



## ***Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation***

**Date: 17.09.2025**

### **CESTAT Allahabad Sets Aside Penalties in Alleged Onion Export**



*This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Allahabad, has set aside penalties imposed on three appellants accused of illegally exporting onions to Nepal under the guise of potatoes. The case, which revolved around alleged violations of a government ban on onion exports, highlights the importance of admissible evidence and procedural safeguards in adjudication processes. This blog delves into the details of the case and the Tribunal's reasoning behind its decision.

#### **Background of the Case**

The controversy began with the issuance of a Show Cause Notice (SCN) dated September 29, 2020, by the Directorate of Revenue Intelligence (DRI). The SCN alleged that M/s Sai Ram Enterprises, its proprietor Appellants (a Superintendent at the Land Customs Station, Toothibari) were involved in exporting onions to Nepal despite a ban imposed by the Director General of Foreign Trade (DGFT) through Notification No. 21/2019-20 dated September 29, 2019. The onions were allegedly exported under the guise of potatoes using falsified shipping bills.

The Joint Commissioner of Customs adjudicated the SCN and imposed penalties of Rs. 5,00,000 each on the appellants under Sections 114AA and 114(i) of the Customs Act, 1962. These penalties were upheld by the Commissioner (Appeals), prompting the appellants to approach the Tribunal.

## Key Issues in the Case

The Tribunal was tasked with determining whether the alleged illegal export of onions had been conclusively proven and whether the penalties imposed on the appellants were justified. The case hinged on several pieces of evidence, including:

1. Statements of the appellants and other individuals.
2. Entries in the SSB register.
3. Toll records showing vehicle movement.
4. Allegations of procedural lapses at the Land Customs Station.

## Tribunal's Observations

The Tribunal meticulously analyzed the evidence presented by the revenue authorities and found several shortcomings:

### 1. Reliability of Statements:

- The Tribunal noted that the statements of the appellants and other individuals were retracted, raising questions about their reliability.
- It emphasized that statements recorded under duress or coercion cannot be treated as substantive evidence, citing precedents from the Supreme Court and High Courts.

### 2. Non-Compliance with Section 138B:

- The Tribunal observed that the revenue authorities failed to follow the mandatory procedure under Section 138B of the Customs Act, which requires witnesses to be examined and cross-examined before their statements can be admitted as evidence.

### 3. SSB Register Entries:

- The Tribunal held that the entries in the SSB register were not conclusive evidence of onion export, as the author of the entries was neither produced for cross-examination nor provided an affidavit.

### 4. Toll Records:

- While toll records showed vehicle movement, they did not conclusively prove that the vehicles were transporting onions.

### 5. Procedural Lapses:

- Allegations against Appellant regarding procedural lapses at the Land Customs Station were deemed insufficient to justify penalties under Section 114(i) of the Customs Act.

## Final Decision

The Tribunal concluded that the revenue authorities failed to prove the illegal export of onions with admissible evidence. Consequently, it set aside the penalties imposed on all three appellants, providing them with consequential relief.

## Implications of the Ruling

This landmark decision underscores the importance of adhering to procedural safeguards and relying on admissible evidence in adjudication processes. It serves as a reminder to enforcement agencies to ensure fairness and transparency while investigating alleged violations. For businesses and individuals, the ruling highlights the significance of challenging penalties based on inadmissible or unreliable evidence.

## Conclusion

The CESTAT Allahabad's decision in this case is a testament to the principles of natural justice and the rule of law. By setting aside penalties based on inadmissible evidence, the Tribunal has reinforced the need for robust and fair adjudication processes. This ruling will undoubtedly serve as a precedent for similar cases in the future, ensuring that justice prevails in the face of procedural lapses and unsubstantiated allegations.

