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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75007 of 2022

(Arising out of Order-in-Appeal No. 18/CUS(A)/GHY/2021 dated 27.08.2021 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Shri Jagtar Singh **: Appellant**
S/o. Late Sadhu Singh,
Bangaon, House No. 41,
Ganesh Bhawan, IT Colony, Beltala,
Guwahati – 781 028

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
North Eastern Region,
110, M.G. Road, Shillong,
Meghalaya -

APPEARANCE:

Smt. Atika Sumran Ahmed, Advocate, for the Appellant

Shri Rajarshi Chakraborty, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76571 / 2026

DATE OF HEARING: 01.09.2026

DATE OF DECISION: 30.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by Shri Jagtar Singh [hereinafter referred to as the "appellant"] challenging the imposition of penalty of Rs.39,00,000/- upon him under Section 112(b)(i) of the Customs Act, 1962 by way of the Order-in-Original No. COM/CUS/ADDL.COMMR/55/2020 dated 09.09.2020, which came to be subsequently affirmed by the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, Guwahati vide the Order-in-Appeal No. 18/CUS(A)/GHY/2021 dated 27.08.2021.

2. The impugned proceedings have their genesis in an investigation undertaken by the Directorate of Revenue Intelligence (DRI), Guwahati, pursuant to intelligence received regarding illicit storage and movement of foreign-origin cigarettes in the vicinity of Beharbari, Beltola, Guwahati. Acting upon the aforesaid intelligence, officers of the DRI, Guwahati, proceeded on 28.11.2018 at about 13:00 hrs. to a bamboo shed erected upon an unnamed plot of land situated adjacent to Das Parking, National Highway-37, Beharbari, Beltola, Guwahati. Upon arrival, the said bamboo shed was found locked. The officers thereafter conducted a search of the premises in accordance with law and, during the course thereof, recovered a substantial quantity of cigarettes of foreign origin, which were found stored in large paper cartons stacked in considerable quantity inside the said shed. The cigarettes so recovered comprised 33,60,000 sticks pertaining to six different foreign brands. The seized cigarettes comprised 36 carton boxes of cigarettes bearing the brand name "ESSE LIGHTS", stated to have been manufactured in Korea; 25 carton boxes bearing the brand name "Gudang Garam", stated to have been manufactured in Indonesia; 106 carton boxes bearing the brand name "WIN", stated to have been manufactured in China; 62 carton boxes bearing the brand name "RUILI RIVER", stated to have been manufactured in Myanmar; 80 carton boxes bearing the brand name "PARIS", stated to have been manufactured in Myanmar; and 16 carton boxes bearing the brand name "BLACK", stated to have been manufactured in Indonesia.

3. The aforesaid cigarettes, valued by the investigating agency at an estimated value of Rs.3,98,00,000/-, were seized under Section 110 of the Customs Act, 1962 vide DRI Case No. 13/UCL/IMP/CIG/DRI/2018-19 dated 28.11.2018. The seizure was effected on the reasonable belief entertained by the officers that the cigarettes had been illegally brought into the territory of India through a route other than that specified under Section 7(c) of the Customs Act, 1962, and that their importation, possession, storage and distribution were in contravention of the applicable statutory and regulatory framework. The investigation also adverted to alleged violations of the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA, 2003) and the Rules framed thereunder, as well as the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, which regulate packaged commodities, including cigarettes. In this connection, reliance was also placed upon Circular No. 09/2017-Customs dated 29.03.2017. Seizure List of the goods was prepared and a Panchanama was also drawn on 28.11.2018. Significantly, at the time of seizure, no person came forward to claim ownership of the said cigarettes.

4. During the course of the seizure proceedings on 28.11.2018, the officers enquired with one Shri Bipul Basumatary, who was found standing in the vicinity of the bamboo shed from which the cigarettes had been recovered. It was allegedly disclosed by Shri Bipul Basumatary that the shed from which the cigarettes had been recovered belonged to Shri Jagtar Singh,

whereas the land upon which the said shed stood was owned by one Shri Prakash Chand Sharma.

5. Acting on the said information, the statement of Shri Prakash Chand Sharma was thereafter recorded by the DRI Officers on 29.11.2018. In his statement, Shri Prakash Chand Sharma stated, inter alia, that the plot of land in question was jointly owned by himself and his three brothers and that, as he resided at Guwahati, the said property was looked after by him. According to him, the land was otherwise vacant except for a few bamboo-thatched sheds erected thereon. He further stated that one portion of the land had been taken on a monthly rent of Rs.11,000/- by Shri Jagtar Singh, who was stated to be carrying on transport business in the name of "AGC Transport"; another portion had been taken by one Shri Dasai Shah, a mechanic, on a monthly rent of Rs.4,000/-; and another portion had been rented out to one Shri Harihar Choudhury, who was carrying on the business of a vehicle body repairing workshop therefrom, on a monthly rent of Rs.5,000/-. Shri Prakash Chand Sharma further inter alia stated that the particular shed from which the foreign-origin cigarettes had been recovered had been constructed and used by Shri Jagtar Singh (the appellant herein). He further stated that Shri Jagtar Singh had an office situated in close proximity to the said plot of land, namely, the office of AGC Carriers, National Highway-37 Road, Beharbari, opposite Brahmaputra Kata, Beltola, Guwahati – 781 029. Shri Prakash Chand Sharma also stated that he had known Shri Jagtar Singh for approximately ten years. At the same time, it was stated that there was no written rent agreement between him and Shri Jagtar Singh in respect of the portion of the land allegedly occupied by the latter.

6. The statement of Shri Bipul Basumatary, the person who had identified Shri Prakash Chand Sharma as the owner of the land and Shri Jagtar Singh as the alleged owner of the shed, was also recorded on 28.11.2018 wherein he allegedly stated that the huge consignment of foreign-origin cigarettes recovered from the shed belonged to Shri Jagtar Singh, while the land upon which the shed stood belonged to Shri Prakash Chand Sharma.

7. Thereafter, summons were issued to Shri Jagtar Singh / appellant to explain the circumstances and his statement was recorded on 28.01.2019. In his statement, the appellant categorically denied the material allegations attributed to him. He stated, inter alia, that he was neither the owner of the bamboo shed from which the cigarettes had been recovered nor the owner of the foreign-origin cigarettes seized by the DRI on 28.11.2018. He further denied having taken any shed on rent from Shri Prakash Chand Sharma and specifically denied having paid any amount of Rs.11,000/- per month as rent to Shri Sharma; the circumstances relied upon by the investigation, namely, that he was in occupation or possession of the particular shed from which the contraband cigarettes had been recovered was denied by the appellant in his said statement.

8. The investigation was thereafter extended to the other persons occupying or using different portions of the land. The statement of Shri Dasai Shah was recorded on 30.01.2019. Shri Shah, who was stated to be occupying another portion of the land as a mechanic upon payment of monthly rent, allegedly stated that the cigarettes belonged to Shri Jagtar Singh since the same had been found in the shed allegedly belonging to him. The statement of Shri

Harihar Choudhury was recorded on 01.04.2019. Shri Harihar Choudhury, who was stated to be operating a vehicle body repairing workshop upon another portion of the land, did not furnish any conclusive statement regarding the ownership or possession of the cigarettes. When confronted with the statement of Shri Prakash Chand Sharma that the cigarettes belonged to Shri Jagtar Singh, Shri Choudhury stated, in substance, that he had subsequently come to know that wrong things were happening nearby and that everybody was taking the name of Shri Jagtar Singh.

9. On the basis of the above, the Revenue came to the conclusion that Shri Prakash Chand Sharma and Shri Jagtar Singh were jointly involved in the illicit importation and smuggling of foreign-origin cigarettes into India through the porous Indo-Myanmar border at Moreh in Manipur. It was alleged that the appellant and Shri Prakash Chand Sharma were engaged in the illegal acquisition, possession, harbouring and further transportation of the contraband cigarettes and had wilfully and knowingly misdeclared material facts with a view to evade the payment of applicable customs duties. Thus, proceedings were initiated against the said persons on the premise that the cigarettes recovered from the bamboo shed were not merely goods stored upon land belonging to a third person, but formed part of an illicit consignment in which the appellant had knowingly participated and which he had allegedly acquired, possessed, harboured and intended to further transport.

10. Consequent upon the investigation, a Show Cause Notice dated 24.05.2019 came to be issued proposing confiscation of the seized foreign-origin cigarettes and, inter alia, imposition of penalty upon

Shri Jagtar Singh under Sections 112(a) and 112(b) of the Customs Act, 1962.

10.1. The proceedings culminated in Order-in-Original No. COM/CUS/ADDL.COMMR/55/2020 dated 09.09.2020 whereby the ld. adjudicating authority confirmed the proposals contained in the above Show Cause Notice, including inter alia the imposition of a penalty of Rs.39,00,000/- upon the present appellant under Section 112(b)(i) of the Customs Act, 1962.

10.2. Aggrieved by the aforesaid adjudication order, Shri Jagtar Singh preferred an appeal before the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, Guwahati. Before the appellate authority, the appellant disputed the findings recorded against him and contended, inter alia, that the mere fact that Shri Prakash Chand Sharma owned or controlled the land upon which the shed was situated could not, by itself, establish that the appellant occupied or controlled the particular shed from which the cigarettes had been recovered. The Ld. Commissioner (Appeals), however, not being satisfied by the contentions advanced, vide the Order-in-Appeal No. 18/CUS(A)/GHY/2021 dated 27.08.2021, dismissed the appeal and upheld the penalty of Rs.39,00,000/- imposed under Section 112(b)(i) of the Customs Act, 1962.

10.3. Aggrieved by the confirmation of the personal penalty imposed upon him in connection with the seizure of the aforesaid foreign-origin cigarettes, the appellant has preferred the instant appeal.

11. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant made various submissions, which can inter alia be summarized as follows: -

(i) That Section 123 of the Customs Act, 1962 cannot be invoked so as to create ownership or possession: The appellant does not dispute that cigarettes are notified goods for the purposes of Section 123 of the Customs Act, 1962; however, the statutory reversal of the ordinary burden of proof contemplated therein operates only upon the existence of the foundational facts prescribed by the provision, namely, seizure of the notified goods from the possession of a person or a claim of ownership thereto. In the present case, the cigarettes were neither seized from the personal possession, residence, vehicle or established business premises of the Appellant, nor has the appellant ever claimed ownership thereof. It is therefore impermissible for the Department first to presume that the appellant was in possession or control of the shed and thereafter to invoke Section 123 against him. Section 123 is a rule as to burden of proof and not a deeming provision creating ownership or possession in favour of the Revenue.

(ii) That the decision in Ajay Saraogi v. Commissioner of Customs (Preventive), NER, Shillong, is directly applicable: Reliance was placed upon Final Order dated 24.11.2025 passed by this Tribunal, Kolkata, in Customs Appeal No. C/76438/2025, wherein, in circumstances involving recovery of foreign-origin cigarettes from a godown and denial of

ownership and connection with the premises by the appellant therein, the Tribunal held that the mere fact that cigarettes are notified under Section 123 does not, by itself, cast the statutory burden upon every person sought to be associated with the premises. It was submitted that the Tribunal had found absence of independent evidence establishing conscious possession or control, including verification of the godown owner and other corroborative investigation, and consequently set aside the penalty under Section 112(b). The ratio thereof, according to the appellant, squarely applies in the present case, particularly since the contemporaneous seizure record itself did not identify the appellant as the owner or occupier of the shed.

(iii) That the Department has failed to establish the appellant's possession or control over the particular shed: It was submitted that there is no rent agreement, rent receipt, bank statement evidencing payment of the alleged monthly rent of Rs.11,000/-, electricity connection in the Appellant's name, GMC record identifying him as occupier, trade licence for any garage at the premises, municipal permission evidencing construction of the shed, document showing that the appellant constructed the shed, or any other contemporaneous material establishing his exclusive possession or control thereof. The absence of such objective evidence is particularly significant when the Department itself was initially unable to ascertain the ownership of the shed.

(iv) That ownership of the land does not establish ownership or possession of the shed: The statement of Shri Prakash Chand Sharma establishes, at best, his claim of ownership or control over the underlying land and cannot, without independent corroboration, establish that the appellant was in possession of the particular bamboo shed from which the cigarettes were recovered. The allegation that the appellant had taken a portion of the land on rent at Rs.11,000/- per month is unsupported by any rent agreement, rent receipt or contemporaneous payment record. The appellant has consistently denied the alleged tenancy and possession, and such denial has not been displaced by any reliable documentary evidence.

(v) That the alleged rental arrangement itself remains unsubstantiated: The alleged statement of Shri Prakash Chand Sharma dated 29.11.2018 regarding the monthly rent of Rs.11,000/- has not been corroborated by any contemporaneous record. It was further submitted that the assertion that rent agreements were not ordinarily executed is contradicted by the material concerning another occupant, Shri Harihar Choudhury, who is stated to have executed a written agreement with Shri Prakash Chand Sharma. The Department, according to the appellant, has relied upon the favourable portion of Shri Sharma's statement while disregarding circumstances which materially affect its reliability. It was also submitted that Shri Sharma himself was engaged in transport

business and the contraband was recovered from his plot of land, and that the possibility of the blame having been shifted upon the Appellant had not been properly investigated.

(vi) That the contemporaneous seizure records materially contradict the subsequent version: Learned Counsel drew attention to the seizure list and panchnama dated 28.11.2018, contending that neither contemporaneous document identified the Appellant as owner or occupier of the shed. While the land owner was stated to have been ascertainable as Shri Prakash Chand Sharma, the ownership of the bamboo shed was recorded as not ascertainable; that the subsequent theory that Shri Bipul Basumatary had immediately identified the shed as belonging to the appellant is inconsistent with the contemporaneous official record. The Department has not explained why such identification was not recorded in the seizure documents or why Shri Basumatary's statement was recorded only subsequently. According to the appellant, the subsequent version, being inconsistent with the contemporaneous record, required independent corroboration, which is absent.

(vii) That the statement of Shri Bipul Basumatary cannot, by itself, establish conscious possession: The alleged statement of Shri Bipul Basumatary, relied upon to connect the Appellant with the shed and the cigarettes, was submitted to be insufficient to establish that the Appellant was in possession or exclusive control of the shed on the date of seizure, knew what was stored therein, purchased or received the

cigarettes, handled the cartons, or knew that the cigarettes were smuggled. It was further contended that Shri Basumatary was not a seizure witness and that his subsequent statement was not corroborated by the contemporaneous seizure documents; that such statement could not constitute the sole basis for sustaining the substantial personal penalty imposed upon him.

(viii) That the statements of Shri Dasai Shah and Shri Harihar Choudhury do not establish conscious possession: It was submitted that the said persons were not present at the time of seizure and that their statements were not based upon direct knowledge. Shri Harihar Choudhury, in particular, did not make any conclusive assertion that the Appellant possessed the shed or the cigarettes. The mere fact that the appellant had an office in the vicinity could not be equated with possession of the particular shed. The appellant had, in fact, produced material showing that his official premises in the same area were under a proper rent agreement with its owner, Shri Gyan Singh, which material, according to the appellant, had not been duly considered.

(ix) That effective cross-examination of the persons whose statements formed the principal basis of the case was not afforded: Learned Counsel submitted that the persons whose statements were relied upon to connect the appellant with the premises were not effectively subjected to cross-examination, despite their statements containing material assertions concerning the alleged identification of the shed, tenancy, rent,

ownership, presence of the appellant and his alleged connection with the cigarettes. In the absence of an effective opportunity to test such statements, and particularly where the same are not supported by independent documentary evidence, reliance thereon was contended to cause serious prejudice to the Appellant and to offend the principles of natural justice. It was further emphasised that none of the persons whose statements were relied upon had claimed to have actually witnessed the appellant dealing with the cartons containing the foreign-origin cigarettes.

(x) That Section 112(b) is a personal penal provision and cannot be invoked merely because the goods are liable to confiscation: The appellant submitted that the liability of the goods to confiscation and the personal culpability of an individual under Section 112(b) are distinct and require separate consideration. The mere recovery of confiscable goods from a particular premises cannot automatically render every person whom the Department seeks to associate with such premises liable to personal penalty. In the absence of cogent, reliable and corroborated evidence establishing the Appellant's own conscious involvement in the acquisition, possession, harbouring, keeping, dealing with or otherwise facilitating the smuggled goods, the essential ingredients for imposition of penalty under Section 112(b)(i) are not satisfied.

11.1. The Ld. Counsel for the appellant therefore prayed for waiver of the penalty of Rs.39,00,000/- imposed upon the present appellant.

12. The Ld. Authorized Representative appearing for the Revenue, on the other hand, supported the impugned order and submitted that the evidence collected during investigation, particularly the statements of Shri Prakash Chand Sharma, Shri Bipul Basumatary and other persons acquainted with the premises, sufficiently establishes the appellant's connection with and control over the shed from which the huge quantity of foreign-origin cigarettes was recovered. It was contended that the recovery of 33,60,000 sticks of cigarettes, valued at approximately Rs.3,98,00,000/-, coupled with the material on record connecting the appellant with the said premises, establishes his involvement in the acquisition, possession and/or harbouring of the smuggled goods, thereby attracting the provisions of Section 112(b)(i) of the Customs Act, 1962. The Learned Departmental Representative further submitted that the appellant's denial is unsupported by any cogent documentary evidence and cannot displace the statements and/or other material relied upon by the Department. Accordingly, it was prayed that the penalty of Rs.39,00,000/- imposed upon the appellant be upheld and the appeal be rejected.

13. Heard both the sides and perused the records available before us.

14. Having examined the records available before us, we find that the issue in the present appeal is confined to the sustainability of the personal penalty imposed upon the appellant under Section 112(b)(i) of the Customs Act, 1962.

15. At the outset, we find that the very foundation of the case against the appellant rests upon the allegation that the bamboo shed from which the foreign-origin cigarettes were recovered, was under his possession or control. The said cigarettes, however, were admittedly not recovered from the personal possession of the appellant, his vehicle, his residence or any established business premises belonging to him. The appellant has, throughout the proceedings, denied ownership, possession or control of either the said shed or the seized cigarettes, including in his statement dated 28.01.2019. In such circumstances. The Revenue, on the other hand, contends that the evidences brought on record during the investigation are sufficient for sustaining the penalty imposed against the appellant, which have established his role in the alleged offence.

Therefore, it is required to be examined as to whether the evidences on record establish, with a degree of certainty, that the appellant had the requisite possession, control, knowledge or involvement in respect of the foreign-origin cigarettes recovered from the bamboo shed in question, for the purpose of imposition of penalty under Section 112(b) of the Customs Act, 1962.

I. Evidence establishing possession or control of the bamboo shed

16. We find that the case of the Revenue against the appellant proceeds principally on the premise that the bamboo shed from which the cigarettes in question were recovered was in his possession or under his control. Such possession or control, however, is

required to be established from the material on record before any consequential penal liability can be fastened upon him. As already noted hereinabove, in the present case, the appellant has consistently denied having occupied, possessed or exercised control over the said shed, as also having any connection with the cigarettes recovered therefrom, including in his statement recorded on 28.01.2019.

16.1. The alleged tenancy of the appellant thus in effect rests substantially upon the statement of Shri Prakash Chand Sharma, who stated that a portion of the land had been given to the appellant on rent for Rs.11,000/- per month. However, no evidence in the form of rent agreement, rent receipt, bank record or other contemporaneous material evidencing payment or receipt of the alleged rent has been brought on record. Equally, there is no electricity record, municipal record, trade licence, permission, or other objective material available on record demonstrating that the appellant was the occupier or person exercising control over the particular bamboo shed from which the cigarettes were recovered. In the absence of such material, the identity of the person owning or occupying the shed at the time of seizure cannot be said to have been factually established.

16.2. We are, therefore, unable to accept the contentions of the Revenue which are based on a mere assertion of an alleged rental arrangement, unsupported by any contemporaneous documentary material. Even the other materials relied upon by the Revenue do not independently establish such possession or control. The alleged rental arrangement, therefore, remains essentially an assertion unsupported by contemporaneous or objective material, which aspect assumes significance

particularly because the appellant has throughout denied the alleged tenancy and the contemporaneous seizure record itself did not identify him as the occupier of the shed. In these circumstances, we find that the foundational fact of the appellant's possession or control over the particular premises has not been established with sufficient cogency.

