IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75275 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/WB/KS/84-85/2023 dated 03.02.2023 passed by the Commissioner of Custom House, 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. M. K. Saha Export Ltd. **: Appellant**
M. K. House, 2/2, Justice Dwarkanath Road,
Kolkata-700020

VERSUS

Commissioner of Customs(Prev.), **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata-700001

AND

Customs Appeal No. 75280 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/WB/KS/84-85/2023 dated 03.02.2023 passed by the Commissioner of Custom House, 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. South Assam Roadways, **: Appellant**
Om Towers, 32, Choweingee Road,
Room NO. 304, 3rd Floor, Kolkata-700071.

VERSUS

The Commissioner of Customs(Prev.), **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata-700001

APPEARANCE:

Ms. Atika S. Ahmed, Advocate for the Appellant
Shri R. Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76569-76570/ 2026

DATE OF HEARING: 16.09.2026
DATE OF PRONOUNCEMENT: 30.10.2026

ORDER: [PER SHRI R. MURALIDHAR]

The Appellant No. 1, M/s M.K. Saha Exports Ltd., is engaged in the business of manufacture and export of orthodox tea and has tea estates in Assam. In the ordinary course of its business, the Appellant had arranged transportation of 660 packages of black tea, comprising consignments originating from its tea estates in Assam, for transportation to Kolkata. They had engaged Appellant No. 2, M/s South Assam Roadways, as transporter in the ordinary course of business. On or about 02.01.2019, officers of DRI, Siliguri intercepted the vehicle and recovered four pieces of elephant tusks from the Driver's cabin weighing 16.962 kgs, stated to have been valued at approximately Rs.1,69,62,000/-. The tea packages were located in the rear carrier of the vehicle. The Appellant No. 1 immediately took steps for securing release of its legitimate commercial consignment. A representation was made for release of the seized tea. The Department thereafter permitted provisional release of the tea upon execution of a bond for its full value and furnishing of security/bank guarantee of approximately Rs.7,31,997/-. Appellant No. 2 furnished the requisite Bank Guarantee and indemnity documentation, following which the 660 packages of black tea were provisionally released.

2. A Show Cause Notice issued under DRI F. No. 16/CL/EXP/DRI/SLG/2018-19/647 dated 28.06.2019 alleging, inter

alia, that the tea had been used as camouflage for transportation of the elephant tusks and that both Appellants were liable to penal action. The Adjudicating authority vide Order-in-Original No. 1/ADC(P)/CUS/WB/20-21 dated 26.06.2020, ordered confiscation of the tea under Section 119 of the Customs Act, 1962, while granting an option for redemption on payment of redemption fine of Rs. 6,10,000/-. Further, Penalty of Rs. 3,00,000/- each was also imposed upon Appellant No. 1 and Appellant No. 2 under Section 114 of the Customs Act. The Redemption fine of Rs. 6,10,000/- stands appropriated against the Bank Guarantee No. 6947BGFD007219 dated 14.03.2019 of value Rs. 7,31,997/-issued by ICICI Bank Ltd, Chowringhee whereas the remaining balance of Rs. 1,21,997/- has been appropriated towards the penalty imposed upon M/s South Assam Roadways (i.e. Appellant No. 2). The appeals filed before the Commissioner (Appeals) came to be dismissed by him. Therefore, the appellants are before the Tribunal.

3. The Ld. Counsel representing the appellants makes the following submissions:

4. The record discloses that the tea consisted of approximately 300 packages from Koilamari Tea Estate and 360 packages from Majulighur Tea Estate, which were initially transported in two smaller vehicles

and thereafter consolidated/transhipped for onward transportation to Kolkata. The movement of the tea was supported by commercial transportation documentation, including the relevant E-way Bills and consignment documentation. The E-way Bills bore the particulars of the consignment and transporter. The record further discloses that the transporter made the requisite vehicle/transhipment-related changes in the E-way Bills after the goods were consolidated into the larger vehicle. The consignment was ultimately loaded into TATA Truck bearing Registration No. WB-23E-5533 for transportation towards Kolkata.

5. The driver i.e Subodh Das was proceeded against in relation to the elephant tusks. The record indicates that the driver allegedly possessed/carried the elephant tusks and that a separate consideration of Rs.15,000/- was allegedly offered to him for its transportation at the behest of one person namely Shamsul Haque Talukder. Significantly, there is no allegation that either of the Appellants received any part of such consideration. Also, no alleged statement present on record implicates either of the appellant into the present case with connection to the possession/carriage and or involvement with the subject elephant tusks.

6. The first and most fundamental fact

which deserves emphasis is that the tea is a genuine commercial commodity belonging to Appellant No. 1. The record identifies the nature, quantity, value and origin of the tea. The 660 packages were not subsequently introduced into the vehicle for the purpose of concealing the elephant tusks. The packages originated from identified tea estates and were entrusted to the transporter for transportation to Kolkata. The Appellant No. 1 had a legitimate commercial purpose in transporting the tea. The goods were intended for delivery to its nominated warehouse(s) in Kolkata, including Dutta Tea Blenders.

7. The documents relied upon by the Department itself demonstrate the existence of a pre-existing commercial transportation arrangement. The Appellant No. 1 had generated E-way Bills dated 28.12.2018. The consignment notes were also generated in connection with the movement of the tea. The record further shows that two smaller vehicles initially carried the consignments from the respective tea estates and that the consignments were subsequently consolidated into the larger vehicle at Guwahati.

8. The Appellant No. 1 had specifically stated that the choice of vehicle and the mode of transportation—whether by direct vehicle or transshipment—was within the operational domain of the transporter. This distinction is crucial. The Appellant No. 1

entrusted a legitimate consignment to a professional transporter. Once the goods were handed over for carriage, the subsequent operational selection of the vehicle through Assam Bengal Parivahan did not, by itself, establish that the consignor had knowledge of every act independently undertaken by the driver. Moreover, The Department has not brought on record any communication from the Appellant No. 1 instructing the driver to carry elephant tusks.

9. The Hon'ble Bench may kindly consider the fact that there is no evidence of any financial transaction between the Appellant No. 1 and the driver concerning the elephant tusks. No part of the alleged consideration of Rs.15,000/- stated to have been received for transportation of the tusks by the driver (booked through Parivahan) has been attributed to either Appellant.

10. The absence of such evidence assumes significance because the Department seeks to transform an otherwise legitimate commercial transportation transaction into a deliberate smuggling arrangement. A finding of deliberate camouflage must rest on positive evidence of deliberate conduct. It cannot be founded merely upon the circumstance that the legitimate goods and contraband happened to be present in the same vehicle.

11. The allegation of the Department is that the black tea was used as "camouflage" for the elephant tusks. The allegation, however,

is contradicted by the physical circumstances recorded at the time of seizure. The elephant tusks were recovered from the driver's cabin. The black tea was loaded in the rear portion/carrier of the vehicle.

12. Thus, the contraband was not concealed beneath the tea packages/within the tea packages/behind the tea packages/inside the tea packages/or otherwise physically shielded by the tea. There is no finding that any package of tea was opened, manipulated, modified or used as a container for the tusks. There is no finding that the tea packages were arranged in a manner intended to conceal the driver's cabin.

13. On the contrary, the very place of recovery demonstrates that the alleged contraband was independently possessed by the driver. The distinction is not merely technical. It strikes at the essential factual premise of the confiscation order. If the tea did not conceal the tusks, the Department must identify some other factual basis to bring the tea within Section 119. No such independent basis has been established. The phrase "camouflage" cannot substitute for evidence. That circumstance may justify inquiry, but it does not, without more, establish deliberate concealment. The Department was required to establish the nexus between the tea and the contraband. That nexus is conspicuously absent. Reliance is placed upon the case law of **Kool**

International v. Commissioner of Customs, New Delhi, reported in 2025 SCC Online CESTAT 4361 wherein the Tribunal held that where the goods belonging to the appellant were separate and distinct and were not actually used to conceal the other goods, Section 119 could not be invoked. Consequently, the confiscation and penalties were set aside

14. The ratio of Kool International assumes significance in the present case as Section 119 cannot be invoked merely because two categories of goods travelled in the same conveyance. The statutory requirement is that the goods sought to be confiscated must have been used for concealing the smuggled goods. Where the goods are separate and distinct and no factual nexus of concealment is established, invocation of Section 119 is unsustainable. Section 119 concerns goods used for concealing goods liable to confiscation. The statutory concept therefore contains a specific relationship between the goods sought to be confiscated and the goods alleged to be concealed. The provision cannot be interpreted to mean that every legitimate article transported in a vehicle containing contraband automatically becomes confiscable. Such an interpretation would enlarge the scope of Section 119 beyond its statutory language and would effectively create a form of automatic or vicarious confiscation. The Department must establish:

a) identification of the goods liable to confiscation;

b) identification of the goods alleged to have been used for concealment;

c) a factual nexus between the two;

d) actual or demonstrable use of the latter goods for concealment; and

e) circumstances justifying confiscation under the statutory provision.

15. In the present case, while the elephant tusks have been identified, the necessary nexus between the tusks and the tea has not been established. The tusks were recovered from the driver's cabin whereas the tea was located in the rear carrier of the vehicle. Further, no evidence establishes that the arrangement of tea obstructed detection of the tusks. The conclusion that the tea constituted "camouflage" is therefore unsupported by the physical evidence. The mere use of a common vehicle cannot be equated with statutory concealment. If such an interpretation were accepted, a transporter carrying several independent consignments would become automatically liable to confiscation of every innocent consignment whenever a driver independently carries

prohibited goods. Such an approach would impose liability based upon proximity rather than statutory nexus.

16. The record itself refers to the statement of driver Shri Subodh Das from which it is apparent that the tea was loaded at a different point and at an earlier stage, whereas the elephant tusks were allegedly placed in the vehicle subsequently upon the instruction of one Mr. Samsul Haque Talukder @ Pakhi Mia (he has been traced down by the department an later made a party to the SCN). The significance of this chronology cannot be understated. The tea had already entered the transportation chain as a legitimate commercial consignment. The elephant tusks were subsequently introduced into the driver's cabin. The distinction demonstrates that the two transactions were temporally and functionally separate.

17. A substantial part of the reasoning against Appellant No. 1 proceeds from the fact that the E-way Bills contained modifications made by Appellant No. 2. The Commissioner (Appeals) has treated such modification as proof that Appellant No. 1 must necessarily have authorised or participated in the illicit transportation. The inference is unsustainable. The record itself explains that the original tea consignments were transported in two smaller vehicles and were thereafter consolidated/transhipped into vehicle No.

WB-23E-5533. A change in vehicle particulars following transhipment is inherently capable of being explained by the transportation transaction itself.

18. The Appellant No. 1's reply records that the transporter, being GST registered, made the necessary changes in the E-way Bill particulars relating to vehicle number, point of loading and consignment details following transshipment. Neither the Department has established that the modifications were false nor has the Department established that the modifications were made for the purpose of facilitating transportation of elephant tusks.

19. The authorities below have also relied upon an alleged discrepancy concerning the destination of the tea. The record shows that the Appellant No. 1 explained that one E-way Bill contained the registered office address instead of the address of the nominated warehouse and that the error was clerical and unintentional. More importantly, the Department has not established that such clerical discrepancy had any relationship with the elephant tusks. The allegation concerning the destination of the tea is therefore collateral to the actual issue. Even if a procedural discrepancy in an E-way Bill were assumed, such discrepancy cannot, without additional evidence, establish participation in an entirely separate illicit transaction involving elephant tusks. The legal enquiry must

remain focused upon whether the Appellants consciously facilitated the prohibited activity. A discrepancy in commercial documentation cannot automatically supply the missing element of knowledge or intent.

The conduct of Appellant No. 1 immediately after learning of the seizure is wholly consistent with the conduct of an owner whose legitimate commercial goods have been wrongfully detained. Upon learning that its tea consignment had been seized, the Appellant contacted the transporter and sought release of the tea. A representation was made before the Customs authorities. The Appellant sought provisional release because the tea was a perishable commercial commodity and was intended either for export to China or for auction within the territory of India as would have been determined post arrival of the consignment at its designated place. Such conduct is inconsistent with the theory that the Appellant had deliberately arranged for the tea to act as camouflage for smuggled elephant tusks. Had the tea been intentionally deployed as part of an illicit scheme, the Appellant's conduct immediately upon seizure would require some explanation. Instead, the record demonstrates an attempt to secure release of the Appellant's own legitimate goods. The Department has not identified any conduct of the Appellant after seizure that indicates consciousness of guilt.

The case against Appellant No. 2 requires separate consideration. Appellant No. 2 is a transporter engaged in the business of

transportation and logistics. It was engaged to transport the tea consignment. The record shows that Appellant No. 2 approached Assam Bengal Parivahan for supply of a vehicle for the transportation of the tea and consequently vehicle No. WB-23E-5533 was supplied through the said intermediary. The transporter has specifically stated that it had no previous knowledge of the driver or owner of the vehicle. This fact assumes significance because the alleged elephant tusks were recovered from the driver's cabin. The Department has not demonstrated that Appellant No. 2 had any prior relationship with the driver concerning the tusks. Neither has it demonstrated that Appellant No. 2 instructed the driver to carry the tusks nor has it demonstrated any payment from Appellant No. 2 to the driver for transportation of the tusks. The fact that Appellant No. 2 arranged the vehicle for carriage of tea does not establish that it authorised every item subsequently placed in the driver's cabin. A transporter cannot be treated as an insurer against every unauthorised act of an independent vehicle owner or driver unless the statutory ingredients of penal liability are established. Reiance is placed upon the case law of **Harbans Singh Narula- *Versus*- Commissioner of Customs (P), Mumbai reported in 1996 SCC OnLine CEGAT 417 : (1998) 100 ELT 282**_wherein the Hon’ble CEGAT, Mumbai was pleased enough to set aside the penalties imposed upon the transporter based

on the following observation-:

> *"These are that as persons concerned with running a transport company they could not be expected to know, or be aware of, the contents of each of the hundreds of packages which must have passed through their office; that there is no specific evidence to show that the appellants knew or had reason to believe that the packages in question contained contraband; there is no legal requirement for names and addresses of consignees and consignors to be mentioned, and insistence of this requirement, in practice would mean refusing to accept large number of packages for carriage."*

20. The Hon'ble Tribunal may kindly appreciate that Section 114 concerns penalty in relation to goods liable to confiscation under Section 113. The penalty provision cannot be applied merely because the person happens to own goods transported in a vehicle where another prohibited article is discovered. The Department must establish the particular act or omission attributable to the person which attracts the provision. In the present case, no act of Appellant No. 1 has been identified whereby it knowingly attempted to export, assist in export, or otherwise facilitate the elephant tusks. The tea was not shown to be part of an export declaration concerning elephant tusks. Neither the elephant tusks were goods belonging to Appellant No. 1. Nor there is any evidence of financial benefit received by

Appellant No. 1 from the tusks. Also, there is no evidence of communication with the driver or instruction to the transporter regarding the carriage of tusks. In these circumstances, the penalty under Section 114 lacks the necessary factual foundation. The ratio led down in the case law of **Concord Maritime and Logistics Pvt. Ltd.- vs- Commissioner of Customs reported in 2024 SCC Online CESTAT 143** is very much applicable in this case wherein the Hon'ble Tribunal has held the following-:

> *"A bare perusal of the section show that penalty can be imposed only on the person who in relation to the export goods which were rendered liable to confiscation under section 113, does or omits or abets the doing or omission of an act, shall be liable for penalty. In this case the facts has narrated in the show cause notice itself shows that the appellant neither filed the shipping bill nor committed any act or abetted the commission or omission of any act which rendered the goods liable for confiscation under section 113. In view of above, no penalty whatsoever is imposable under section 114 on the appellant."*

21. The case against Appellant No. 2 is similarly deficient. The Appellant's established role was that of transporter of the tea, as for which the vehicle was procured through Assam Bengal Parivahan. The Appellant did not own the vehicle. Also,

the driver was not shown to be an employee of Appellant No. 2. The Department has not produced evidence that Appellant No. 2 was aware of the tusks before seizure. Nor is there evidence that Appellant No. 2 had any financial interest in the alleged illicit transportation.

22. The Department relies substantially upon the fact that Appellant No. 2 had engaged the vehicle. That circumstance alone is insufficient to establish the statutory ingredients of penalty. Otherwise, every transporter would become automatically liable for every unauthorised article independently carried by a driver. Such a principle would amount to strict or vicarious penal liability without statutory foundation. The Customs Act requires the Department to establish the relevant conduct of the person sought to be penalized. That burden has not been discharged.

23. In view of the above submissions, the Ld. Counsel prays that the impugned order in respect of the above appellants may be set aside the their appeals may be allowed.

24. The Ld. AR appearing for the Revenue submits that that Elephant Tusk was found in the truck which was carrying the tea dispatched by the appellant. This is operation to remove the contraband Elephant tusk in a camouflaged way so that the truck can be cleared as a normal truck carrying tea bags. He relies on the detailed findings of the lower authorities and prays that the present appeals may be

dismissed.

25. Heard both the sides. Perused the appeal papers and further documents placed before us.

26. We first take up the Panchanama for the seizure effected, the relevant portion of which is reproduced below:

Panchanama

Pancha No.1 Shri Kamalesh Bhadury, Age 48 years
S/o Late Kishorimohan Bhadury
No. 1 Dabgram Colony, P.O. Rabindra Sarani
Siliguri-734006.

ANNEXURE-P/4'

Pancha No.2 Shri Amar Mondal, Age 42 yrs.
S/o Late Bartan Mondal
Hospital Quarters,
Siliguri-734001

We the above named Panchas were requested by the Officers of the Directorate of Intelligence, Siliguri Regional Unit at about 22:00 hrs of 01.01.2019 to be present at their office at 'Dey Bhawan', Ashutosh Mukherjee Road, Siliguri and we reached the DRI office accordingly. On reaching DRI Office at 'Dey Bhawan', Ashutosh Mukherjee Road, Siliguri, the DRI Officers told us that they had information about huge quantity of Elephant Tusk is being transported by a truck from Assam for their delivery to some person in Kolkata from where it would be illegally exported to some foreign country. The DRI Officers further informed us that the said truck would be apparently carrying some bonafide goods and the contraband Elephant Tusks would be found in the driver's cabin of the truck. Accordingly, at about 23:15 hrs, we accompanied the DRI Officers to Chhipukur Toll Plaza on NH-31 where the DRI officers mounted surveillance over each and every vehicle that were coming from Assam side. At about 00:15 hrs of 02.01.2019, the DRI Officers intercepted a TATA LPT Truck bearing registration number WB-23E-5533. The truck had its driver as its sole occupant. On questioning, the driver of the said truck revealed his name as Shri Subodh Das and said that he was coming from Guwahati with a consignment of black tea for their delivery at Kolkata. He also showed the Tax Invoices and other related documents in respect of the consignment of Black Tea. The DRI Officers further questioned as to whether he was carrying any contraband with him to which he boldly denied. However, on repeated questioning he ultimately confessed that he was actually carrying contraband elephant tusks that are kept secreted in a black coloured back-pack kept in the driver's cabin of the truck. As the place of interception was a public place and a number of vehicles and onlookers started gathering around creating a chaos, the intercepted person requested the DRI officers to conduct the required search in a safe and secured place. The DRI officers gave him an option for being search DRI office at "Dey Bhawan", Ashutosh Mukherjee Road, College Para, Siliguri – 734001 to which he readily agreed. At this the intercepted person along with the truck bearing registration number WB-23E-5523 were brought to the DRI Office. We too accompanied

Pancha 1: Shri Kamalesh Bhadury 1. Kamalesh Bhadury 02/01/19

Pancha 2: Shri Amar Mondal 2. Amar Mondal 2/1/19

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On reaching DRI office at 'Dey Bhavan', Ashutosh Mukherjee Road, Siliguri, the intercepted person was asked to provide the details his name, parentage, addresses etc. which he provided as follows:

Shri Subodh Das, Age-43 years, S/o- Late Shashimohan Das, Permanent address- Vill- Alisiga, P.O + P.S- Lanka, Sub-Divn- Hojai, Dist- Nagaon, Assam, PIN-782446, Present Address- Rajchandrapur, Barua Para Math, P.S- Nischinda, P.O- Ghosh Para, Dist- Howrah, PIN-711227.

On reaching the DRI Office at Dey Bhawan, Collegepara, Siliguri, the intercepted person was again asked about what he was carrying to which he admitted that he were actually carrying Elephant Tusks in his black backpack kept in the driver's cabin of the intercepted truck which was brought from Guwahati, Assam and were supposed to be delivered at Kolkata for being sent the same to Bangladesh for their ultimate exportation to some South-East Asian country.

The DRI Officers then asked the intercepted person to produce the items which were being carried by him in his person at which Shri Subodh Das produced one Old and used white coloured LAVA (Model: One) mobile phone having IMEI No. 911448956929995 & IMEI No. 911418959099937 fitted with one Sim having number: 9748622110

Then, the DRI Officers carried out the search of the truck which was found to be loaded with a consignment of black tea. From the driver's cabin one old and used black coloured backpack was recovered in presence of us and the intercepted person. On search two very heavy cylindrical objects and two very heavy conical objects securely wrapped with newspaper and brown colour self-adhesive tapes were recovered. On unwrapping, it was found that those four objects appeared to be cut pieces of large elephant tusks.

The DRI officers, then, took the measurement of the recovered total four cut pieces of elephant tusk which are numbered as (A), (B), (C) and (D). The measurement of the recovered cut pieces of elephant tusk was ascertained as follows:

Sl. No.	Piece Number	Length (in cm)	Girth (in cm)	Weight (in Grams)
I	1	39.4	33.00	4605
II	2	42.00	32.00	3486

Pancha 1: Shri Kamalesh Bhadury 1. Kamalesh Bhadury 02/01/19

Pancha 2: Shri Amar Mondal 2. Amar Mondal 2/1/19

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III	3	41.00	33.50	4965
IV	4	33.50	32.50	3906
		TOTAL		16962

After that, the DRI officers prepared a detailed inventory of all the recovered goods in presence of the intercepted person and in our presence and all of us had put our signatures on the inventory. The value of the recovered elephant tusks was ascertained at Rs.10,00,000/- per Kgs as the recovered tusk is of an Asian jumbo ***(Elephas maximus indicus)*** having very high quality ivory that fetches extraordinary price in the international market. The recovered goods were then seized by the DRI Officers under Section 110 of the Customs Act, 1962 as they had reasons to believe that the same had been procured from the poachers in Assam and was being taken to Kolkata for their illicit exportation to some South-East Asian country through Bangladesh violating the provisions of Customs Act, 1962 and therefore liable to confiscation under Section 113 of the Customs Act, 1962. Indian (Asian) Elephant (Elephas maximus) is listed in Appendix I of the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) and also listed under Sl no: 12B of Part I of Schedule I of the Wild Life Protection Act, 1972. As per Schedule -2 of the ITC(HS) Export Policy 2015-20 the export of wild animals (including their parts and products) as defined in the Wild Life (Protection) Act, 1972 is prohibited.

The old and used black backpack used for carrying the recovered smuggled elephant tusks and the wrappers used for wrapping the said elephant tusks were also seized by the DRI officers under Section 110 of the Customs Act, 1962 as they had reasons to believe that the same are liable to confiscation under Section 119 of the Customs Act, 1962.

The consignment of black tea apparently used as a concealing material for transportation of the smuggled contraband elephant tusks was by the DRI officers under Section 110 of the Customs Act, 1962 as they had reasons to believe that the same are liable to confiscation under Section 118 of the Customs Act 1962.

The carrier truck bearing registration number WB-23E-5533 used for carrying and transporting the smuggled contraband elephant tusks was by the DRI officers under Section 110 of the Customs Act, 1962 as they had reasons to believe that the same are liable to confiscation under Section 115 of the Customs Act, 1962.

Pancha 1: Shri Kamalesh Bhadury

1. Kamalesh Bhadury 02.11.19

Pancha 2: Shri Amar Mondal

2. Amar Mondal 2.11.19

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The Recovered old and used mobile phone too was seized under Section 110(3) OF THE Customs Act, 1962 as the DRI Officers had reasons to believe that the same will be useful for the proceedings under this Act.

A seizure case was booked vide seizure case No. 16/CL/EXP/DRI/SLG/18-19 dated 02.01.2019 valued at Rs.2,17,02,490/- (Rupees two crore seventeen lakhs two thousand four hundred and ninety) only that includes the value of the seized elephant tusks computed at Rs.1,69,62,000/- (Rupees one crore sixty-nine lakhs and sixty-two thousand) only. Shri Subodh Das was supplied with a copy of the inventory so prepared under his proper dated receipt. The recovered four cut pieces of Elephant Tusks were labelled and the intercepted person along with us have put our dated signatures on the said labels.

All the above proceedings were completed at around 06:30 hrs on 02.01.2019 peacefully without causing any damage / harm to any property or person. We were present during the whole proceedings. As we are not familiar with preparation of Panchanama, and, on our request, one of the DRI officers has prepared this Panchanama and explained the same to us in our vernacular to our understanding. On being satisfied about the contents of this Panchanama, we hereby put our dated signature on its each page.

