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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76443 of 2024

(Arising out of Order-in-Original No.CCP/NER/12/2020 dated 08.06.2020 passed by Commissioner of Customs (Preventive), North Eastern Region, Shillong.)

Shri Nogendra Chandra Paul
(S/o (L) N.C. Paul,
Resident of 20/21, Parshunath Chowdhury Area, Rilbong, Shillong-793004.)
...Appellant

VERSUS

Commissioner of Customs (Prev.), NER, Shillong
.....Respondent
(Custom House, 110, M.G. Road, Shillong-793001, Meghalaya)

APPEARANCE

Shri Pranab Sikder & Shri D. Bhattacharya, Advocates for the Appellant (s)
Shri R. Chakraborty, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 76529/2026

DATE OF HEARING : 07.10.2026
DATE OF DECISION : 28.10.2026

R. MURALIDHAR :

Brief facts of the case are that as per the Show Cause Notice dated 27.09.2019, on 01.04.2019, the Customs Preventive Officers, Headquarters, Shillong, found 13 cartons of WIN-brand cigarettes and 54 boxes of "N-RAT" rat-killing glue lying unattended in a corner of the Bara Bazar parking lot. No person claimed the goods, and the officers took possession of them.

2. During surveillance, the officers noticed a porter carrying 3-4 carton from the parking lot towards Shop/Godown No.59/60C, Bara

Bazar. The premises were found locked and were sealed in the presence of a police officer.

3. On 02.04.2019, under a search authorization, the premises were opened and searched in the presence of Shri Haribol Das alias Pradiop Das, stated to be an employee of the Appellant. The search yielded 77 cartons of cigarettes, 14 cartons of rice cookers and other goods. In his statement under Section 108 of the Customs Act, 1962, Shri Haribol Das stated that the premises had been taken on rent by the Appellant, and that the cigarettes had been brought by persons named Imran and Alauddin, whose addresses he did not know. In his statement dated 06.04.2019, the Appellant admitted taking the premises on rent for dealing in electrical goods and Chinese-made crockery, but denied any illegal activity. He claimed only 15 cartons of cigarettes and the rice cookers as his own, and stated that 20 cartons belonged to one Shri Imran (Mobile No.7629906285) and 42 cartons to one Shri Alauddin. Para 3.4 of the Show Cause Notice itself records the address of Shri Imran as Dongktieh, Nongthymmai. No verification of Shri Imran or Shri Alauddin was undertaken.

4. The Show Cause Notice was issued on 27.09.2019. After due process, the Adjudicating authority has confiscated the cigarettes of foreign origin absolutely. He also confiscated other items valued at Rs.1,58,000/- giving an option to pay redemption fine of Rs.40,000/-. He imposed penalty of Rs.10.00 Lakhs on the Appellant. Hence the present Appeal before the Tribunal.

5. The Ld.Consultant appearing on behalf of the Appellant submits that statements were recorded from the Appellant and one more person Shri Haribol Das alias Pradip Das. The Appellant vide his letter dated 10.04.2019, has retracted the statement earlier recorded by him on 08.04.2019. Therefore, the Ld.Consultant submits that the same is not to be taken as an evidence in support of the Revenue’s case. He further

submits that both during the first recorded statement on 08.04.2019 and by way of retraction letter dated 10.04.2019 the Appellant has stated that only 15 cartons of Cigarettes belonged to him. As a matter of fact, the 15 cartons of Cigarettes are of Indian make. He has also stated that the goods belonged to two persons – one Shri Imran and another Md.Alauddin. Their Mobile numbers are also shared with the Department. However, the Department has not taken up any verification at the end of these persons. It is submitted that the godown is shared by several persons on sharing basis. The Appellant owns only 15 cartons of Indian made Cigarettes and 24 rice cookers and 14 ceramic stoves.

6. The Ld.Consultant submits copy of CGST Invoice No.PB 2019-0382 dated 25.03.2019 to show that the 15 cartons of Gold Flake Cigarettes have been bought by the Appellant. He further relies on the following case laws :

Tele Brands (India) Pvt.Ltd. v. CC(Import), Mumbai
[2016 (336) ELT 97 (Tri.-Mumbai)]

In this case it has been held that confessional statement once retracted cannot be considered as proper confessional statement.

Shri Rahul Gupta v. CC, CGST, CX & Customs, Indore
[vide Order No.50932/2026 dated 19.05.2026]

In this case it has been held that when the goods are not liable for confiscation, the penalty under Section 112(B) of the Customs Act cannot be imposed.

Ajay Sarawagi v. Commissioner of Customs (Prev.), Shillong
[2023 (385) ELT 557 (Tri.-Kolkata)]

It is held that based on the past conduct, no penalty can be imposed in respect of the newly alleged offense.

7. In view of these submissions, the Ld.Consultant prays that the Appeal may be allowed.

8. The Ld.AR for the Department submits that when the premises were searched, 89 cartons of Cigarettes of foreign brand were found. Apart from that rice cookers and ceramic stoves were also found. The Appellants in their statement dated 08.04.2019 has confessed that he was dealing with smuggled goods and earlier also he was charged with dealing in smuggled goods. Therefore, he submits that proper investigation has been taken up by the Department to impose penalty on the Appellant.

9. Heard both sides and perused the appeal papers and other documents produced before me.

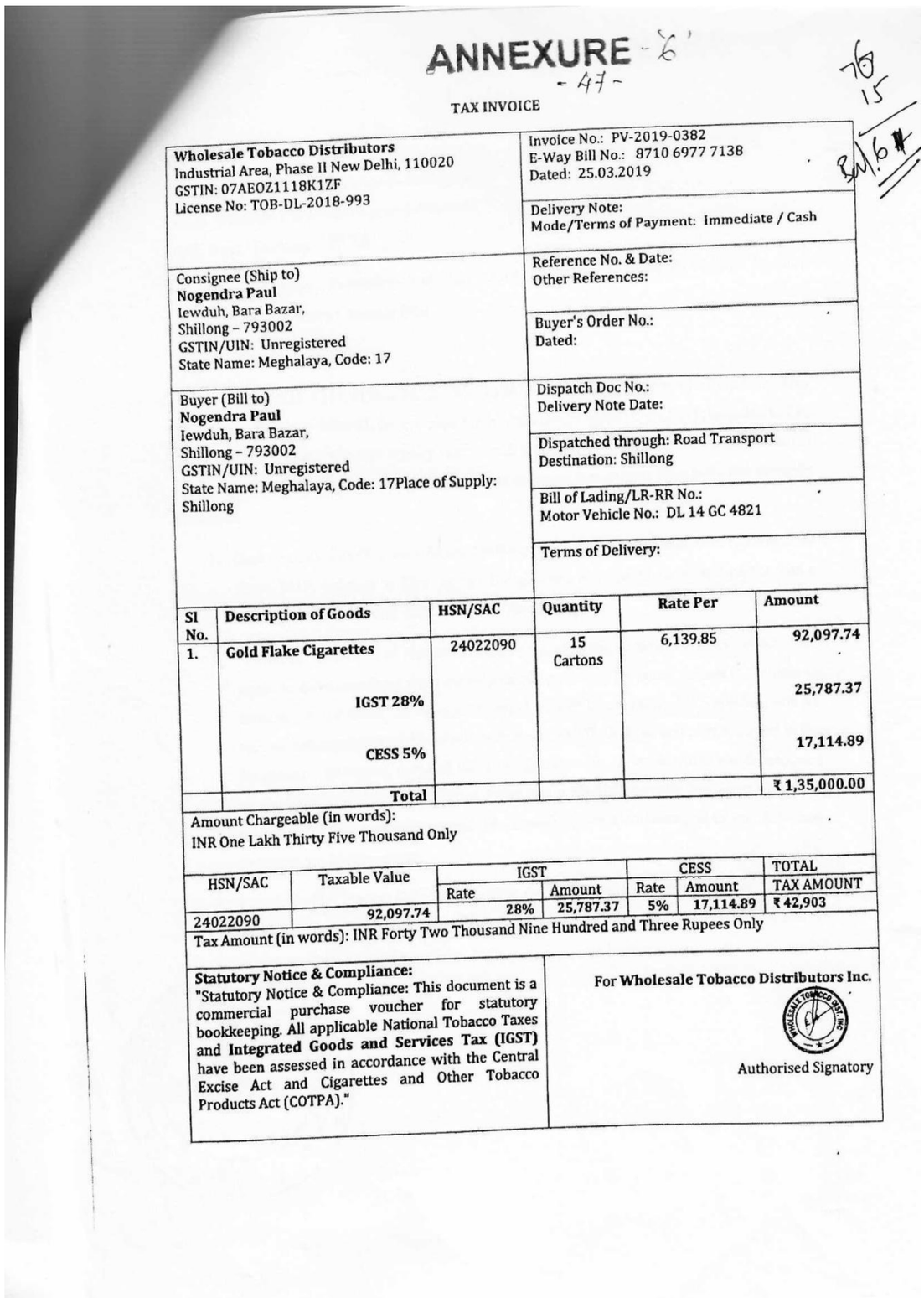
10. I have gone through the recorded statement of the Appellant. It was given by him on 08.04.2019. I find that towards question No.5 he has answered that 15 cartons of Cigarettes belonged to him. Subsequently, the Appellant has vide his letter dated 10.04.2019 which was submitted to the Office of the Commissioner of Customs (Preventive) on 16.04.2019, retracted the statement. In the recorded statement as well as in the letter dated 10.04.2019, he has given the details of one Shri Imran and another person Md. Alauddin along with their mobile numbers. So far as this statement that the godown was being used by several persons, he has also give the mobile number of the owner stating that this fact can be verified from her. From the entire proceedings I do not find any follow up action has been taken to ascertain the statement of Shri Imran and Md.Alauddin or even from the landlord. It is also on record that the statement given by the Appellant on 08.04.2019 was retracted by him within two days on 16.02.2019. Therefore, on this issue I have for reference the case of **Tele Brands (India) Pvt.Ltd. v. CC(Import), Mumbai**, cited supra, wherein the Tribunal has held as under :-

