# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70546 of 2024**

(Arising out of Order-In-Appeal No.233-CUS-APPL-LKO-2024, dated - 22.03.2024 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow)

**Shri Ram Kumar Yadav** **.....Appellant**
(S/o Shri Ram Bahadur Yadav
R/o Village Chausa Baharia, Post Rahwai, Kunda
Pratapgarh, Uttar Pradesh 230002)

*VERSUS*

**Commissioner, Customs (Preventive), Lucknow**
**....Respondent**
(Hall No.3 5th & 11th Floor,
Lucknow, Uttar Pradesh 226024)

**APPEARANCE:**

Shri S. A. Khan, Consultant &
Shri Vineet Kumar Singh, Advocate for the Appellant
Shri Prashant Kumar Authorized Representative &
Shri Abhishek Mukherjee, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.-70403/2026**

DATE OF HEARING : 29.05.2026
DATE OF DECISION : 28.09.2026

**P. K. CHOUDHARY:**

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.233-CUS-APPL-LKO-2024, dated -22.03.2024 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow.

2. The chronology of events resulting in the impugned order as submitted by the Appellant in the Synopsis during the course of hearing is as under:-

i. The Appellant is a Havildar of Customs & Central Excise Department presently posted at Office of The Commissioner

(Appeals), Customs, CGST & Central Excise, Lucknow. On the date of incidence i.e., 15.08.2021 the Appellant was posted at CCSI Airport, Amausi, Lucknow.

ii. On 15.08.2021 two persons namely Naushad Ahmad and Mohseen arrived from Flight No. SV3000 when the Appellant along with other sepoy/havildar, Inspectors, Superintendents was on duty in the arrival hall of Customs. They were cleared with their baggage after screening. Naushad Ahmad along with some other persons proceeded towards Noida through Lucknow-Agra Expressway on Kia Seltos Car bearing Registration No. UK17N5550. Similarly, Mohseen along with some other persons also proceeded towards Noida on Toyata Fortuner Car bearing Registration No. UP-12X-9393. Both the vehicles were intercepted by the teams of DRI, Lucknow and Noida near Fatehabad Toll Booth on Lucknow - Agra Expressway. 40 gold bars weighing 4663.540 grams valued Rs. 2,31,31,158/- and Indian currency of Rs. 1,43,000/- were recovered from Mohseen and his fellow passengers. 37 gold bars weighing 4314.200 gms valued at Rs. 2,01,97,358.72/- and Indian Currency Rs. 2,10,000/- were recovered from Naushad Ahmad and his fellow passengers. Seizure and other formalities against Mohseen and his fellow passengers were completed by DRI, Lucknow whereas DRI Noida unit completed formalities against Naushad Ahmad and his fellow passengers.

iii. On 06.09.2021 DRI Officers of Lucknow picked the Appellant from his home at village – Chausa Baharia, Post – Rahwai, Kunda, Pratapgarh, Uttar Pradesh on 06.09.2021 and took him to DRI office at Lucknow. The Appellant was remained in DRI's custody till 07.09.2021. In the meantime, a statement dated 06.09.2021 of the Appellant was recorded under duress and threat.

iv. On 07.09.2021 Appellant was arrested by the DRI under Customs Act, 1962 and was produced before the magistrate on the same day who sent the Appellant under judicial custody.

v. On 14.09.2021 Appellant was released on bail by Additional District & Sessions Court, Lucknow vide Order dated 14.09.2021. The Hon'ble Court observed :-

> "प्रस्तुत मामले में प्रथम दृश्या धरा 135 कस्टम अधिनियम के प्राविधान आकर्षित नहीं हो रहे हैं| प्रस्तुत प्रकरण में कस्टम अधिकारीयों को बचाने का कुप्रयास किया गया है तथा उन्हें प्रस्तुत प्रकरण में जान बूझ कर अभियुक्त नहीं बनाया गया है मात्र उनके विरुद्ध विभागीय जांच प्रचलित होना कहा गया है|"

vi. On 06.10.2021 & 27.10.2021 statements of the Appellant was recorded before Shri Ajay Kumar Mishra, the then Joint Commissioner, Customs (Prev) Commissionerate, Lucknow in compliance his letters C. No. 02/JC(Prev)/ Customs/2021 dated 06.10.2021 and 26.10.2021.