**Source: CESTAT Allahabad**

## Disclaimer

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

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70627 of 2024**

(Arising out of Order-in-Appeal No.722-725-CUS/APPL/LKO/2022 dated 26.09.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

**M/s Sai Ram Enterprises, .....Appellant**

(Behind City Guest House, Main Road,  
Sonauli, District-Maharajganj, U.P.-273308)

*VERSUS*

**Commissioner of Customs (Preventive),  
Lucknow ....Respondent**

(Commissionerate, Lucknow)

**WITH**

**Customs Appeal No.70626 of 2024**

(Arising out of Order-in-Appeal No.722-725-CUS/APPL/LKO/2022 dated 26.09.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

**Shri Sunny Kumar Maddheshiya, .....Appellant**

(Proprietor of M/s Sai Ram Traders,  
Behind City Guest House, Main Road,  
Sonauli, District-Maharajganj, U.P.-273308)

*VERSUS*

**Commissioner of Customs (Preventive),  
Lucknow ....Respondent**

(Commissionerate, Lucknow)

**AND**

**Customs Appeal No.70198 of 2024**

(Arising out of Order-in-Appeal No.1066-CUS/APPL/LKO/2022 dated 16.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

**Shri Rajiv Kumar Biswas, .....Appellant**

(1/999, Vishal Khand, Gomti Nagar,  
Lucknow-226010)

*VERSUS*

**Commissioner of Customs (Preventive),  
Lucknow ....Respondent**

(3/194, Vishal Khand, Gomti Nagar,  
Lucknow-226010)

**APPEARANCE:**

Shri Nishant Mishra, Advocate & Shri Tanmay Sadh, Advocate for the Appellant No.3 and Shri Prakhar Shukla, Advocate for Appellants No.1 & 2.

Shri Santosh Kumar, Authorized Representative for the Respondent

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

**FINAL ORDER NOs.- 70656-70658/2025**

DATE OF HEARING : 02.07.2025  
DATE OF PRONOUNCEMENT : 16.09.2025

All the aforesaid three appeals arises from the same Show Cause Notice<sup>1</sup> and same adjudication order, hence the three appeals were heard together.

2. Appeal No. C/70627/2024 and Appeal No. C/70626/2024 arises from Order-in-Appeal No.722-725-CUS/APPL/LKO/2022 dated 26.09.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow by which the penalties of Rs.5,00,000/- has been confirmed on M/s Sai Ram Enterprises<sup>2</sup> and Shri Sunny Kumar Maddheshiya<sup>3</sup> under Section 114AA of the Customs Act, 1962<sup>4</sup>.

3. Appeal No. C/70198/2024 arises from Order-in-Appeal No.1066-CUS/APPL/LKO/2022 dated 16.11.2022 passed by Commissioner (appeals), Customs, CGST & Central Excise, Lucknow by which the imposition of penalty of Rs.5,00,000/- under Section 114(i) of the Act on Shri Rajiv Kumar Biswas<sup>5</sup> has been confirmed.

4. Both the aforesaid Orders-in-Appeal dated 26.09.2022 and 16.11.2022 were passed by Commissioner (Appeals) in separate appeals arising from Order-in-Original No.69/JC/2021-22 dated 07.12.2021 passed by Joint Commissioner, Customs (Preventive) Commissionerate, Lucknow, by which SCN dated 29.09.2020 issued by the Additional Director, Directorate of

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<sup>1</sup> SCN

<sup>2</sup>Appellant No.1

<sup>3</sup>Appellant No.2

<sup>4</sup>Act

<sup>5</sup>Appellant No.3

Revenue Intelligence, Lucknow Zonal, Lucknow was adjudicated and it was held that the onions exported vide four shipping bills retain the character of goods liable to confiscation and penalties of Rs.5,00,000/- each was imposed on Appellant No.1 & 2 under Section 114AA of the Act and a penalty of Rs.5,00,000/- on Appellant No.3 under Section 114(i) of the Act.

