

## Arjun Agrawal @ Arjun Agarwal Vs Union Of India

**Court:** Gauhati High Court

**Date of Decision:** Dec. 6, 2021

**Acts Referred:** Constitution Of India, 1950 " Article 226

Code Of Criminal Procedure, 1973 " Section 155(2), 156(1), 482

Customs Act, 1962 " Section 2(33), 11A(d), 11B, 11C, 11D, 11E, 11F, 111, 111(d), 113, 123, 123(2), 135(a), 135(b)

Foreign Trade (Development and Regulation) Act, 1992 " Section 1

Imports and Exports (Control) Act, 1947 " Section 3

**Hon'ble Judges:** Hitesh Kumar Sarma, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

### Judgement

[1] This criminal petition has been filed under Section 482 of the Cr.PC seeking quashment of Customs case No. 05/CL/IMP/CUS/CPF/NML/2020-

2021 dated 15.03.2021 pending in the court of the learned Chief Judicial Magistrate, Golaghat.

[2] Heard Mr. D Saikia, learned senior counsel for the petitioners. Also heard Mr. SC Keyal, learned Standing Counsel, respondent/Customs

Department.

[3] The fact of the case is that on 14.03.2021, at about 23:30 hours (11:30 pm), a flying squad from Ghiladhari Police Station recovered 8 (eight)

silvery marmosets, 2 (two) golden headed lion tamarins and 2 (two) lutino blue and gold macaws from a Scorpio vehicle bearing registration No. AS-

01/EA-4707 travelling from Merapani to Golaghat. The three accused persons/petitioners herein, upon interrogation, stated that the exotic animals and

birds so recovered were collected from Imphal, Manipur and were being taken to Chennai. On 15.03.2021, the Officer-In-Charge, Ghiladhari Police

Station, Golaghat handed over the detected items, i.e., the recovered animals and birds and the vehicle along with the accused persons/petitioners to

the Range Forest Officer, Jamuguri Range, Golaghat who in turn informed that the recovered animals and birds being exotic were beyond the scope

of the Wildlife Protection Act, 1972 and therefore, requested the Customs Preventive Force Numaligarh to proceed against the petitioners and seized

the vehicle under the Customs Act, 1962. Thereafter, the accused persons/petitioners herein were arrested on the same day, i.e. on 15.03.2021 in

connection with the aforesaid case and the vehicle along with the recovered articles was seized. The rescued animals being in live condition and there

being no rescue cum rehabilitation centre were transferred to the Assam State Zoo cum Botanical Garden Authority, Guwahati on the same day for

their proper health care, treatment as well as safety.

[4] Accordingly, the aforesaid Customs case No. 05/CL/IMP/CUS/CPF/NML/2020-2021 was registered and investigated into by the Customs

Department.

[5] The basic contention of the petitioners is that they are breeders of exotic species of animals and birds and purchased the seized birds and animals

from Imphal where they are freely available in open market. It has further been submitted, in the light of the above contention, that the

respondent/Department has registered the case for offence under Section 135(a) and (b) of the Customs Act, 1962. According to Mr. Saikia, learned

Senior counsel for the petitioners, no offence has been committed by the petitioners, not to speak of an offence under Section 135(a) and (b) of the

Customs Act, 1962.

[6] Section 135(a) and (b) of the Customs Act, 1962 is extracted below for convenience of understanding:

“135 Evasion of duty or prohibitions.—(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at

evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being

in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or

purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under

Section 111 or Section 113, as the case may be; or

[7] Section 135 (b) of the Customs Act, 1962 provides that if any person acquires/possesses/purchases/sells which he knows or has reason to believe

are liable to confiscation under Section 111 or under Section 113, as the case may be, the same is made punishable with imprisonment with fine.

[8] Referring to the said provisions, Mr. Saikia has contended that for confiscation of improperly imported goods under Section 111 of the Customs

Act, 1962 such goods must be dutiable or prohibited goods. Similarly, as submitted by him, for confiscation of goods attempted to be improperly

exported must fulfil certain conditions which are not in existence in the case at hand.