vii. On 08.10.2021 Show Cause Notice[1] in case of Mohseen was issued under F. No. DRI/LKU/GI-26/Enq-14(INT-0)/2021/ by the Joint Director DRI, LZU, Lucknow but Appellant was not made a noticee. SCN in case of Naushad Ahmad was also issued under F. No. DRI/NRU/GI-26/INT-0/ENQ-67/2021 dated 08.10.2021 by ADG, DRI, Lucknow but Appellant was not made a noticee.

viii. On 14.02.2022 supplementary SCN under F. No. DRI/LZU/GI-26/Enq-14(INT-0)/2021/285 was issued in Mohseen case against the Appellant by DRI proposing imposition of penalty under Section 112(a) and/or 112(b) of the Customs Act, 1962.

ix. On 19.05.2022 Supplementary SCN under F. No. DRI/NRU/GI-26/INT-0/ENQ-67/2021 was issued in Naushad Ahmad case also against the Appellant by DRI proposing imposition of penalty under Section 112(a) and/or 112(b) of the Customs Act, 1962.

x. On 26.02.2022 Appellant requested the Ld. adjudicating authority (in Mohseen Case) to provide copy of Appellant's statements dated 08.10.2021 and 27.10.2021 recorded before Shri Ajay Kumar Mishra, the then Joint

[1] SCN

Commissioner, Customs (Prev) Commissionerate, Lucknow. Reminder was also sent on 05.05.2022.

*xi.* On 11.03.2022 Superintendent (Adjudication) vide letter C. No. VIII(10)-114/Adj/JC/DRI LZU/2021/4873 showed inability to provide copies of Appellant's statements with the remark:

> *"I have been directed to inform you that the referred statements dated 08.10.2021 and 27.10.2021 of Shri Ram Kumar Yadav s/o Shri Ram Bahadur Yadav are not available in the Adjudication Branch, as the same have not been made part of the RUDs in the instant case."*

xii. On 05.08.2022 Appellant again requested to provide copies of his statements because it was crucial for his defence. No response from department received.

xiii. On 20.09.2022 Interim Defence Reply filed with request of Cross Examination of (1) Shri Vimal Kumar Srivastava, Superintendent posted at Amausi Airport on 15.08.2021 and (2) Shri Mohd. Javed, Noticee No. 5 in main SCN dated 08.10.2021 whose statement, telephonic conversations and Whatsapp chats have been made main evidence in support of the allegations levelled against the Appellant.

xiv. On 04.10.2022 request for cross examination of Shri Vimal Kumar Srivastava, Superintendent was turned down by Ld. adjudicating authority. However, nothing was informed regarding prayer for cross examination of Shri Mohd. Javed.

xv. On 24.01.2023 Order-in-Original was passed. Penalty of Rs. 10,00,000/- was imposed on the Appellant under Section 112(b) of Customs Act, 1962. On the same day and on similar lines the case of Naushad Ahmad was also decided in which penalty Rs. 10,00,000/- was imposed on Appellant under Section 112(b) of Customs Act, 1962.

xvi. On 12.04.2023 Appeal No. 25-CUS/2023 filed before Commissioner (Appeals), Lucknow (in Mohseen Case) & Appeal No. 26-CUS/2023 was filed in case of Naushad Ahmad.

xvii. On 21.03.2024 Order-in-Appeal No. 222-226-CUS/APPL/LKO/2024 was passed. Penalty of Rs. 10,00,000/- imposed on Appellant was set aside.

xviii. On 22.03.2024 Impugned Order-in-Appeal No. 233-CUS/APPL/LKO/2024 was passed upholding the penalty of Rs. 10,00,000/- imposed on the Appellant.

Being aggrieved with the impugned Order-In-Appeal Appellant is before this Tribunal.