5. Briefly stated, the facts of the case are such that Appellant No.1, a proprietorship firm of Smt. Girija Devi, mother of Appellant No.1, was engaged in trading of potato, onion, fruits and export of the same, under import export license. The Appellant No.3, at relevant point of time, was posted as Superintendent, Land Customs Station<sup>6</sup>, Thoothibari, Maharajganj, Uttar Pradesh. It is the case of Appellants that by Invoices No.0335, 0336, 0337 & 0338, all dated 30.09.2019 of Rs.9,90,000/- each, the Appellant No.1 exported potatoes to one M/s Subh Ganpati Trade and Suppliers, Rupandehi Nepal. After loading the consignment of potatoes, in twelve vehicles, four shipping bills No.7826077, 7826079, 7826080 & 7826106, all dated 01.10.2019 along with commercial invoices were presented before the Proper Officer posted at LCS Toothibari, who, on being satisfied that the goods entered for export are not prohibited goods, assessed the four shipping bills and issued Let Export Order permitting clearance of goods for exportation.

6. It is further the case of the Appellants that after the export was completed, the officers of Department of Revenue Intelligence<sup>7</sup> started making enquiries on the basis of some newspaper reports that despite ban on exports of all varieties of onions by Notification No.21/2019-20 dated 29<sup>th</sup> September' 2019 issued by Director General of Foreign Trade<sup>8</sup>, onion was exported through LCS, Toothibari. The newspaper reports also contained details of registration numbers of vehicles used for export. By letter dated 04.10.2019, the DRI officers requested Appellant No.3 to provide the export documents, which were

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<sup>6</sup> LCS

<sup>7</sup> DRI

<sup>8</sup> DGFT

provided by Appellant No.3 vide letter dated 04.10.2019. In follow up action, search was conducted at the business and residential premises of Appellant No.1 on 05.10.2019 and statements of employees of Appellant No.1 were recorded. On 10.10.2019, the officers visited the office of SSB Maharajganj and obtained copy of Gate Register of LCS Toothibari from 29<sup>th</sup> September' 2019 to 4<sup>th</sup> October' 2019, on the basis of which the officers formed an opinion that five vehicles crossed border and the commodity shown was onion. By letter dated 04.10.2019, Appellant No.3 was requested to provide video footage of LCS gate for 30.09.2019 and 01.10.2019 and when the same was not provided citing technical difficulty, he was requested to make meaningful arrangement to preserve the video footage and intimate DRI, but it has been alleged that no positive response was received from Appellant No.3.

7. Statement of Appellant No.2 was then recorded on 16.10.2019 during which he provided the details of his suppliers and also buyers of Nepal and further admitted that actually onions were exported to Nepal under the garb of potato. Statements of some suppliers, whose details was revealed by Appellant No.2 was also recorded who admitted to have supplied onions to Appellants No.1 & 2. By statement dated 08.11.2019, Appellant No.2 agreed to the contents of his earlier statements. Subsequently, on 19.11.2019, Appellant No.2 was arrested and was released on bail by Sessions Court on 06.01.2020. Statement of one of the driver Shri Laik Ahmed and few transporters were also recorded to the effect that under the grab of potato, onion was transported. During the course of investigation, statements of Shri Ashutosh Chandra Pal and Shri Naresh Kumar Rastogi, both Inspector of Customs, LCS Toothibari were also recorded, on the basis of which it was concluded that due procedure/SOP for export of goods was not followed. The officers also collected toll records showing movement of twelve vehicles from Nashik/Kanpur/Indore towards Chhapwa Toll, Nautanwa, Maharajganj and return as recorded in paragraph 36 of the SCN.

8. On the basis of aforesaid investigation, SCN dated 29.09.2020 under Section 124 of the Act was issued proposing to hold that the onions exported vide four shipping bills are liable for confiscation under Section 113(d) of the Act and imposing penalties under Section 114AA on Appellants No.1 & 2 and penalty under Section 114 on Appellant No.3. Proposal for imposition of penalty was also made against one M/s Sai Ram Traders, proprietorship firm of Appellant No.2 and certain other individuals. The SCN dated 29.09.2020 was adjudicated vide Order-in-Original No.69/JC/2021-22 dated 07.12.2021 by which proposals made in SCN were confirmed and it was held that the onions illegally exported against four shipping bills are liable for confiscation. Penalty of Rs.5,00,000/- each was imposed on Appellants No.1 & 2 under Section 114AA and penalty of Rs.5,00,000/- was imposed on Appellant No.3. A penalty of Rs.10,00,000/- was also imposed on M/s Sai Ram Traders along with personal penalties on certain other individuals, who are not in appeal before this Tribunal. Order-in-Original dated 07.12.2021 was challenged by Appellant No.1 & 2 along with M/s Sai Ram Traders before Commissioner (Appeals), which came to be decided by Order-in-Appeal dated Order-in-Appeal No.722-725-CUS/APPL/LKO/2022 dated 26.09.2022, by which imposition of penalties on Appellant No.1 & 2 was upheld but imposition of penalty on M/s Sai Ram Traders was set-aside. The Appellant No.3 also challenged Order-in-Original dated 07.12.2021 before Commissioner (Appeals), which was rejected by Order-in-Appeal No.1066-CUS/APPL/LKO/2022 dated 16.11.2022. Aggrieved with the two appellate orders, the Appellants have preferred the present three appeals.

9. Heard Shri Nishant Mishra along with Shri Tanmay Sadh, Ld. Counsels for Appellant No.3, Shri Prakhar Shukla, Ld. Counsel for Appellants No.1 & 2 and Ld. Authorized Representative for the Revenue.

10. Ld. Counsels for Appellant No.3 have contended that the entire case of revenue to allege export of onion under garb of potato is based on inadmissible evidence in the form of

statements without testing the same on the anvil of Section 138B of the Act, on the basis of statements which stood retracted, on the basis of material which does not conclusively prove export of onions and therefore, in absence of export of onion being conclusively proved, no penalty can be imposed on the Appellants. The Ld. Counsels for Appellant No.3 further submitted that SSB register relied upon by the revenue is not a statutory register and the same is meant for recording details of vehicles and not description of goods and the word onions alongwith value has been subsequently added which is clear from the difference in handwriting and in any case the entries contained therein cannot be accepted without producing the writer of such entries or his affidavit. The Ld. Counsels also submitted that due procedure/SOP for export of goods was followed and therefore penalty under Section 114(i) cannot be imposed on Appellant No.3.

11. Ld. Counsel for Appellants No.1 & 2 adopted the submissions made by Ld. Counsels for Appellant No.3 and submits that no case for imposition of penalty on Appellant No.1 & 2 is made out. He further submits that the statement dated 16.10.2019 of Appellant No.2 was obtained under duress and coercion and statement dated 08.11.2019 admitting export of onions and implicating Appellant No.3 was obtained after manhandling Appellant No.2, which fact was stated by him in his bail application and also before the lower authorities also.

12. Ld. Authorized Representative for the Revenue reiterated the findings recorded in the impugned orders and submitted that Appellant No.1 & 2 with the help of Appellant No.3 exported onions and therefore, penalties under Section 114AA and 114(i) has rightly been imposed on them, on the basis of material available on record.

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

14. The main issue involved in the present appeals is that whether there was an illegal export of onions by Appellant No.1 & 2 in violation of DGFT Notification No.21/2019-20 dated 29<sup>th</sup> September' 2019. I find that the allegation of export of onions

under the garb of potato in the SCN is based on statements dated 16.10.2019 & 08.11.2019 of Appellant No.2 admitting illegal export of onion to Nepal in connivance with Appellant No.3, statement dated 16.01.2020 of Shri Laik Ahmed owner cum driver of vehicle bearing registration No. UP36T-2864 stating that his vehicle loaded with onions crossed to Nepal along with four other vehicles, statements dated 13.11.2019 & 10.12.2019 of Shri Sanjay Kumar Gupta of M/s Ilu Traders admitting sale of onions to M/s Sai Ram Traders, statement dated 10.12.2019 of Shri Harikesh Narain Shukla proprietor of M/s Harikesh Transport Co. admitting transportation of onions from M/s Ilu Traders to M/s Sai Ram Traders from Kanpur to Sonauli vide Bilty No.1592 dated 28.09.2019, statements of few onion suppliers, statements of Shri Ashutosh Chandra Pal and Shri Naresh Kumar Rastogi, both Inspector of Customs, LCS Toothibari and toll records showing movement of vehicles in question.

15. From perusal of records, I find that revenue has heavily relied on the initial statements of Appellant No.2 admitting illegal export of onions in connivance with Appellant No.3 and has treated the same as substantive evidence. On the other hand, it is the case of the Appellants that the statements were retracted in bail application and it was submitted the statements were obtained under pressure and duress. A perusal of records shows that though this ground was specifically taken by Appellant No.2 & 3 in the appeal before the lower authorities, but still the lower authorities treated the initial statements of Appellant No.2 as substantive evidence, without finding out whether the said statements were voluntary or were recorded under duress or coercion. Thus, it was for the lower authorities to find out whether there was any duress or coercion, before relying on the statements since an involuntary statement is of no evidentiary value, as held by Hon'ble Supreme Court in **Commissioner of Customs vs. Ganpati Overseas (2023) 10 SCC 484**, as under:-

*"53. Thus, what is deducible from an analysis of the relevant legal provisions and the corresponding judicial pronouncements is that a customs officer is not a police officer. Further, the person summoned and who makes a statement under Section 108 is not an accused. However, a statement made by a person under Section 108 of the Customs Act before the customs officer concerned is admissible in evidence and can be used against such a person. Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement recorded is not correct, then, the very utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered under Section 108 to record statement, etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the person concerned to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers."*

16. I also find that once the initial statement were retracted by Appellant, it is no longer safe to rely on such statements, as held by Hon'ble Delhi High Court in **Commissioner of Central Excise vs. Vishnu & Co. Pvt. Ltd. (2016) 332 E.L.T. 793 (Del)**, where the Hon'ble Court held as follows:-

"41. What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard."

17. I also find that both Shri Ashutosh Chandra Pal & Shri Naresh Kumar Rastogi vide their defence replies submitted to the Adjudicating Authority had retracted their statements and the fact of such retraction is duly recorded in the Order-in-Original. The revenue has also relied on statement dated 16.01.2020 of Shri Laik Ahmed, owner cum driver of vehicle bearing registration No. UP36T-2864 stating that his vehicle loaded with onions crossed to Nepal along with four other vehicles. On this issue, the Counsels for the Appellants have contended that neither the said statement was tested on the anvil of Section 138B nor Shri Laik Ahmed was offered for cross examination. I find from record that the adjudicating authority has relied on statement of Shri Laik Ahmed without invoking Section 138B of the Act. Section 138B of the Act is *pari-materia* to Section 9D of the Central Excise Act, 1944, which was considered by Hon'ble Punjab & Haryana High Court in **Jindal Drugs Pvt. Ltd. vs. Union of India 2016 (340) E.L.T. 67 (P&H)** and the following was held:-

"16.If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1)

comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

(i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

**17.** There is no justification for jettisoning this procedure, statutorily prescribed by plenary Parliamentary legislation for admitting, into evidence, a statement recorded before the Gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D(1) of the Act. The use of the word "shall" in Section 9D(1), makes it clear that, the provisions contemplated in the sub-section are mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

**18.** The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudicating authority, as, in such an

*atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.*

*19. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice."*

18. Further, in **Basudev Garg vs. Commissioner of Customs 2013 (294) E.L.T. 353 (Del)**, it has been held that the provisions of Section 138B of the Act are identical to Section 9D of the Central Excise Act, 1944. In view of the above dicta, a statement recorded before an officer of customs, cannot be straight away relied upon, unless and until he invokes clause (a) of Section 138B(1) and in all other cases, the statement has to be first admitted in evidence by first summoning the person, examining such person and thereafter arriving at an opinion that the statement should be admitted in evidence. The records

reveal that neither clause (a) of Section 138B(1) has been invoked nor the procedure contemplated under clause (b) of Section 138B (1) has been followed in the present case and therefore it was not open for the adjudicating authority to rely on the statements of Shri Laik Ahmed, Shri Sanjay Kumar Gupta, Shri Harikesh Narain Shukla, statements of onion suppliers, statements of Shri Ashutosh Chandra Pal and Shri Naresh Kumar Rastogi. Thus, none of the said statements can be held to be admissible evidence against the Appellants.

19. Further, in view of law laid down by jurisdictional High Court in **Commissioner of Central Excise, Meerut-I vs. Parmarth Iron Pvt. Ltd. 2010 (260) E.L.T. 514 (All)**, once the revenue has not offered these persons for cross-examination, their statements cannot be considered as evidence and have to be eschewed from consideration. The Hon'ble High Court has held as under:-

*"16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered."*

20. In view of the above, the statements relied upon by the revenue have to be eschewed from consideration. Once eschewed, the other material relied upon by the revenue is the toll records of the twelve vehicles in question showing movement of vehicles from Nashik/Kanpur/Indore towards Chhapwa Toll, Nautanwa, Maharajganj and return as recorded in paragraph 36 of the show cause notice. Assuming the same to be correct, it

merely proves movement of vehicle to Nautanwa, Maharajganj and return from the said place and does not prove that the vehicles were transporting onions. In absence of any admissible evidence regarding the goods transported on the said vehicles, it cannot be presumed that the vehicles were transporting onions for delivery to Appellant No.2 or for crossing LCS, Toothibari. The last material relied by revenue is the entries made in the SSB register. Though submissions have been made by Ld. Counsels for the Appellant regarding fabrication in entries, difference in handwriting whereas the Ld. Authorized Representative has relied on the authenticity of said entries. However, without going into the factual dispute between the parties, I find that once it was the revenue who was relying on the entries, it was for the revenue to prove the same by either adducing the affidavit of the author of such entries or by producing the author for cross examination, as held by Hon'ble Supreme Court in **Bareilly electric Supply Co. Ltd. vs. Workmen and Ors. (1971) 2 SCC 617** as under:-

*"But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact*

*which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure -under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act 1947 and the rules prescribed therein permit it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again, if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt."*

21. In view of the above position of law, the entries in the SSB register can be relied upon after granting opportunity of cross-examination of writer of entries to the Appellants, which has not been done in the present case. In addition, the revenue has also not conducted any enquiry from the office of SSB, except taking copy of pages of SSB register, which are not conclusive. Thus, the last material relied upon by revenue is also of evidentiary value.

22. In view of the above discussion, the only possible conclusion is that the revenue has failed to prove illegal export of onions and the entire case is based on inadmissible evidence. Thus, the lower authorities have erred in concluding that there was illegal export of onions and the onions illegally exported are liable for confiscation under Section 113(d) of the Act. In absence of export of onions being proved, it cannot be said that

the Appellants No.1 & 2 used any false or incorrect material inviting penalties under Section 114AA of the Act and therefore, the imposition of penalties on Appellants No.1 & 2 are set-aside.

23. As regards Appellant No.3, the allegation of the revenue is regarding connivance for illegal export of onions, which in absence of admissible evidence, does not stands proved. The two Inspectors in their defence replies also retracted their earlier statements and therefore, it cannot be said that Appellant No.3 has done or omitted to have done any act inviting imposition of penalty under Section 114(i). I also find that other allegations against Appellant No.3 is regarding not following due procedure/SOP for export of goods, not providing video footage due to technical difficulty or making necessary arrangement for it, fades away and cannot lead to imposition of penalty under Section 114(i), in absence of any illegal export of onion.

24. In the result, all the three present appeals filed by Appellants are allowed, the impugned orders and imposition of penalties are set-aside, with consequential reliefs to the Appellants.

(Order pronounced in open court on - **16.09.2025**)

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

LKS