigarettes, but had also mentioned about the past antecedents involving smuggling of cigarettes on regular basis. This clearly shows that the appellant was a habitual offender of smuggling of foreign origin cigarettes. The consignments were stored in his office-cum-godown and were booked for delivery to different transporters as per the instructions received from Mohd. Asif. The appellant had agreed with the contents of the Panchama. He also admitted that he was fully aware of the fact that the foreign origin cigarettes handled by him used to be smuggled cigarettes. On the basis of the statement of the appellant, the adjudicating authority found that the appellant shielded both the supplier as well as the ultimate recipient dealers of the contraband and admitted having knowingly engaged himself in the said activity which attract high customs duty and by evading it the

smuggled goods fetch huge profit. As a result, the appellant was found to be the main person handling the storage and distribution of smuggled foreign cigarettes in Delhi. The contents of the statement recorded does not show that it has been made under threat, duress or coercion rather it inspires confidence that the appellant had voluntarily made the statement, admitting his involvement and knowledge that he was dealing with illicit goods for which he could not produce the valid documents. The law on the admissibility of the confessional statement made to the customs officers has been settled in large number of decisions that if found to be voluntary, can form the sole basis for conviction. The self-implicatory statement given by the appellant clearly establishes his involvement in smuggling of the seized cigarettes of foreign origin in the absence of any valid documents. The statement has not been retracted by the appellant at any point of time. The observations of the Supreme Court in **Commissioner of C.EX., Madras versus Systems and Components Pvt. Ltd**⁹ what is admitted need not be proved, suffices the burden of the prosecution and in the circumstances nothing further needs to be established.

16. The appellant has also raised the plea that though he specifically requested for an opportunity to cross examine the Panch witnesses, Shri Nazakat, Shri Suman Pal Shri Mohammad Salman, Mubarak Khan, Zakir Ali and Sunil Kumar Jha however, the Adjudicating Authority failed to allow the same. As discussed above, the appellant had admitted the smuggling of the cigarettes of foreign origin in his statement recorded under section 108, it cannot be said that denying the cross examination of the witnesses has led

⁹2004 (165) ELT 136 (SC)

to any prejudice to the appellant. The Supreme Court in **Kanungo & Company** ¹⁰ considered the complaint made by the appellant that all those persons from whom enquiries were made by the authorities should have been produced to enable him to cross examine them, was turned down, and it was observed that the principles of natural justice do not require that in matters like this, the person who have given information should be examined in their presence and should be allowed to be cross examined by them on the statement made before the Customs Authorities.

17. The same principle was enunciated by the Apex Court in **Surjit Singh Chhabra Vs. Union of India** ¹¹ holding that since the petitioner had confessed the offence of smuggling, failure to provide an opportunity to cross examine the witness is not violative of the principles of natural justice. The Court categorically observed that the confession, though retracted, is an admission and binds the petitioner, so there is no need to call Panch witnesses for examination and cross examination by the petitioner. In fact, it was clarified that once an admission has been made by the petitioner, the denial of right to cross examine the witnesses is justified as no prejudice can be pleaded by such a party. Reference is also invited to the principle reiterated by the Supreme Court in **M/s Telstar Travels (P) Ltd. versus Enforcement Directorate** ¹².

18. Further, to cut across the said contention of the appellant, the learned Authorised Representative has relied on the decision in **Mr. Mohammed**

¹⁰ 1973 (2) SCC 438

¹¹ 1997 (1) SCC 508

¹² 2013 (9) SCC 549

Muzzamil & Anr. versus CBIC and Customs¹³ where the High Court was considering the issue of smuggling of cigarettes and in view of the statements recorded where certain confessions were made implicating themselves in the smuggling of cigarettes, the Court was of the opinion that no prejudice has been caused to the petitioners in denying an opportunity to them to cross examine the other persons who implicated them in the said act of smuggling. In view of the confessional statement made by the appellant, admitting the factum of smuggling of cigarettes of foreign origin, seized in the present case and applying the principle of law as enunciated in various decisions, the appellant could not have improved his case, even if the witnesses were called for cross-examination and hence no prejudice has been caused to the appellant.

19. One of the basic principle to be kept in mind is the standard of proof required in the adjudication proceedings. The proceedings that involve evasion of tax laws or evasion of customs duty, lower threshold of proof, i.e., preponderance of probability is to be followed and it is not required to insist upon proving the case beyond reasonable doubt. Reliance is placed on the decision in **Naresh J. Sukhwani versus Union of India**¹⁴ and **K.I. Pavunny versus Assistant Collector**¹⁵. In **Collector of Customs, Madras & Ors. versus D Bhoormull**¹⁶, the Supreme Court in the context of the burden on the Department to prove the factum of smuggled goods, held that, "the law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of

¹³ 2021 (376)ELT 46, (Telangana)

¹⁴ 1996 (83) ELT 258 (SC)

¹⁵ 1997(90) ELT 241(SC).

¹⁶ 1983,(13) ELT 1546 (SC)

probability that prudent man may, on its basis, believe in the existence of the fact in issue”.

20. The goods seized in the present case are cigarettes of foreign origin. From the legal provisions cigarettes can be freely imported subject to the provisions of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the Rules framed thereunder which envisages that on the box, carton, and pouch type of package, the specified health warning shall appear on both sides of the packages and shall cover 85% of each side or face of the principal display and 60% shall cover pictorial health warning and 25% shall cover textual health warning. No such compliance was found on the seized foreign origin cigarette packets. Also under the Legal Metrology Packaged Commodities Rules 2011, framed under Legal Metrology Act, 2009 it is mandatory to provide the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price etc. on the packages of tobacco products, which were not found on examination of the goods seized.

21. I may now consider that cigarette is an item which is notified under Section 123 of the Act and in terms thereof, the burden of proof is on the appellant to establish that the seized cigarettes were not smuggled. The cartons of cigarettes of foreign origin were seized in the presence of the appellant from the mini truck, godown and the residential premises of the appellant. As noted above, the appellant failed to produce any document to

prove that the cigarettes seized were validly imported. In the absence thereof, the authorities below have rightly concluded that the goods in question were smuggled goods and was therefore rightly confiscated.

22. The appellant has also challenged the valuation of the seized goods arrived at by the revenue on the ground that no details of the market survey has been provided. In this regard, the e-way bill provided at the time of search, described the goods as metal planters whereas on search, cartons containing cigarettes of foreign origin were recovered which were found to be smuggled goods. It is not a case of rejection of the declared value as there was no declared value and hence the applicability of the Valuation Rules does not arise. The appellant neither produced the documents in support of the import made or the value declared and since the smuggled goods being cigarettes, the price thereof was verified on the basis of discrete market enquiry. In the facts and circumstances of the case, no interference is called for in the market price arrived at by the department.

23. Having considered all the issues, there is no reason to interfere with the impugned order and hence the same is hereby affirmed. The appeal is, accordingly, dismissed.

[Order pronounced on 5th June, 2025]

(BINU TAMTA)
Member (Judicial)

Ckp.