3. The learned Advocate appearing on behalf of the Appellant submits that the learned adjudicating authority being in-charge of Customs unit posted at Amausi Airport had recorded Appellant's statement on 08.10.2021 and 27.10.2021. During adjudication, the Appellant demanded copy of those statements but it was refused by Ld. adjudicating authority. Hence, principles of natural justice have been violated by the department.

4. He further submits that the Cross examination of Shri Vimal Kumar Srivastava, Superintendent and Shri Mohd. Javed, Noticee, was requested by the Appellant vide Interim Defence Reply dated 20.09.2022 but it was not permitted. Hence, the statement of Mohd. Javed has no evidentiary value and cannot be used against the Appellant in terms of Section 138B of Customs Act, 1962. Further, Revenue has heavily relied on Appellant's statement dated 06.09.2021 recorded under Section 108. Neither the Appellant nor Mohd. Javed was examined by the Ld. adjudicating authority during adjudication in terms of Section 138B of Customs Act, 1962. Request for cross examination of Mohd. Javed was also declined by the adjudicating authority. Hence, none of the statements (Appellant's and of Mohd. Javed) can be relied as evidence and used against the Appellant for imposing penalty under Section 112(b) of Customs Act, 1962. Reliance is placed on Final Order No. 50969 of 2026 of the Tribunal's, Principal Bench, New Delhi delivered on 21.05.2026 in the case of **Purshottam Jajodia V/s Pr. Commissioner of Customs (Preventive), IGI Airport, New Delhi in Customs** Appeal No. 50497 of 2021 and Final Order No. 50265 of 2026 of the Tribunal's, Principal Bench,

New Delhi delivered on 12.02.2026 in case of **Nawal Kishore Singh V/s Commissioner of Customs, ICD Tughalkabad, New Delhi** in Customs Appeal No. 58373 of 2013.

Thus, the alleged confessional statement of the Appellant and statement of Mohd. Javed have no relevance in adjudication for not following the procedure as contemplated in Section 138B of Customs Act, 1962.

Further, the Appellant's confessional statement dated 06.09.2021 is not a reliable piece of evidence also on the ground that;

(a) the DRI officers picked the Appellant from his home at village – Chausa Baharia, Post – Rahwai, Kunda, Pratapgarh, U.P. on 06.09.2021 and took him to DRI office at Lucknow and got his signatures on typed statement forcefully. This fact was disclosed by the Appellant in his statements dated 08.10.2021 and 27.10.2021 recorded before Shri Ajay Kumar Mishra, who is also the adjudicating authority, the copy of which has been denied by the Ld. Adjudicating Authority, that the Appellant was forcibly taken from his home town Village Chausa Baharia, Post-Rahwai, Kunda, Pratapgarh, U.P.-230002 on 06.09.2021 at about 14.04 hrs. by a team of DRI, Lucknow headed by Shri Shishir Sinha, S.I.O. and got the Appellant's statement recorded under duress, threat and coerce in the office of DRI, LZU, Lucknow and thereafter arrested by them on 07.09.2021. The CCTV Footage of Appellant's house (Annexure-16 to Appeal Memo) clearly shows presence of S/Shri Shishir Sinha, S.I.O. and Imran Khan, I.O. taking into possession the mobile of the Appellant and thereafter taking the Appellant from his house to DRI office, Lucknow. Thus, it is proved that the statement dated 06.09.2021 of the Appellant recorded before DRI officer Shri Shishir Sinha, S.I.O. at DRI office Lucknow is not voluntary being recorded when the Appellant was under his custody and arrest. Malafide intention of the investigating officer is clear from the fact that it has not been disclosed in the SCN that the Appellant was apprehended from his house in Village-Chausa Baharia, Post-Rahwai, Kunda, Pratapgarh, U.P.-

230002 on 06.09.2021 by DRI officers S/Shri Shishir Sinha, S.I.O. and Imran Khan, I.O.

(b) The Appellant has retracted from the said statement on the first opportunity before the Chief Judicial Magistrate and the District & Sessions Court, Lucknow in his bail application and submitted that the same was recorded under duress and threat while the Appellant was under DRI custody.

5. Learned Authorized Representative appearing on behalf of the Revenue justified the impugned order and prayed that the appeal filed by the Appellant being devoid of any merits may be dismissed.