[9] Learned senior counsel Mr. Saikia, has also canvassed before this Court that for any goods to be seized as prohibited or dutiable goods, the same

must be notified in terms of Section 123(2) of the Customs Act, 1962. For better understanding and convenience, Section 123 (2) of the Customs Act,

1962 is quoted below:

“123. Burden of proof in certain cases-

(2) This Section shall apply to gold and manufactures thereof, watches and any other class of goods which the Central Government may be

notification in the Official Gazette, specify

[10] Mr. Saikia has further submitted that for detection of illegally imported goods and prevention of disposal thereof, the Customs Act, 1962 under

Chapter IV A provides under Section 11A(d), that “notified goods” means goods specified in the notification under Section 11B; Section 11B

provides for Power of Central Government to notify goods; Section 11C provides for Persons possessing notified goods to intimate place of storage,

etc; Section 11D provides for precautions to be taken by persons acquiring notified goods, Section 11E provides for persons possessing notified goods

to maintain accounts, etc.

[11] Mr. Saikia, learned senior counsel for the petitioners, on the basis of above legal as well as factual position, has submitted that the seizure of the

birds and animals in the instant case is not only illegal but the same is beyond the scope and ambit of the Customs Act, 1962 since none of the exotic

animals and birds so seized are notified under Section 123(2) and 11B of the Customs Act, 1962. Therefore, he has submitted that the entire

proceedings in the aforesaid case be quashed being not sustainable in law.

[12] Mr. Keyal, learned Standing Counsel for the respondent/Customs Department has objected to the prayer for quashment and has submitted that

the argument advanced by Mr. Saikia, learned Senior counsel for the petitioners, has no leg to stand. Mr. Keyal, has referred to the definition of

“prohibited goods” under Section 2(33) of the Customs Act, 1962 which reads as follows:-

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for

the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted

to be imported or exported, have been complied with;

To fortify his submission, Mr. Keyal has relied upon Schedule I Import Policy under Section 1 of Chapter-1: Section I Live Animals; Animal

Products issued under the Foreign Trade (Development and Regulation) Act, 1992. Serial No. 01061100 Primates and Serial No.

01063200 (including Parrots, Parakeets, Macaws and Cockatoos) of the said Schedule have been referred to by Mr.

Keyal, to bring home a case for the respondent that the seized birds and animals are prohibited as per aforesaid Foreign Trade (Development and

Regulation) Act, 1992.

[13] In this regard, Mr. Saikia, learned Senior counsel for the petitioners has submitted that both Primates and Psittaciformes under

Serial Nos. 01061100 and 01063200 are qualified by the remarks, in the last column of the Schedule itself, that these live animals are "subject to

Policy Condition No. 6 of the Chapter

The Policy Condition No. 6 aforesaid is quoted below for convenience:

"(6) Import of Wild Animals (including their parts and products) as defined in the Wild Life (Protection) Act, 1972 (as amended from

time to time) is prohibited and those species which are listed in CITES are subject to the provisions of CITES.

From the above Policy Condition, it is clearly noticed that the seized live exotic animals and birds which are not included in any of the Schedule under

the Wild Life (Protection) Act, 1972 are not within the purview of the Foreign Trade (Development and Regulation) Act, 1992 and the Schedule 1-

Import Policy, referred to above, as only the animals and birds which find a place in the Schedule under the Wild Life (Protection) Act, 1972 fall

within the ambit of the Act of 1992 as indicated in the remarks column in Serial Nos. 01061100 and 01063200.

On the other hand, the Policy Condition No. 6 mentions about those species which are listed in CITES are subject to provisions of CITES. It deserves

a mention here and found to be an undisputed position that the recommendations under CITES has not been implemented in India till date. As such, as

on date, the provisions of CITES are not applicable in India.

Such being the legal position, the Schedule 1 of the Import Policy under the Foreign Trade (Development and Regulation) Act, 1992 is not of any help

to the respondent to bring the birds and animals seized in the instant case within the ambit of prohibited goods under Section 2(33) of the

Customs Act. Accordingly, the seizure of the birds and animals in the instant case has no statutory sanction.

[14] Mr. Keyal, learned counsel for the respondent, has also referred to the First Schedule to the Customs Tariff Act, 1975, Section 1 Live Animals;

Animal Products. Referring to Serial Nos. 01061900 and 01063200 of the Tariff Items there, it has been submitted that since the birds and animals

seized in connection with the instant case are of Foreign origin, custom duty is leviable thereon and to deny such custom duty the petitioners must

prove that they are of Indian origin and purchased in India only.

[15] To rebut such point raised by the learned counsel for the respondent, it has been submitted by the learned Senior counsel for the petitioners that

the birds and animals seized in connection with this case were purchased from the open market in Imphal where they are available without any

restrictions. He has specifically submitted that there is no instance, to indicate, even remotely, that the birds and animals were imported to India and

therefore, the offence alleged against the petitioners is not maintainable in the instant case.

[16] Learned counsel for the respondent has referred to the decision of the Hon'ble Supreme Court in the case of Om Prakash Bhatia vs-

Commissioner of Customs, Delhi, reported in (2003) 6 SCC 161 specifically paras 7 to 11 thereof. The relevant paras of the above judgment are

quoted below:-

"7. Next as the order for confiscation of goods is passed by referring to Section 113(d) of the Act, we would refer to the same. It

reads as under:

113. Confiscation of goods attempted to be improperly exported etc. The following export goods shall be liable to confiscation:-

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any

prohibition imposed by or under this Act or any other law for the time being in force.

8. The aforesaid Section empowers the authority to confiscate any goods attempted to be exported contrary to any 'prohibition' imposed by or

under the Act or any other law for the time being in force. Hence, for application of the said provision, it is required to be established that

attempt to export the goods was contrary to any prohibition imposed under any law for the time being in force.

9. Further, Section 2(33) of the Act defines "prohibited goods" as under: "prohibited goods" means any goods the import or export of

which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect

of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

10. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other

law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of

which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions

prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from

Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after

clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be

issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed

conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also

made clear by this Court in *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended

that the expression 'prohibition' used in section 111 (d) must be considered as a total prohibition and that the expression does not bring

within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held

thus:—

“What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to “any prohibition

imposed by any law for the time being in force in this country” is liable to be confiscated. “Any prohibition” referred to in that section

applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a

prohibition. The expression “any prohibition” in section 111 (d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of

the Imports and Exports (Control) Act, 1947, uses three different expressions “prohibiting”, “restricting” or “otherwise controlling”, we

cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of the Act. “Any prohibition” means every prohibition. In

other words all types of prohibitions. Restriction is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order,

1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the

prohibition continues.

11. The next question is —“Is there any prohibition imposed under other law which is for the time being in force?

[17] In support of his contention, Mr. Saikia, learned Senior counsel for the petitioners has relied on the following judgments:

A. Anil Naidu vs- Union of India in Criminal Writ Petition (WP) No. 807/2019 by the High Court of Judicature, Bombay, Nagpur Bench vide order

dated 11.09.2019. The relevant portion of the order referred to by the learned Senior counsel for the petitioners are quoted herein below:-

“.....we do not find that there can be any restriction to the domestic trade, possession or keep for breeding of exotic species.....”

“.....perusal of the provisions of Section 123 of the Customs Act, 1962 would reveal that it has no application to the exotic species of

birds and animals and thus, owners or persons claiming ownership or are in possession of such exotic species are not required to establish

that they are smuggled in India.....“

“.....no prohibitions, restriction or regulation to sale, purchase, possession or breeding of the exotic species within India under the

provisions of the Customs Act, 1962.....“

B. Dinesh Chandra “vs- Union of India, in PIL Civil No. 22903/2019 by the High Court of Judicature at Allahabad vide order dated 30.08.2019.

Learned Senior counsel for the petitioners has referred to para 48 thereof which is quoted herein below:-

“48. From the aforesaid, we are of the view that the Central Government has consciously kept the exotic animals/ exotic birds out of the

purview of Wildlife (Protection) Act, 1972 by not including them in its Schedules, and has thus permitted their domestic trading, possession

and captive breeding in India. Such legislative intent and decision of the Government can neither be interfered with in writ jurisdiction, nor

can any direction be given to the Government in this regard to amend Wildlife (Protection) Act, 1972 or Customs Act, 1962. At the point of

Import/Export, a Customs/DRI officer has jurisdiction to detect and prevent International Trade, i.e., import/ export of live animals and

birds into or out of India, if found in violation of the provisions of Customs Act , 1962 read with the 'CITES' and Foreign Trade Policy. Thus,

any live animals and birds, while being smuggled through the Indian Customs Frontiers, can be seized at the point of Import/Export by

DRI/Customs and the concerned persons can be subjected to penal and confiscatory provisions in accordance with the provisions of the

Customs Act, 1962. There is no restriction on domestic trade, keeping, captive, breeding, buying, selling and exhibiting 'exotic

animals/exotic birds' within India, either under the Wildlife (Protection) Act, 1972 or under the Customs Act, 1962 or under the Foreign

Trade (Development & Regulation) Act, 1962 or CITES. Any person in possession of 'exotic animals/exotic birds' within India, is not bound

to comply with the requirements of Section 11C to 11F of the Customs Act, 1962 regarding intimation of place of storage, precautions to be

taken in acquiring, maintaining accounts or sale, as they are not notified under Section 11B. Similarly, mere 'acquisition', 'purchase', or

'possession' of the exotic animals or exotic birds within India, shall not invite any penal consequences under the Customs Act, 1962 or

Wildlife (Protection) Act, 1972.

C. Imran Latif Shirgawkar vs- Directorate of Revenue Intelligence & Ors. in Writ Petition No. 4779/2019 by the High Court of Judicature at

Bombay vide order dated 27.09.2019. Learned Senior counsel for the petitioners has referred to para 16 thereof which is quoted herein below:-

“16.....there is no notification under Section 135(1)(i)(c) of the Act specifying the exotic animals as prohibited goods.....”

D. V. Muniyandi vs- Commissioner of Customs, Chennai, reported in 2004 SCC Online CESTAT 3228: (2004) 167 ELT 215 by the Customs

Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai vide order dated 05.03.2004. Learned Senior counsel for the petitioners has

referred to para 8 and 9 thereof which are quoted herein below:-

“8 I have considered the submissions made by both the sides and perused case records. I find that in the present case, the goods involved

are non-notified goods under Section 123 of the Customs Act and are freely importable under Open General Licence and are freely

available in the market. The confiscation of the goods has been ordered on the ground that the goods are of foreign origin and are in trade

quantities and that the goods are not covered by any bills for their licit import into the country. I observe that merely because the goods are

in trade quantities and there are foreign markings on the goods, that by itself cannot lead to an inference that the goods have been smuggled

into the country. The appellants in their initial statements have stated that they are doing business in such goods and the goods have been

purchased by them for business purposes and that they are not the importers. There is nothing extra ordinary that people doing business in

buying and selling of goods will have goods in trade quantities and that cannot be a reason to take an inference that the goods were

smuggled into the country. In any event, in the instant case, the goods involved are not notified goods and the burden to prove that they are

smuggled into the country lies with the department which burden has not been discharged. I also note that the Central Board of Excise and

Customs vide Circular F.N. 04/149/65-Cus-III, dated 14-12- 65 has issued guidelines in regard to town seizure. The guidelines inter alia

reads as under:

(a) Except for the commodities which attract the provisions of Section 178A of SCA or Section 123 of the Customs Act, the burden to prove

that the goods seizure are smuggled is on the Customs authorities.

(b) When the goods are recovered from a person who is not proved to be the importer of the goods and claims to be a purchaser of the



imported goods, onus is always on the customs authorities to establish that the goods were imported contrary to any import or prohibition or

restriction and they have to bring home the guilt to the person alleged to have committed a particular offence by adducing satisfactory

evidence.

(c) From the above it will be seen that there are three essential Ingredients of the offence under Section 167(8) of the SCA or under

(1) that the importation of certain goods has been prohibited or restricted;

(2) that the goods in question, belonging to such category, have been imported into India i.e. the goods are of foreign origin;

(3) that such importation has been contrary to such prohibition or restriction.

Unless all the three ingredients are proved by the Department, the offence is not established. In other words, even if the import of a

particular commodity has been prohibited for quite some time and it is also proved that the seized goods of that commodity are of foreign

origin, it would not be sufficient evidence to hold that the goods seized are smuggled unless there is evidence which conclusively leads to the

inference that the said goods were imported into the country to any prohibition or restriction. It has been held that the circumstances that a

person makes inconsistent statement regarding the manner in which he came into the possession of the articles recovered from him, or that

he did not maintain proper account to show the purchase of the articles, or that the purchase vouchers produced were found to be forged

cannot necessarily lead to the conclusion that the articles were smuggled or were imported contrary to any prohibition or restriction. The

evidence to justify an inference of smuggling should be one which is relevant for providing the unauthorised importation of the goods and

not the unauthorised possession of the goods.

9. Further the case law cited by the learned Counsel for the appellants in the matter of *Sadbhavana v. CC, Indore* reported in 2003 (158)

E.L.T. 652 wherein it has been held that failure to produce document regarding legal import/possession of foreign origin goods, the burden

to prove the smuggled character of the goods lies on the department, squarely applies to the facts of the present case. In the instant case as

noted above, the goods are non notified goods, and are freely available in the open market for any one to purchase or do business.Ã¢â‚¬â€

E. Sultan Dharani Ã¢â‚¬â€vs- Commissioner of Cus.(P), Mumbai, reported in 2007 SCC Online CESTAT 2918: (2007) 220 ELT 820 by Customs Excise

and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai vide order dated 05.09.2007. Learned Senior counsel for the petitioners has referred

to para 25 and 34 thereof which are quoted herein below:-

“25. Since, as above, this case can be decided only on the basis of undisputed facts and it is held on facts that no valid confiscation of any

of the seized goods can be made, there is actually no need to deal with the various judgments relied upon by the Revenue and the Appellant.

However, we find that the Revenue is not following the binding and clear instructions of Central Board of Excise & Customs issued vide

Circular No. 04/149/65-Cus-III dated 14-12- 1965, which is also the basis of para 73A of the “Adjudication Manual” regarding

“Onus of Proof that goods are smuggled or imported illegally on Customs Department”, and are arguing contrary to these instructions

and the settled position of law. Therefore, it would be necessary to deal with the case-laws, as also to look into the Board's Instructions.

34. Since undisputedly none of the seized goods were among the notified goods under section 123(2) of the Customs Act, 1962, a heavy

burden was cast upon the DRI to bring some positive and tangible evidence relevant for proving the unauthorised importation of the seized

goods to justify an inference of smuggling, for valid confiscation of seized goods. The DRI miserably failed to discharge this burden to prove

smuggled nature of seized goods by adducing any such evidence, which can conclusively lead to the inference that the seized goods were

imported contrary to any prohibition or restriction, or by evading duty. The DRI failed to justify with evidence, unauthorised importation of

the seized goods, in any manner, and instead sought to shift the burden upon the Appellant to prove that the goods were not smuggled. Such

a course was not available to them as per settled position of law. We hold that in the instant case, concerning the seized goods, not even a

shred of evidence is adduced by the Department to show their illegal importation by breach of any customs barrier, and the onus cannot be

shifted on the Appellant. The formal seizure of Copper cathode and Zinc Ingots after more than 4 months of their verification and just 2

days prior to issuance of SCN, that too after the Appellant pleaded on record the Board Instructions dated 14-12-1965 in the SLP filed by

him, shows glaring abuse of power by DRI. It is evident that even such belated seizure is without any firm reasonable belief and, therefore, is

illegal.”

F. 1992 Supp (1) SCC 335 (State of Haryana vs- Bhajan Lal). Learned Senior counsel for the petitioners has referred to para 102 thereof which is

quoted herein below:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers

under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of

illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of

justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in

their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable

offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the

purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person

can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

[18] From the arguments advanced by the respective learned counsel for the parties, on facts as well as on law, as indicated above, it appears that the

seized animals and birds are not prohibited goods under any other law as provided in Section 2(33) of the Customs Act, 1962. We have

already discussed and found that the seized birds and animals are not included in any of the Schedule of the Wild Life (Protection) Act, 1972 and as

such, the same is not within the purview of Foreign Trade (Development and Regulation) Act, 1992 and the Schedule 1- Import Policy, referred to

above. Therefore, the seizure of the birds and animals, in the instant case, has no approval of any law relevant for the purpose of the offence alleged

in the instant case.

[19] This Court is, however, not in agreement with the learned counsel for the respondent so far applicability of the decision in *Om Prakash Bhatia*

(supra) is concerned in the given fact of the instant case as we have already indicated in the foregoing paras that the seized birds and animals are not

notified to be prohibited goods under any law as required under Section 2(33) of the Customs Act, 1962.

[20] This Court would also like to indicate herein that the decisions cited by the learned senior counsel for the petitioners appears to be applicable on

the facts of the present case and this Court agrees with the views/opinion expressed in those orders and judgments.

[21] In view of the above, in the considered view of this Court, to proceed any further with the case shall be an abuse of the process of the Court.

Therefore, invoking the provisions of Section 482 of the Cr.PC to prevent the abuse of the process of the Court, the aforesaid Customs case No.

05/CL/IMP/CUS/CPF/NML/2020-2021, pending in the court of learned Chief Judicial Magistrate, Golaghat is quashed.

[22] With the above observations and direction, this petition stands disposed of.