



2026:DHC:1245-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 05th February, 2026*

Pronounced on: 13th February, 2026

Date of Uploading: 13th February, 2026

+ **CUSAA 7/2026 & CM APPL. 7007/2026**

HIRA SINGH

S/o SH. RAMDHARI SINGH,
S-450, 3rd FLOOR, SCHOOL BLOCK,
SHAKARPUR, DELHI-110092.

.....Appellant

Through: Mr. Rahul Raheja, Mr. Gaurav
Prakash and Mr. Rohit Raheja,
Advocates.

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE)

NEW CUSTOMS HOUSE,
NEAR IGI AIRPORT, NEW DELHI 110037

.....Respondent

Through: Mr. Gibran Naushad, Senior
Standing Counsel with Mr. Suraj
Shekhar Singh and Mr. Harsh
Singhal, Advocates.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT



NITIN WASUDEO SAMBRE, J.

1. This is an appeal under Section 130 of the Customs Act, 1962 (in short, “*the Customs Act*”) questioning the value of goods for assessment.
2. The brief facts necessary for deciding the present appeal are as under:
 - A. On the night of 20th/21st December, 2018, the officers from Directorate of Revenue Intelligence (in short, “*DRP*”), Delhi Zonal Unit based on a specific intelligence inputs, as regards the foreign origin cigarettes being smuggled and stored at a godown, placed the godown area under surveillance.
 - B. During the early hours of 21st December, 2018, a light commercial vehicle, Swaraj Mazda bearing registration No. UP-21-BN-5207, was intercepted by the said unit while the cartons containing foreign origin cigarettes were being unloaded. Since in the godowns, so also in the vehicle, the said cigarette cartons were traced, a *Punchnama* dated 21st December, 2018 was drawn recording entire details and recovery of 150 cigarettes cartons from the aforesaid light commercial vehicle and 33 cartons from the godown in question.
 - C. The present appellant was present at the spot of the incident and was, accordingly, detained and his statement was recorded under Section 108 of the Customs Act during said period.
 - D. It was evaluated that the total 25,01,200 cigarette sticks of foreign origin were seized from the aforesaid consignment.



E. The same has led to the show cause notice dated 07th June, 2019 being served on the appellant, which includes the entire details of consignment seized with the relevant *Punchnama* and other documents, the statement of the witnesses recorded under Section 108 of the Customs Act including that of appellant and the other incriminating material found on the spot. The show cause notice was based on the violation of provisions of Section 2(33) of the Customs Act (*prohibited goods*) which includes goods import or export of which is subject to prohibition under the Customs Act or any other law for the time being in force; Section 2(39) of the Customs Act (*Smuggling*); Section 110 of the Customs Act (*Seizure of goods, documents and things*); Section 111 of the Customs Act (*confiscation of improperly imported goods*); Section 123 of the Customs Act (*burden of proof in certain cases*); and the allied notifications; Section 112 of the Customs Act (*penalty for improper importation of goods*); Section 18(1) of the Legal Metrology Act, 2009; Proviso to Rule 3(1)(b) of the Cigarettes and other tobacco Products (Packaging and Labelling) Rules, 2008; Section 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003; Section 8 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and



Distribution) Act, 2003; Para 6 of the Central Board of Excise & Customs Circular No.09/2017-Customs; and the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011.

- F. The appellant through reply dated 07th September, 2019 to the show cause notice, denied the allegations against him and submitted that he is not liable for the action as proposed under the show cause notice.
- G. Based on the show cause notice, explanation tendered by the appellant, other material available on record, the Joint Commissioner of Customs, Customs (Preventive), Delhi passed following order-in-original dated 20th November, 2019 against the appellant:

“(i) I order for absolute confiscation of smuggled 25,01,200 sticks of foreign original cigarettes (packed in 183 cartons) of different brands, having market value of Rs3,50,16,800/- (Rupees Three Crore Fifty Lakhs Sixteen Thousand and Eight Hundred Only) under Section 111 (d) of the Customs Act, 1962.

(ii) I impose penalty amounting to Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on Sh. Hira Singh, S/o Sh. Ramdhari Singh under Section 112 (b)(i) of the Customs Act, 1962, for his various acts of omission and/or commission as discussed in the foregoing paras.

(iii) I impose penalty to Rs. 10,000/- (Rupees Ten Thousand Only) on Sh. Nizakat, S/o Sh. Mullan



under Section 112 (b)(i) of the Customs Act, 1962, for his various acts of omission and/or commission as discussed in the foregoing para's.