6. Heard both the sides and perused the appeal records.

7. In light of the submissions made from both the sides, I have considered the case and find that the Appellant is a Havildar in Customs and Central Excise Department, presently posted at the Office of Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow. On the date of incident i.e. 05.08.2021, the Appellant was posted at CCSI Airport, Amausi, Lucknow.

8. The Department has imposed penalty of Rs. 10,00,000/- under Section 112(b) of the Customs Act, 1962 on the following grounds:-

(i) The Appellant was present in hall when the accused passenger Shri Mohseen passed through DFMD and its light turned red but the Appellant neither chose to stop him nor informed of the incident to his seniors. Thus, the Appellant assisted in his smuggling of F.O. Gold.

(ii) The Appellant colluded with the 'handler' and the accused Shri Mohd. Javed in the smuggling of F.O. gold. In support of this allegation the revenue has produced call details and WhatsApp chat of Mohd. Javed with the Appellant.

(iii) The Appellant has recorded his confessional statement dated 06.09.2021 before DRI officer under Section 108 in which he admitted his

involvement with the accused person in his act of smuggling of foreign origin gold.

9. I find that Telephonic calls between Appellant and Mohd. Javed (co-accused) were relied on by the Ld. Commissioner (Appeals) in Para 5.9 of the impugned order. While relying, only number of calls has been considered as abnormal. Contents of call details are absent. Call details between the Appellant and the co-accused Mohd. Javed shows that there was no call after 11.08.2021 which indicates that no conversation was held during the period 12.08.2021 to 15.08.2021. This goes to prove that the Appellant was not in touch with Mohd. Javed during the period 12.08.2021 to 15.08.2021. Hence, no adverse conclusion can be drawn on number of calls. Further, the said telephonic conversations are not a reliable piece of evidence because it was not certified in terms of Section 138C of the Customs Act, 1962 and the procedure prescribed under Section 65B of Evidence Act, 1872 and Section 3 of Information Technology Act, 2000 in recovery of call details has not been followed.

10. Revenue has heavily relied on WhatsApp chats with Mohd. Javed which cannot be used as evidence without certification under Section 65B of the Evidence Act/Section 138C of Customs Act, 1962.

11. In the matter of admissibility of WhatsApp Chat, Call details and statement recorded under Section 108, the Appellant relies on Tribunal's decision and order in the case of **ARUN KUMAR Vs. Commissioner of Customs, Mundra** [(2024) 20 Centax 238 (Tri-Ahmd)] which is squarely applicable in Appellant's case.

12. Allegation of inaction/omission by Appellant on DFMD light turned red when Mohseen crossed is not tenable because DFMD machine was faulty and not working properly on 15.08.2021. It is evident from the fact that it turned red more than 20 times between 16.52 PM to 17.14 PM. In Naushad Ahmad's case, the learned Commissioner Appeals has also held that DFMD machine was faulty on that day. Further, omission, inaction and negligence

in duty cannot be a proof of abetment in smuggling. Relevant para of the order is reproduced below for ready reference:-

> *"5.3.2 It has been alleged that the DFMD machine turned red while passing of Sh. Naushad Ahmed but the appellant ignored the same. In this connection, I observe that DFMD turned red more than 20 times between 16.52 Hrs to 17.14 Hrs on 15.08.2021 as mentioned in show cause notice at S.No. 12. It means the machine turned red more than 20 times in 20 minutes. In such a situation senior officers should have intervened in the matter but it appears that the same was not done herein. I therefore, find gravity in the submission of appellant that DFMD was faulty. Moreover, the appellant, a Havaldar was not a proper officer within the meaning of any of the section of Customs Act, 1962. I observe that Inspector of Central Excise and Examiner of Customs were the proper officers assigned by Board vide erstwhile notification No.40/2012-Cus (N.T.) dated 02.05.2012 under Section 100 (power to search suspected person entering or leaving India) and Section 103 (power to screen or X-ray of body of a suspected person) but a Havaldar was not authorized for that. In fact, a Havaldar is not assigned the responsibility of proper officer under any of the notification of Board. Also, there appears no such office order entrusting the act of frisking of passengers through hand held metal detector or any other mode by a Havaldar/Sepoy. Moreover, it is beyond imagination that such a more responsible work (frisking of persons or checking through DFMD machine) could be entrusted upon such a junior employee like Havaldar."*

13. Moreover, the Appellant is not a 'Proper Officer' in terms of Notification No.40/2012-Cus (N.T.) dated 02.05.2012 under Section 100 (power to search suspected person entering or leaving India) and Section 103 (power to screen or X-ray of body of a suspected person) and, accordingly, the Appellant was not authorized and also the Appellant was not assigned the responsibility of 'Proper Officer' under any of the notifications of

the Board. Further, the Appellant was not assigned any duty at DFMD machine in the duty register (RUD-26). On perusal of the duty roaster certified by the DC, Customs it is seen that Appellant's duty was allotted either at '**आगमन**' or **'प्रस्थान'** without any mention of DFMD machine. Hence, it is proved that the Appellant was not deputed at DFMD machine. The Appellant was posted in Customs Arrival Hall and not on DFMD Machine. This also proves that all the officers posted in arrival hall are collectively responsible if any lapse occurred and illegal goods are cleared clandestinely. In such circumstances, the allegation, if any, cannot be held sustainable only against the Appellant. Hence, no allegation can be levelled against the Appellant for not taking search of Mohseen while he was passing through the DFMD machine and its light turned red. The Ld. Commissioner Appeals in Naushad Ahmad's case agreed with the above argument and accordingly set aside the penalty imposed on the Appellant under Section 112(b) ibid. The Ld. Commissioner (Appeals) in that case concluded as "*Also, there appears no such office order entrusting the act of frisking of passengers through hand held metal detector or any other mode by a Havaldar/Sepoy.*" He further held – "*Moreover, it is beyond imagination that such a more responsible work (frisking of persons or checking through DFMD machine) could be entrusted upon such a junior employee like Havaldar."*

14. Naushad Ahmad (DRI Noida Case) and Mohseen (DRI Lucknow case – impugned) both arrived from Flight No. SV3000 on 15.08.2021 when the Appellant was on duty in the arrival hall of Customs. Same duty was performed in regard to both the passengers. Same allegation of not checking the passengers at DFMD was levelled when DFMD machine's light turned red. In case of Naushad Ahmad the Ld. Commissioner (Appeals) held (Annexure No. 15) as --"*There appears no evidence which could lead to a conclusion towards his involvement in the matter or he had knowledge about the instant illicit act of Shri Naushad. Since Appellant no. 5 (*Appellant in this case*) was neither concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling nor purchasing nor in any other manner dealt with the*

*instant goods, provisions of Section 111 of the Act are inapplicable."* As against this, the Ld. Commissioner (Appeals) found the Appellant guilty and confirmed the penalty under Section 112(b) of the Customs Act, 1962 in the present case. When both the cases are on similar footings based on identical evidence viz. call details, WhattsApp Chats and confessional statement of Appellant, how can two different views are possible.

15. Shri Mohseen, the main accused from whom the gold was recovered, has not implicated the Appellant in his statement. No co-relation with the confiscated gold has been established with the Appellant. There is no allegation against the Appellant regarding handling of the said gold.

16. Contrary findings have been given by Ld. Commissioner Appeals in his Order-in-Appeal No. 01/CUS/APPL/LKO/2024 dated 16.01.2024 passed in case of Vimal Kumar Srivastava as compared to the impugned order issued against the Appellant in the single case which is impugned here. Provisions of Section 112(b) of Customs Act are not applicable in Appellant's case because there is no allegation against the Appellant that he acquired possession of the said gold or he was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the said gold. The contents of allegation against Appellant shows that department has alleged **abetment** which is covered under Section 112(a) and not 112(b).