> ***"7.*** *We observed that the department heavily relied upon the statements of Shri Prakashchandra Pandya and Shri Nandgopal*

Govindwamy Naidu. We find that both the persons have retracted their so called confessional statements vide letter dated 31-7-2006. Therefore the said statements cannot be considered as confessional statements. The ld. Special Consultant appearing on behalf of the Revenue relying on judgment of K.P. Abdul Majeed (supra) submits that the retraction letter was addressed to the Commissioner, whereas the retraction should be necessarily addressed to the officer before whom statement was given. On perusal of the copies of the said retraction letter submitted to the Commissioner, produced by the ld. Counsel, it clearly shows that the said letter has been marked and reached to the concerned investigating officers. Therefore even the retraction letter is addressed to the Commissioner but since it has reached to the concerned officer, it is as good as submitted to the said investigating officer. Moreover, if at all there is any objection of the department on the said retraction, nothing prevented the departmental officers to reject the same with cogent reason or to record a counter statement in context with the retraction. We have seen that no such effort was shown by the department. In such situation, the retraction letter cannot be discarded. We are therefore of the view that statements which were retracted cannot be accepted as evidence."

11. I find that to the facts of the present case the cited case law is applicable.

12. Coming to the further claim of the Appellant that only 15 cartos of Cigarettes belonged to him, he has produced the tax invoice dated 25.03.2019, which is extracted below :-



ANNEXURE - 6'
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TAX INVOICE

Wholesale Tobacco Distributors Industrial Area, Phase II New Delhi, 110020 GSTIN: 07AEOZ1118K1ZF License No: TOB-DL-2018-993	Invoice No.: PV-2019-0382 E-Way Bill No.: 8710 6977 7138 Dated: 25.03.2019
	Delivery Note: Mode/Terms of Payment: Immediate / Cash
Consignee (Ship to) **Nogendra Paul** Iewduh, Bara Bazar, Shillong – 793002 GSTIN/UIN: Unregistered State Name: Meghalaya, Code: 17	Reference No. & Date: Other References:
	Buyer's Order No.: Dated:
Buyer (Bill to) **Nogendra Paul** Iewduh, Bara Bazar, Shillong – 793002 GSTIN/UIN: Unregistered State Name: Meghalaya, Code: 17Place of Supply: Shillong	Dispatch Doc No.: Delivery Note Date:
	Dispatched through: Road Transport Destination: Shillong
	Bill of Lading/LR-RR No.: Motor Vehicle No.: DL 14 GC 4821
	Terms of Delivery:

Sl No.	Description of Goods	HSN/SAC	Quantity	Rate Per	Amount
1.	**Gold Flake Cigarettes**	24022090	15 Cartons	6,139.85	92,097.74
	IGST 28%				25,787.37
	CESS 5%				17,114.89
	Total				₹ 1,35,000.00

Amount Chargeable (in words):
INR One Lakh Thirty Five Thousand Only

HSN/SAC	Taxable Value	IGST		CESS		TOTAL
		Rate	Amount	Rate	Amount	TAX AMOUNT
24022090	92,097.74	28%	25,787.37	5%	17,114.89	₹ 42,903

Tax Amount (in words): INR Forty Two Thousand Nine Hundred and Three Rupees Only

Statutory Notice & Compliance:
"Statutory Notice & Compliance: This document is a commercial purchase voucher for statutory bookkeeping. All applicable National Tobacco Taxes and **Integrated Goods and Services Tax (IGST)** have been assessed in accordance with the Central Excise Act and Cigarettes and Other Tobacco Products Act (COTPA)."

For **Wholesale Tobacco Distributors Inc.**

Authorised Signatory

13. Since the Appellant was having only 15 cartons of Cigarettes, the other seized Cigarettes of foreign origin belonged to two other persons whose details were not verified by the Appellant, the condition that the Appellant was knowingly dealing with any goods liable for confiscation under Section 111 of the Customs Act, 1962 does not get fulfilled. The

Delhi Tribunal in the case of **Shri Rahul Gupta v. The Commissioner of Customs, CGST, Central Excise & Customs**, cited supra, has held as under :

> *"12. It is seen from the impugned order that reliance has been placed on the statement made by the appellant under section 108 of the Customs Act. This statement of the appellant cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed. This is what was also held by the Tribunal in M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur[6] .*
>
> *…….*
>
> *14. Penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant as for imposing penalty two conditions are required to be followed namely,*
>
> *(i) Acquiring possession or being in anyway concerned or dealing with any goods that are liable for confiscation; and*
>
> *(ii) Knowledge or belief about such goods being liable for confiscation.*
>
> *15. The aforesaid two conditions are not satisfied in the present case. The appellant had not dealt with the goods that are liable to confiscation and nor is there anything to show that the appellant had knowledge or belief that such goods were liable to confiscation. The impugned order also does not provide any basis to assume that the appellant had any knowledge that the goods are liable to confiscation under section 111 of the Customs Act.*
>
> *16. Thus, in the absence of knowledge or belief that such goods are liable to confiscation under section 111 of the Customs Act, penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant."*

14. Considering the above factual details discussed and the cited case laws, I set aside the penalty of Rs.10.00 Lakhs imposed on the Appellant.

15. In respect of confiscation of foreign origin electric rice cooker and ceramic stoves, both sides have not made out any proper case towards

confiscation as well as towards the release of the same. I take the view that considering the value of the goods which also is only on some assumption basis, the goods should be released on payment of redemption fine of Rs.10,000/- (Rupees Ten Thousand only).

16. The Appeal stands disposed of thus.

(Order pronounced in the open court on 28.10.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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