II. Statements relied upon by the Department require independent corroboration

16. The case of the Revenue, insofar as the present appellant is concerned, is essentially built upon statements of Shri Prakash Chand Sharma, Shri Bipul Basumatary, Shri Dasai Shah and Shri Harihar Das. It is imperative to note that in cases where such statements constitute the principal, and substantially, the only material connecting an individual with the premises and the goods, their probative value necessarily falls to be assessed in the context of the surrounding circumstances and the availability or otherwise of independent corroboration.

16.1. In the present case, Shri Bipul Basumatary is the person who is stated to have verbally informed the officers at the time of search operations that the shed belonged to the appellant. However, such alleged identification is conspicuously absent from the contemporaneous seizure documents prepared on the date of recovery. Further, Shri Bipul Basumatary was not shown as a seizure witness, but merely denoted as a person present 'near the shed'. The evidentiary significance of his subsequent statement must, therefore, be considered with due circumspection, particularly when it is sought to be employed as the

principal connecting link between the appellant and the seized goods.

16.2. Likewise, the statement of Shri Prakash Chand Sharma, the co-accused, inter alia alleged that the appellant had taken a portion of the land on rent, but does not receive the necessary corroboration from any documentary evidence establishing the alleged tenancy or payment of Rs.11,000/- per month. It is well settled that suspicions, howsoever strong, cannot take the place of proof. Further, we find substance in the appellant's contention that Shri Prakash Chand Sharma himself being proceeded against in connection with the very transaction, his statements cannot be relied upon independently in these proceedings.

16.3. Furthermore, we find that the statements of Shri Dasai Shah and Shri Harihar Das do not materially improve the position of the Revenue either. It is a fact that neither of them was present at the time of seizure. Equally, the fact that the appellant may have had a garage or office in the vicinity, as stated by the deponents, cannot, by itself, establish that he was in possession or control of the particular bamboo shed from which the cigarettes were recovered. Proximity of an admittedly separate business establishment cannot be transmuted into possession of another premises in the absence of evidence establishing the intervening link.

16.4. More importantly, none of the aforesaid statements, even taken at their highest, furnishes direct evidence that the appellant had handled the cartons, received or stored the cigarettes, exercised conscious possession over them, or had knowledge of their illicit character. In the absence of independent

corroboration connecting the appellant with the particular goods, the said statements, viewed collectively, do not in our considered opinion constitute sufficient grounds for sustaining a substantial personal penalty under Section 112(b) as imposed in this case.

III. Significance of the Panchnama and other seizure records

21. It would also be relevant to take note of the records prepared at the very inception of the proceedings. The Panchnama drawn on 28.11.2018 records that the owner of the land could be ascertained as Shri Prakash Sharma, whereas the ownership of the bamboo shed could not be ascertained. For ease of reference, the relevant portion of the said Panchnama is reproduced below: -

> *"On being called upon by some persons who identified themselves as DRI officers from Guwahati on 28.11.2018 at around 1300 hrs, we the above named Panchas presented ourselves near a plot of land which was being used as truck parking. The officers informed us that they have received specific information that certain sheds within that truck parking contains huge quantity of smuggled goods. The officers further told us that they intend to conduct an inspection of the said sheds and to be the witness to the proceedings. As we acceded to their request, the officers entered the plot of land and on preliminary scrutiny a shed made of bamboo thatch was identified. The officers asked certain people who were in the compound as to who the owner of the shed is.* ***No one could shed any light on the ownership of the sheds.*** *However on enquiry with a garage owner who was found in that parking yard, 'it was ascertained that the owner of the land is one Shri Prakash Sharma who hardly visits the land and that the entire land has been rented out to many persons……..."*
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> [Emphasis supplied]

21.1. This contemporaneous record assumes importance. The seizure proceedings were undertaken on 28.11.2018, and the documents prepared in the immediate course thereof constitute the earliest record of what the investigating officers themselves were able to ascertain regarding the premises. The subsequent emergence of a version identifying the appellant as the person to whom the shed allegedly belonged, therefore, cannot be viewed in isolation from the fact that the seizure records themselves did not identify him either as the owner or occupier of the shed.