17. Section 138B of the Customs Act deals with relevancy of statements under certain circumstances and it is reproduced below:

> "**138B. Relevancy of statements under certain circumstances.**
>
> **(1)** A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence

under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

**(2)** The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

18. It would be seen that Section 108 of the Customs Act enables the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under this provision. It is these statements which are referred to in Section 138B of the Customs Act. A bare perusal of Sub-Section (1) of Section 138B makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interest of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of Sub-

Section (2) of Section 138B of the Customs Act, the provisions of Sub-Section (1) of the Customs Act shall apply to any proceedings under the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.

19. In **Additional Director General (Adjudication)** vs. **Its My Name Pvt. Ltd**. **2021 (375) E.L.T. 545 (Del.)** decided on 01.06.2020, the Hon'ble Delhi High Court examined the provisions of Sections 108 and 138B of the Customs Act. The department placed reliance upon the statements recorded under Section 108 of the Customs Act. The Hon'ble High Court held that the procedure contemplated under Section 138B(1)(b) has to be followed before the statements recorded under Section 108 of the Customs Act can be considered as relevant. The relevant paragraphs of the judgment of the Hon'ble Delhi High Court are reproduced below:

> "76. **We are not persuaded to change our view, on the basis of the various statements, recorded under Section 108 of the Act, on which the Learned ASG sought to rely. Statements, under Section 108 of the Act, we may note, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating**

**authority and, if the affected assessee so chooses, tested by cross-examination. We may, in this context, reproduce, for ready reference, Section 138B of the Act, thus:*******

**A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held, in J & K Cigarettes Ltd. v. Collector of Central Excise [2009 (242) E.L.T. 189 (Del.)] that, by virtue of sub-section (2), Section 138B(1) of the Act would apply, with as much force, to adjudication proceedings, as to criminal proceedings.**

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We express our respectful concurrence with the above elucidation of the law which, in our view, directly flows from Section 138B(1) of the Act - or, for that matter, Section 9D of the Central Excise Act, 1944.

77. The framers of the law having, thus, subjected statements, recorded under Section 108 of the Act, to such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods. **The reliance, in the appeal before us, on various statements recorded during the course of investigation in the present case cannot, therefore, in our view, invalidate the decision, of the Learned Tribunal, to allow provisional release of the seized 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190, dated 20th April, 2019.**"

**(emphasis supplied)**

20. I find that as the procedure contemplated under Section 138B of the Customs Act was not followed, the statement made by the appellant under Section 108 of the Customs Act cannot be considered as relevant. The statement made by the Appellant under Section 108 of the Customs Act is the sole basis for imposition of penalty upon the Appellant.

21. Though the above cross-examination which is only pertaining to departmental inquiry, it indicates that Adjudicating Authority is required first to examine the witnesses in chief and also form an opinion that in the given facts and circumstances of the matter, the statements of various persons can be relied upon as an evidence and thereafter the witnesses be offered for cross-examination by the Appellant. Since it is a matter of record that the entire case against the Appellant is based solely on the statements of the witnesses and inspite of request made to the Adjudicating Authority for their examination in chief and cross-examination, the Adjudicating Authority has not examined the crucial witnesses nor they were offered for cross-examination and therefore, I am of the opinion that considering the statements as an evidence against the Appellant without following the procedure laid down under Section 138B of Customs Act, 1962, is against the accepted legal practices and judicial pronouncements made by various Courts and therefore, I hold that none of the statement is admissible as an evidence against the Appellant.

22. After hearing both sides, and on going through the Order-in-Original and the Order-in-Appeal, it is observed that the Appellant is penalised solely on the statement given under duress. The Appellant has been linked to the crime without giving proper opportunity of hearing. The Appellant has not been given opportunity to cross examine any witness and object on any of the evidences presented. In case of Commissioner of Customs (Preventive), Kolkata, vs. Amit Jalan, (2024) 23 Centax 266 (Tri.-Cal.), it has been held that statements made cannot be accepted blindly without corroborative evidence as, ‘the issue is, can that statement be accepted blindly without corroboration, and the answer is no.’

23. In view of the above discussion, I hold that Order-In-Appeal No.233-CUS-APPL-LKO-2024, dated 22.03.2024 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow cannot be sustained and the same is set aside. Accordingly, the appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 28.09.2026)

**Sd/-**
**(P. K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

*Nihal*