(iv) I impose penalty to Rs. 10,000/- (Rupees Ten Thousand Only) on Sh. Suman Pal, S/o Sh. Ram Prasad under Section 112 (b)(i) of the Customs Act, 1962, for his various acts of omission and/or commission as discussed in the foregoing para's

(v) I impose penalty to Rs. 2,00,000/- (Rupees Two Lakhs Only) on Sh. Nizakat, S/o Sh. Mullan under Section 112 (b)(i) of the Customs Act, 1962, for his various acts of omission and/or commission as discussed in the foregoing para's.”

H. The appellant feeling aggrieved preferred an appeal against the aforesaid order under Section 128 to the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) after considering the contentions raised by the appellant *vide* judgment and order dated 10th March, 2023 was pleased to dismiss the appeal and upheld the order in original dated 20th November, 2019.

I. Being dissatisfied by the aforesaid order, the appellant approached before the Customs, Excise and Service Tax Appellate Tribunal (in short, “CESTAT”) through an appeal being Customs Appeal No. 55047/2023. The said appeal came to be dismissed by a reasoned order dated 05th June, 2025.



J. As such, this appeal under Section 130 of the Customs Act.

3. We have heard the respective counsels at length who have submitted their written submissions on record.

4. The learned counsel for the appellant, while questioning the concurrent findings recorded by all three authorities against him, has urged that the value of the goods, which forms the statutory ceiling for penalty, was not legally and validly determined and is based on the vague assertion of market survey. It is according to him that the method adopted by the respondent in the matter of valuation of the goods is at all not disclosed and no documentary evidence in support thereof is placed on record or supplied to the appellant. He would claim that even the seizure was not proved and that is why the appellant has disputed the alleged recovery, based on the absence of clarity and legality of *Punchnama* by denying the ownership and conscious possession of the goods in question. According to him, the authorities below have assessed the market value of the cigarette @ 14/- per stick. Based on above, the question of law which the learned counsel for the appellant has sought to canvass is whether the order under challenge can be said to be contrary to the very mandate provided under Section 112 (b)(i) of the Customs Act as there is a failure to record a finding as regards on the point of legality of *Punchnama*, even the ownership and conscious possession of goods was denied.

5. The question of law which the learned counsel for the appellant has tried to canvass is “*whether the valuation of the goods can be said to be sustainable in law in absence of there being any legal material to infer the*



value of each cigarette stick to be Rs.14?”

6. So as to substantiate the aforesaid contention, the learned counsel for the appellant has invited our attention to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. According to him, the mode which is adopted by the respondent in the matter of valuation of the goods is not recognized under the aforesaid Rules and the respondent has arbitrarily calculated the value of the cigarette @ Rs.14/- per stick. According to him, the penalty imposed ought not to have been more than prescribed value of the good. He would claim that the provisions of Section 14 are not adhered to as the value of the good as defined under sub-section 41 of Section 2 of the Customs Act defines value to mean the value determined in accordance with the said provisions.

7. That being so, his contentions are that not only there is a denial of opportunity by not permitting cross examination of the witness, but also the orders are contrary to the very mandate provided under Rule 12 of the Rules referred above.

8. As against above, the learned counsel appearing for the respondent has supported the impugned orders and would urge that the appellant has failed to discharge the burden.

9. According to him, the statement of the appellant and the witnesses which was recorded under Section 108 of the Customs Act is binding. He would, as such, urge that appellant has failed to discharge the burden in the light of the admissions given in the statement recorded under Section 108 and that being so, the present appeal does not involve any question of



law and is liable to be dismissed.

10. We have considered the aforesaid submissions.

11. We have carefully perused the order in original passed by the Joint Commissioner of Customs (Preventive) Delhi on 20th November, 2019. The order in original has in detail and minutely, considered the entire gamut of the matter. The order in original not only considers the sanctity of *Punchnama*, the statement of witnesses recorded under Section 108 of the Customs Act including that of the appellant but also provides a critical analysis of such statement *qua* the case put forth by the appellant.

12. The said order further considers the effect of the legal provisions *viz.* all the Customs Act, the Legal Metrology Act, 2009; the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008; the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003, various circulars in relation thereto issued by the authorities. The order in original has dealt with the following documents in detail:

- i. *“Panchanama dated 21.12.2018 drawn at DRI, DZU, CGO Complex, New Delhi;*
- ii. *Seizure Memo dated 21.12.2018;*
- iii. *Statement dated 21.12.2018 of Shri Nizakat;*
- iv. *Statement dated 21.12.2018 of Shri Suman Pal;*
- v. *Statement dated 21.12.2018 of Shri Salman;*
- vi. *Statement dated 21.12.2018 of Shri Hira Singh;*
- vii. *Panchnama dated 21.12.2018 drawn at the residential premises of Shri Hira Singh;*
- viii. *Statement dated 21.12.2018 of Shri Mubarak Khan;*



- ix. *Statement dated 12.02.2019 of Shri Zakir Ali;*
- x. *Statement dated 05.03.2019 of Shri Sunil Kumar Jha;”*

13. Each of the grounds raised by the appellant in his reply to the show cause notice is minutely dealt with in the order in original. The authority further relied on the provisions of Section 123 of the Customs Act, which deals with the burden of proof in certain cases. The authority, accordingly, having inferred that the seizure was from the possession of the present appellant, proceeded to pass the order referred above.

14. The Commissioner (Appeals) having regard to the grounds of the appeal raised and canvassed before it recorded the finding also on the issue of confiscation of the goods under Section 111(d) of the Customs Act and imposition of the penalty.

15. The Commissioner (Appeals), accordingly, proceeded to affirm the order in original dated 20th November, 2019 by dismissing the appeal. The *CESTAT*, before whom, the appellant had preferred an appeal, had considered the sanctity of the *Punchnama* dated 21st December, 2018, the legality of the act of seizure of the smuggled goods, the impact of statement recorded under Section 108 of the Customs Act, the effect of the alleged denial of cross examination and the right of the appellant to seek cross examination, the goods being banned for import or export, the effect of Section 123 *viz.* the burden on the present appellant and dismissed the appeal.

16. At the outset, we are required to consider as to the effect of



statement under Section 108 of the Customs Act.

17. The statement recorded under Section 108 of the Customs Act of the appellant so also the other witnesses, at no point of time, was retracted and the same has a binding effect in law. Once such statements are not retracted and by virtue of statutory fiction, are rightly so accepted by the authorities for the seizure and confiscation. Therefore, in our opinion, no fault can be noticed in the same.

18. Such seizure was effected after having satisfied that the goods were brought into the receiving country, *i.e.*, India, in violation of the statutory provisions referred to in all three orders and also as referred herein above.

19. The statement of the appellant recorded under Section 108 of the Customs Act speaks of the history of similar events.

20. The show cause notice, in categorical terms, speaks of the market value of the seized goods to be Rs.3,50,16,800/-. The said market value appears to be based on the survey that was conducted. Paragraph 36 of the show cause notice is relevant for the said purpose.

21. Once the respondent has issued a show cause notice on the point of the cost of a cigarette stick based on the market value, the burden shifts on the appellant to demonstrate that the evaluation, as was reached to, was incorrect or improper and he should have substantiated his contention to that effect. It appears that the appellant was in complete denial mode of the entire story of the respondent about the seizure of the goods which were illegally brought in the country.

22. The appellant was expected to discharge his burden by



demonstrating that the goods were not properly valued.

23. As a sequel of above, having regard to the statutory mandate prescribed under Section 130 of the Customs Act, the present appeal can be said to be maintainable only in case if there involves any question of law.

24. We have already recorded a specific finding that not only the order in original is passed by the competent authority based on the detailed show cause notice, the entire adverse material based on which the show cause notice was issued being made available to the appellant so also sufficient opportunity of hearing was given. The appellant, in our opinion, has raised completely vague and non-specific plea not only before the authorities below but also failed to establish his case based on the statutory provisions.

25. Having regard to the law laid down by the Apex Court in the various judgments such as *State of Haryana Vs. Rajmal & Anr.:* (2011) 14 SCC 326; *Radhakishan Vs. State of UP:* 1963 SCR SUPL.(1) 408, on the issue of seizure and the effect thereof, the impact of Section 108 and 123 of the Customs Act and the bindingness of the statement, so also having regard to the law laid down by the Apex Court in the matter of *Commissioner of C.Ex., Madras Vs. Systems and Components Pvt. Ltd.:* 2004 (165) ELT 136 (SC), the non-consequential ground or the failure of the appellant to demonstrate prejudice for not cross examining the witnesses, the statements were recorded under Section 108 of the Customs Act and in view of the law laid down by the Apex Court in the matter of *Kanungo & Company Vs. Collector of Customs & Ors:* (1973) 2 SCC 438, wherein it



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is held that the right to cross examination is not an absolute right, the effect of statement recorded under Section 108 of the Customs Act, we are of the view that no question of law is involved in the present appeal.

26. That being so, the appeal lacks merit and stands dismissed accordingly.

27. Pending application, if any, also stands disposed of.

28. Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

FEBRUARY 13, 2026/ab