Drawn by me Avranil Ghosh 02/01/19
Intelligence Officer
Directorate of Revenue Intelligence
Siliguri Regional Unit
Siliguri

Drawn in my presence
2/1/19
Senior Intelligence Officer
Directorate of Revenue Intelligence
Siliguri Regional Unit
Siliguri

Panchs 1. Shri Kamalesh Bhadury 1. Kamalesh Bhadury 02/01/19

Panchs 2. Shri Amar Mondal 2. Amar Mondal 2/1/19

27. From the above extracts, we observe that the Driver Subodh Das had told that he was carrying the contraband Elephant Tusk secreted in an old and used black back bag found in the Driver's cabin.

28. After this, Subodh Das's Statement was recorded on 02.01.2019, i.e on the same day of the Panchanama. The relevant details of his Statement as given in the OIO is reproduced below:

> *"From the above statement, it is seen that he has neither implicated the Appellant No.1 [M K Saha Exports Pvt Ltd.] or the appellant No.2 South Assam Roadways. He has stated that he has been engaged by Samsul Haq Talukdar @ Pakhi Mia for delivering the elephant tusk at Kolkata to Md.Habibullah@ Babu Bhai. For this he was to be paid Rs.15000. He has given the details of his earlier attempt to carry out this activity on 17th December 2018 failing and subsequently, he informed Pakhi Mia about his upcoming trip on 31.12.2018 and was asked to deliver the elephant tusk on 1.1.2019. In this statement he has given the details of Paki Mia as well as that of Babu Bhai along with the mobile numbers used. We note that in the entire statement, not a word has been spoken against the role either M K Saha Exports, whose Tea Bags or South Assam Roadways in this transaction pertaining the Elephant Tusks. It is seen that subsequently, the Revenue has made all the efforts and located these persons and they have been made a party to the present proceedings. Here the factual details emerging is to the effect is that Paki Mia is the sender of the elephant tusks, Subodh Das is the driver cum handler and the ultimate targeted recipient is the Babu Bhai. The Revenue has not come out with any evidence linking the present two appellant with any of these three persons in this movement of elephant tusks. The only reference and link that can be considered would be the driver Subodh Das. But has been engaged by the owner of the Vehicle and not by the Appellant No.2. Hence, even with Subodh Das no link has been established by the*

Revenue between Appellant 1 and 2 with the Driver, who was the handler."

29. We have also gone through Statements recorded by the officials of the M K Saha Exports and South Assam Roadways. The relevant portion of their recorded Statements reproduced in the OIO is extracted below:

In this Statement dated 11.02.2019, Shri Arun Agarwal inter-alia stated that:

ii) M K Shah Exports Ltd had 13 Tea gardens in Assam and produces tea in those gardens. M. K. Shah Exports Ltd also had a nominated warehouse at Kolkata namely Dutta Tea Blenders, BBT Road Gobindapur Maheshtala, Kolkata-700141. Tea produced in tea gardens of Assam are being regularly transferred to warehouse of Dutta Tea Blenders for selling the same to Kolkata and also for exporting the same. For transportation of tea three transporters are engaged by M. K. Shah Exports Ltd, one of which is M/s South Assam Roadways Ltd.

iii) After being acknowledging that their 660 packages of black tea weighing 14,740 Kgs were seized by DRI, Siliguri on 02.01.2019 while being transported in the truck bearing registration number WB-23E-5533, he stated that on 04.01.2019 they received one phone call from DRI, Siliguri Regional Unit regarding seizure of the above consignment, they then contacted their transporter M/s South Assam Roadways and subsequently submitted one letter to the Commissioner of Customs (Preventive), Kolkata on 07.01.2019 for releasing the black tea as the same were meant for export.

iv) They regularly transport tea from their tea gardens of Assam to Kolkata through transporters. The driver of the truck bearing registration number

WB-23E-5533, on his own volition was carrying subject elephant tusks in the driver's cabin of the said truck. They were no way involved in this illicit act. The truck was arranged by the transporter. They were fully unaware of which truck or which driver would be engaged by the transporter to carry the consignment of tea.

v) On being asked by the DRI officers he further stated that he did not know the driver of the carrier truck Shri Subodh Das, S/o- Late Sashimohan Das a resident of Nischinda, Ghoshpara, Howrah. He was not even aware that which truck which would be deployed by the transporter.

vi) Duta Tea Blenders is the nominated warehouse of M. K. Shah Exports Ltd. Tea sent by M. K. Shah Exports Ltd are being stored in the warehouse. They were neither aware of the transporter nor the truck or the driver associated with such transportation.

vii) He reiterated that they were no way involved in this illicit act of carrying the subject elephant tusks, He thought that the driver was carrying the said elephant tusks on his own volition to earn easy money. He prayed for releasing the consignment of tea at the earliest.

In his Statement dated 11.02.2019, Shri Nemai Nag inter-alia stated that:

i) M/s South Assam Roadways Ltd. provides logistics services throughout India.

ii) They got the order for transporting 660 pkgs Black Tea from the office of M/s M. K.Shah Exports Ltd. 212 Justice Dwarkanath Road, Kolkata-700020 over phone from Guwahati Kolkata and the said tea was supposed to be delivered at the office of Dutta Tea Blenders, Budge Budge Trunk Road, P.O. Gobindapur, P.S. Maheshtala, Kolkata-700141.

iii) After being acknowledged that 660 packages of black tea weighing 14,740 Kgs were seized by DRI, Siliguri on 02.01.2019 while being transported in the truck bearing registration number WB-23E-5533, he stated that on 02.01.2019 they received phone call at their Siliguri office from DRI, Siliguri Unit regarding seizure of the above consignment. It was also informed that elephant tusks were recovered from the driver's cabin of the said truck and the driver was arrested. They were also advised to contact the owner of the tea for release of the same, they then contacted M/s M. K. Shah Exports Ltd and subsequently submitted a letter to the Commissioner of Customs (Preventive), Kolkata on 07.01.2019 for releasing the black tea as the same were meant for export.

iv) They engage vehicles through authorized vehicle broker for security of the goods and in this instance the said truck bearing registration number WB-23E-5533 was booked by their Guwahati office through Assam Bengal Parivahan, Guwahati. As per the data provided by Assam Bengal Parivahan, one Shri Subodh Das was the driver of the said truck. However, he did not know the said Subodh Das in person.

v) On being asked to offer his comments on the fact that elephant tusks were being transported in the driver's cabin of the truck bearing registration number WB-23E-5533 in which tea of M/s M K Shah Exports Ltd. was being transported, he stated that the truck was booked through authorized vehicle broker Assam Bengal Parivahan, Guwahati and the driver was engaged by them. They do not have any hand in such engagement. The driver might carrying the said elephant tusks on his own volition to earn easy money.

vi) He reiterated that they were no way involved in this illicit act of carrying the subject elephant tusks. He prayed for releasing the consignment of tea at the earliest

30. We find that in these statements, they have told that they were not aware of any activity independently taken by the driver on his own volition. They have denied that they had anything to do with the seized Elephant tusks. When all the above three statements are viewed together, it is clear that nowhere any link is established between the present Appellant No.1, 2 with the contraband goods.

31. Another point noted by us is that the statement of the Driver Subodh has been taken immediately after the Panchanama was drawn. On immediate questioning, he has given the details of the despatcher of the goods and the likely receiver of the goods, without once mentioning anything about the appellant No.1 and 2. Since there is not time gap between the seizure and recording of statement, it cannot be the case, that he was instructed or directed to give a statement implicating some other persons. It is also on record that, the Revenue has ultimately found the persons, who have been implicated in this statement. Further there is no evidence brought in to the effect that the appellant No.1 and 2 were in touch with the Driver to give any such instructions.

32. In view of our observation, it would be important to go through the details of the call records relied upon in the OIO. We are reproducing the relevant portion.

28. The Call Details Record (CDR) of the mobile phone number 9862799982 (used by the said Pakhi Mia as disclosed by Shri Subodh Das & found registered in the name of Mr. Kadisang) was obtained from concerned service provider and on scrutiny of the Call Details Record (CDR) of the number 9862799982 from the period of 01.12.2018 to 05.01.2019 it reveals that there are several calls exchanged with the mobile numbers 9748622110 (recovered and seized from the possession of Shri Subodh Das on 02.01.2019). The details of the calls exchanged between mobile numbers 9862799982 and 9748622110 are shown in Table-I below:

Table-1

Calling No.	*Called No.*	*Date*	*Time*	*Duration (in seconds)*
9862799982'	*'9748622110*	*10-DEC-18*	*10:28:34′*	*56*
9862799982'	*'9748622110*	*11-DEC-18*	*09:54:14′*	*49*
9862799982'	*'9748622110*	*19-DEC-18*	*09:45:45′*	*31*
'9748622110	*9862799982'*	*30-DEC-18*	*10:23:09′*	*0*
'9748622110	*9862799982'*	*30-DEC-18*	*14:50:55′*	*13*
'9748622110	*9862799982'*	*30-DEC-18*	*14:51:49′*	*25*
9862799982'	*'9748622110*	*30-DEC-18*	*14:52:34*	*82*
'9748622110	*9862799982'*	*31-DEC-18*	*07:53:59′*	*0*
9748622110	*9862799982*	*31-DEC-18*	*08:46:47′*	*38*
9862799982	*9748622110*	*31-DEC-18*	*08:47:43′*	*86*
9748622110	*9862799982*	*01-JAN-19*	*06:29:27′*	*36*
9748622110	*9862799982*	*01-JAN-19*	*06:30:32′*	*0*
9748622110	*9862799982*	*01-JAN-19*	*07:53:27′*	*30*

9748622110	*9862799982*	*01-JAN-19*	*08:57:27'*	*64*
9748622110	*9862799982*	*01-JAN-19*	*09:51:51*	*18*
9862799982	*9748622110*	*01-JAN-19*	*10:58;45'*	*22*
9748622110	*9862799982*	*01-JAN-19*	*18:42:38*	*0*
9748622110	*9862799982*	*01-JAN-19*	*19:03:01*	*0*

29. The Call Details Record (CDR) of the mobile phone number 8420226252 (used by the said Babubhai as disclosed by Nazrul Islam and Subodh Das & found registered in the name of Umair Jawaid) was also obtained from concerned service provider and on scrutiny of the Call Details Record (CDR) of the number 8420226252 from the period of01.12.2018 to 05.01.2019 it reveals that there are several calls exchanged with the mobile numbers 9862799982 & 9077693226 (used by the said Samsul Haque Talukdar @ Pakhi Mia as disclosed by Shri Subodh Das & found registered in the name of Mr. Kadisang and Mr. Abhilas respectively).

A. On scrutiny of the Call Details Record (CDR) of the number 8420226252 (used by the said Babubhai as disclosed by Nazrul Islam and Subodh Das & found registered in the name of Umair Jawaid) from the period of 01.12.2018 to 05.01.2019 it reveals that there are three calls exchanged with the mobile number 9862799982 (used by the said Pakhi Mia as disclosed by Shri Subodh Das & found registered in the name of Mr. Kadisang). The details of the calls exchanged between mobile numbers 9862799982 and 8420226252 is shown in

Table-2 below:

Calling No.	*Called No.*	*Date*	*Time*	*Duration (in seconds)*
8420226252	*'9862799982'*	*04-DEC-18*	*10:03:17'*	*12*
9862799982'	*8420226252*	*11-DEC-18*	*11:16:03'*	*65*
9862799982'	*8420226252*	*11-DEC-18*	*12:54:04*	*48*

B. On scrutiny of the Call Details Record (CDR) of the number 84202262S2 (used by the said Babubhai as disclosed by Nazrul Islam and Subodh Das & found registered in the name of Umair Jawaid) from the period of 01.12.2018 to 05.01.2019 it reveals that there are eleven calls exchanged with the mobile number 9077693226 (used by the said Pakhi Mia as disclosed by Shri Subodh Das & found registered in the name of Mr. Abhilas. The details of the calls exchanged between mobile numbers 8420226252 and 9077693226 is shown in Table-3 below:

		Table-3		
Calling No	*Called No*	*Date*	*Time*	*Duration On seconds)*
9077693226	*8420226252*	*04-DEC-18*	*11:09:56*	*10*
9077693226	*8420226252*	*04-DEC-18*	*11:10:31*	*20*
8420226252	*9077693226*	*'06-DEC-18'*	*07:57:36*	*156*

8420226252	*9077693226*	*'06-DEC-18'*	*18:24:39*	*86*
8420226252	*9077693226*	*11-DEC-18'*	*09:21:20*	*84*
8420226252	*9077693226*	*11-DEC-18'*	*16:01:09*	*96*
8420226252	*9077693226*	*'13-DEC-18'*	*15:51:20*	*37*
2568420226252	*9077693226*	*'14-DEC-18*	*13:57:01*	*254*
8420226252	*9077693226*	*'14-DEC-18*	*14:01:31*	*7*
9077693226	*8420226252*	*'14-DEC-18*	*14:03:13*	*81*
9077693226	*8420226252*	*'14-DEC-18*	*18:15;40*	*0*

33. From the above records, what is being revealed is the talk between the Paki Mia and Driver Subodh Das or Driver's talk with the likely recipient. None of these call records show that the appellant number 1 or number 2 were discussing anything over mobile with the Driver.

34. We also observe that after coming to know about the seizure of the vehicle, the appellant No.1 and No.2 immediately approached the authorities and sought the provisional release of the seized tea bags. Upon their furnishing the necessary BG the goods were released. This act of the appellants shows their bonafides. In case they were hand in glove with the movement of contraband, they would have been searching for method to avoid any interaction with the Revenue officials.

35. We find that ultimately the Revenue officials have linked the transactions to Paki Mia and Babu Bhai and they along with the carrier / driver are the main person in the entire proceedings.

36. This being so, when all these facts are viewed together, we find that no case whatsoever has been made out against the appellant number 1 and number 2. First of all, the tea bags were in the rear portion of the truck. The contraband was seized from the driver's cabin, who also owned the responsibility, without ever implicating the present two appellants. Secondly, once the alleged perpetrators are made part of the proceedings, in order take any action against the present two appellants, the Revenue has to provide cogent evidence linking these alleged perpetrators with them. Not only the Driver has not implicated the present appellants, even the other alleged perpetrators have not given any statement implicating the present appellants.

37. Mere defects pointed on account of Way bills, error in the receiver's name address etc. on their own do not form any cohesive evidence against the appellants. As a matter of fact, they have made their submissions in their defence even towards these errors.

38. Therefore, after taking an overall view of the entire proceedings, we have come to a conclusion that the Revenue has not come out with an cogent evidence linking the appellants with the already identified perpetrators.

39. So far as the confiscation of the tea bag, with an option being given to be redeemed on payment of Redemption Fine, as discussed above, we find that no case has been made out for allegation that the tea bags were being dispatched as a guise for movement of the contraband goods. Hence, we set aside the confiscation and the Redemption Fine imposed. The Redemption fine already recovered is required to be refunded to the appellant/s along with interest.

40. As discussed above, no case has been made out against the appellants towards penalty to be imposed under Section 114 of the Customs Act 1062. Therefore, we set aside the penalties imposed on the present appellants.

41. We set aside the impugned order in respect of the present two appellants. The appellants would be eligible for consequential relief, if any, as per law.

(Order Pronounced in Open court on 30.10.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP