

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

REGIONAL BENCH - COURT No.I

**Customs Appeal No.70501 of 2024**

(Arising out of Order-in-Appeal No.25-CUS/APPL/LKO/2024 dated 24/01/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

**Mr. Rakesh Pandey,**

**.....Appellant**

(S/o Sri Ramanuj Pandey,  
Sonda, Salempur Road, Deoria-274001)

*VERSUS*

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

(7<sup>th</sup> Floor, Apratyaksh Kar Bhawan,  
Vibhuti Khand, Lucknow-226010)

**APPEARANCE:**

Shri Prakhar Shukla, Advocate for the Appellant

Shri A.K. Choudhary, Authorised Representative for the Respondent

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

**FINAL ORDER NO.70080/2026**

DATE OF HEARING: 12 March, 2026

DATE OF PRONOUNCEMENT: 24 March, 2026

**P. ANJANI KUMAR:**

M/s Rakesh Pandey, the appellant assails the impugned order dated 24.01.2024 passed by Commissioner (Appeals) of Customs, Central Excise & CGST, Lucknow.

2. Brief facts of the case are that Customs Officers received an intelligence to the effect that Canadian origin green peas were being illegally smuggled into India through Indo-Nepal border, intercepted four trucks at the godown and office of the Appellant on 12.10.2021. On completion of an enquiry/ investigation, a Show Cause Notice dated 08.04.2022, seeking confiscation of 45655 kgs of Green Peas alleged to be of foreign origin and the four trucks which were loaded with the green peas under various sub-sections of Section 111(b) of the Customs Act, 1962, was issued. Additional Commissioner, vide Order-in-

Original dated 23.03.2023, upheld the proposals in the SCN and imposed penalty of Rs.5lakhs on Shri Rakesh Pandey and imposed penalties on various persons involved. On an appeal filed by the Appellant, Learned Commissioner (Appeals) vide the impugned order dated 24.01.2024, upheld the Order-in-Original. Hence, this appeal.

3. Shri Prakhar Shukla, learned Counsel for the Appellant submits that the entire case has been made only on the basis of the statement of the person and no other evidence have been brought forth to substantiate the same. He further submits that the only evidence that was available to the Department was that the sacks containing the green peas bore the words, 'Canadian origin green peaspremium quality'. He submits that the department has not established that the green peas have been smuggled through the Nepal border and the seizure was also not in a Customs Station. Therefore, he submits that the seizure is illegal and the penalties imposed on various persons are unwarranted.

4. Shri A.K. Choudhary learned Authorised Representative for revenue reiterates the findings of the impugned order.

5. Heard both the sides and perused the records of the case.

6. We find that the recovery of smuggled green peas from the trucks parked near the godown is not disputed. We find Learned Commissioner (Appeals) relied on the statement of Shri Rakesh Pandey dated 13.10.2021 and he also relied on the statement made by the drivers that the green peas, loaded on their trucks, were smuggled from Nepal. The evidence gathered by the department is only in the form of statement of Shri Rakesh Pandey and the truck drivers and the marking on the sacks.

7. Undisputedly, the seizure has not taken place at any customs station or near the international border so that the officers could entertain reasons to believe that the impugned goods were smuggled. We find that other than merely alleging that the goods are smuggled, revenue did not establish the place,

the method, the time and the persons involved in the smuggling of the impugned green peas. Moreover, we find that green peas are not notified under Section 123 of the Customs Act, 1962 and therefore, the burden of proof is on the revenue to prove that the green peas are of smuggled nature. We find that the adjudicating authority has not examined the persons whose statements had been relied upon in terms of Section 138 B of the Customs Act, 1962, for establishing the case. Therefore, as held in the case of M/s Flamingo (DFS) Pvt. Ltd. 2018 (363) ELT 450 (Tri. -Hyd.) and M/s G-Tech Industries 2016 (339) ELT 209 (P&H), the statements cannot be relied upon. Thus, we find that when the statements cannot be relied upon, the only evidence that remains is in the form of markings on the sacks/gunny bags. The same cannot be held to be reliable evidence to prove a serious allegation such as smuggling. We find that a coordinate bench of the Tribunal at Kolkata in the case of M/s Gagan Deorah 2024 (14) Centax 26 (Tri. -Cal.) has dealt with the similar issue and held as follows: -

**"11.** *I find that the seizure was made from the Godown of the Appellant at Shillong city, which is not connected to the International Border. Goods were purchased under valued documents, which are mix of Indian and imported origin and the purchase documents were not proven to be false or fake. No evidence other than foreign markings on the bags was adduced to prove that the goods were smuggled.*

**12.** *Foreign markings or foreign origin of goods by itself does not render the goods as smuggled. Burden to prove the smuggled nature of goods is on the Revenue. Such burden was not discharged by adducing any positive tangible evidence. Thus, foreign origin of the goods even proved, smuggled nature thereof is not proven.*

**13.** *Purchase bills submitted by the Appellant were not verified at source to find whether the goods under seizure were actually covered by the documents or not. Mere fact that foreign origin of goods does not ipso facto lead to inevitable conclusion that the same are of smuggled character, as held in the following case laws:*

- (i) *Commissioner of Customs v. Monoranjan Bainik - 2004 (165) ELT. 237 (Tri - Kol.).*
- (ii) *Godari Rai v. Commissioner of Customs - [2003 \(160\) E.L.T. 1027/2003 taxmann.com 1389 \(CEGAT - Kol.\).](#)*
- (iii) *Dipak Deb- [2003 \(157\) E.L.T. 237 \(Commr. APPT\)](#)*
- (iv) *Jitendra Pawar v. Commissioner of Customs - [2003 \(156\) E.L.T. 622/2003 taxmann.com 908 \(CEGAT - New Delhi\)](#)*
- (v) *Naveed Ahmed Khan - [2005 \(182\) E.L.T. 494 \(Tri.-Bang.\).](#)*

*In the liberalized economy, foreign goods have free entry and found in the shops in abundance for almost each and every commodity. Foreign markings ipso facto does not prove smuggled nature of the goods. It needs corroborative evidence which is totally absent in the case. Therefore, Order of confiscation of the goods deserves to be set aside and quashed with consequential relief to the Appellant.”*

8. In view of the above, we find that the impugned order cannot be sustained and the same is set aside. The Redemption Fine of Rs.18,26,200/- and penalty of Rs.5,00,000/- imposed under Section 112(b) is also liable to be set aside.

9. In the result, appeal filed by the Appellant is allowed with consequential relief to the Appellant.

(Order pronounced in open court on-24 March, 2026)

Sd/-

**(P.K. CHOUDHARY)  
MEMBER (JUDICIAL)**

**Sd/-  
(P. ANJANI KUMAR)  
MEMBER (TECHNICAL)**