21.2. The investigation itself thus suffers from a lacuna as there was, in our considered view, nothing which precluded the Revenue from bringing on record cogent or independent material establishing such identification, possession or control, which would be crucial to sufficiently establish the role of the appellant from the genesis of the case. In such circumstances, some independent corroborative material would ordinarily be required before such statements can be elevated to the status of conclusive proof of possession or control. However, in the present case, we find that no such independent material of sufficient probative value has been brought on record by the Revenue.

21.3. The above aspect assumes significance since the question before us is not merely whether the cigarettes were of foreign origin or were liable to confiscation; nor is the question whether the Department was justified in investigating the persons connected with the premises. The narrower question is whether the material on record establishes the appellant's own culpable connection with the goods so as to attract the personal penal consequences

contemplated under Section 112(b) of the Act. A finding of such liability cannot rest merely upon an inference of association with the premises unsupported by reliable evidence of possession, control or conscious involvement on record.

22. We also take note of the decision of this Tribunal in *Ajay Sarawagi v. Commissioner of Customs (Preventive), NER, Shillong [Final Order 77758 of 2025 dated 24.11.2025 in Customs Appeal No. 76438 of 2025],* wherein, under similar circumstances concerning foreign-origin cigarettes recovered from a godown, the Tribunal set aside the penalty imposed under Section 112(b) observing as under: -

> *"5.2. A perusal of section 123 of the Customs Act, 1962, reproduced above reveals that in respect of the goods notified under the said section, the onus to prove that the said goods are not smuggled rests with the person who claims the ownership of the goods. Cigarettes is a notified item, which is also under seizure in this case. Thus, the ownership to prove that the said goods are not smuggled rests with the Appellant, if he claims the ownership of the goods. In the present case, we find that the Appellant categorically said that he was not the owner of the said goods. It is on record that the Appellant admitted that he was the owner of the goods in his statement recorded under Section 107 of the Customs Act on 03.03.2019, when he was under custody of the Customs officers. He was formally arrested on 03.03.2019 and no further statement was recorded thereafter that could qualify as voluntary. In this regard, we agree with the submission of the Appellant that the statement obtained while an accused is in custody are inherently involuntary. In the absence of any independent corroboration, they are inadmissible in law. Thus, we find that other than his own statement and the statement of the co-accused Shri, Amarjit Sahu, there is no other evidence to implicate that the Appellant was the owner of the goods. Thus, we observe that the ownership of the goods has not been claimed by the Appellant. On the contrary, the ownership has been thrust on him. Thus, we hold that the provisions of section 123 of the Customs Act are not applicable in this case, as the Appellant has not claimed the ownership of the impugned goods.*
>
> *.....*

> *6.4. Thus, we hold that mere inculpatory statement of the co-accused about ownership of the goods cannot be the basis for implicating the Appellant in the alleged offence and imposing penalty on him under Section 112(b) of the Customs Act, 1962. In view of the above decisions, we hold that the statement of the co-accused cannot be relied upon to implicate the appellant in the alleged offence, without any independent corroborative evidence."*

23. In view of the foregoing and applying the ratio of the above decision to the facts before us, we find that the essential factual link between the appellant and the bamboo shed has not been established by cogent and independent evidence. In the facts before us, the alleged tenancy of the shed has not been substantiated by any contemporaneous documentary material; the statements relied upon by the Revenue do not receive sufficient independent corroboration; and, significantly, the contemporaneous Panchnama and seizure records do not identify the appellant as the owner or occupier of the shed. In such circumstances, the requisite ingredients for fastening a personal penalty under Section 112(b) cannot be said to have been established merely on the basis of an inferred association with the premises.

24. Viewed cumulatively, therefore, the material on record does not establish, with the requisite degree of certainty, that the appellant was in possession or control of the bamboo shed, much less that he had conscious knowledge of, or any active involvement with, the foreign-origin cigarettes recovered therefrom. The essential ingredients necessary for fastening penalty under Section 112(b)(i) of the Act are consequently not established against the appellant.

25. Consequently, the penalty of Rs.39,00,000/- imposed upon Shri Jagtar Singh under Section 112(b)(i) of the Customs Act, 1962 cannot be sustained and is accordingly set aside.

26. The appeal is disposed of in the above terms.

(Order pronounced in the open court on **30.10.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd