

2026 (7) TMI 269 - CESTAT KOLKATA**Domnic Jacob Sequeira Versus Commissioner of Customs (Preventive), Kolkata And
Principal Commissioner of Customs (Preventive), Kolkata Versus Gouse Gaffar
Shaikh, Balashaed Appasaheb Dhumal, Domnic Jacob Sequeira**

No.- Customs Appeal No. 75062 of 2022 With Customs Appeal No. 75916 of 2023, Customs Appeal No. 75982 of 2023 And Customs Appeal No. 75984 of 2023

Dated:- July 3, 2026

Order No. Final Order Nos. 75838 - 75841/2026

Burden of proving smuggling for non-notified goods failed; confiscation, penalties and vehicle seizure were set aside.

Exotic birds and mammals not notified under Section 123 of the Customs Act placed the burden on Revenue to prove foreign origin, smuggling and unlawful import. The record suggested domestic movement within Mizoram, and without tangible corroborative evidence, mere suspicion and uncorroborated statements were insufficient to sustain confiscation. The same failure of proof meant the vehicle could not be confiscated as an instrument of smuggling. As a result, confiscation was set aside, penalties were held unsustainable, and release of the vehicle was directed.

Issues: Whether the seized exotic birds and mammals, together with the vehicle allegedly used for their transport, were liable to confiscation and whether penalties were sustainable when the goods were not notified under Section 123 of the Customs Act, 1962 and the Revenue had not established illicit import with corroborative evidence.

Analysis: The birds and mammals in question were not notified goods under Section 123 of the Customs Act, 1962, so the burden remained on the Revenue to prove foreign origin, smuggling, and unlawful importation. The record indicated that the supplier stated he had received the consignment from another person within Mizoram and had supplied it in the domestic area, which supported the finding that the appellants had acquired the goods through domestic movement. In the absence of tangible and corroborative evidence establishing illegal import, mere suspicion and uncorroborated statements were insufficient to sustain confiscation. The same reasoning applied to the vehicle, which could not be treated as liable to confiscation once the underlying allegation of smuggling failed.

Conclusion: The confiscation of the seized birds and mammals was set aside, the penalties were not sustainable, and the vehicle was directed to be released. The decision was in favour of the assessee.

Judgment / Order

Hon'ble Shri Ashok Jindal, Member (Judicial) And Hon'ble Shri K. Anpazhakan, Member (Technical)

For the Assessee(s)/Noticee(s) : Shri Neerav Mainkar, Advocate

For the Revenue : Shri Faiz Ahmed, Authorized Representative**ORDER****PER SHRI ASHOK JINDAL:**

The present appeals arise out of the common Order-in-Appeal No. KOL/CUS/CCP/AKR/827-829/2021 dated 26.11.2021 passed by the Ld. Commissioner of Customs (Appeals), Kolkata. Appeal No. C/75062/2022 has been preferred by Shri Domnic Jacob Sequeira challenging the appellate order insofar as it upheld the confiscation of 35 live birds/animals seized at the Kolkata Domestic Air Cargo Terminal and the penalty imposed upon him. The remaining three appeals have been filed by the Revenue challenging different portions of the impugned order, namely:

- (i) the direction for release of 19 birds seized from the residential premises of Shri Domnic Jacob Sequeira at Pune together with the reduction of penalty imposed upon him;
- (ii) setting aside of the penalty imposed upon Shri Gouse Gaffar Shaikh; and
- (iii) the direction for release of the Mahindra Scorpio vehicle bearing Registration No. MH-42-AH-5496 owned by Shri Balasaheb Appasaheb Dhumal.

2. The dispute arises out of an investigation conducted by officers of the Directorate of Revenue Intelligence (DRI) into the alleged transportation and possession of certain live birds and mammals stated by the Department to be exotic wildlife of foreign origin, allegedly brought into India in contravention of the provisions of the Customs Act, 1962 read with the Wildlife (Protection) Act, 1972 and the Foreign Trade Policy. The proceedings ultimately culminated in confiscation of the seized birds and mammals and imposition of penalties upon certain persons alleged to be connected with the transportation and possession of the said wildlife.

3. Acting on specific intelligence that certain live exotic birds and mammals had allegedly been smuggled into India from Myanmar and were being transported from Aizawl to the Netaji Subhas Chandra Bose International Airport, Kolkata by Air India Flight No. AI-712 dated 06.10.2018 under a cargo booking in the name of Shri Domnic Jacob Sequeira of Pune, and that Shri Domnic Jacob Sequeira along with his associate would take delivery of the consignment from the Domestic Air Cargo Terminal before transporting the same in a Mahindra Scorpio vehicle bearing Registration No. MH-42-AH-5496, officers of the Directorate of Revenue Intelligence (DRI), accompanied by two independent witnesses, reached the Domestic Air Cargo Terminal at NSCBI Airport, Kolkata at about 3:30 p.m. on 06.10.2018 and maintained surveillance outside the delivery area.

3.1. At about 4:10 p.m. on the same day, a white Mahindra Scorpio bearing Registration No. MH-42-AH5496 entered the Domestic Air Cargo enclosure. The vehicle was found to be occupied by four persons, including the driver. Since the registration number of the vehicle matched the specific intelligence received, the DRI officers continued discreet surveillance over the vehicle as well as its occupants.

3.2. Maintaining surveillance over the said cargo terminal, the DRI intercepted certain cages, all wrapped with white cloth, which were booked through a domestic cargo operator. Upon examination in the presence of independent witnesses and other concerned persons, the concerned cages were found to contain several live birds and mammals, which were suspected to be exotic species requiring lawful import documentation.

4. The officers conducted physical verification of the consignments, which comprised 5 (five) cages, and prepared inventories of the live animals and birds recovered therefrom. The Department took the view that the wildlife recovered comprised species which were not indigenous to India and whose legal importation required compliance with the Customs Act and allied statutory provisions. Since no import documents, bills of entry, licences, health certificates or other documents evidencing lawful acquisition or lawful importation were allegedly produced at the time of interception, the officers entertained a reasonable belief that the

goods represented smuggled goods liable to confiscation under the Customs Act, 1962. Accordingly, the entire consignment consisting of 35 numbers of live birds and animals was seized under the reasonable belief of being liable to confiscation. The details of the wildlife found in the 5 (five) cages seized are as follows: -

Cage No.	Species Recovered	Quantity
Cage No. 1	Black & White Ruffed Lemur (Live Exotic Mammal)	2 Nos.
	Marmoset (Live Exotic Mammal)	1 No.
	Bengal Cat (Live Exotic Mammal)	1 No.
	Bird of Paradise (Live Exotic Bird)	2 Nos.
Cage No. 2	Blue Gold Macaw (Live Exotic Bird)	1 No.
	Silver Macaw (Live Exotic Bird)	1 No.
Cage No. 3	Knobbed Hornbill (Live Exotic Bird)	1 No.
Cage No. 4	Yellow-tailed Black Cockatoo (Live Exotic Bird)	1 No.
	Cassowary Chick (Live Exotic Bird)	4 Nos.
Cage No. 5	White (Live Exotic Bird) Cockatoo	4 Nos.
	Eclectus Parrot (Male) (Live Exotic Bird)	2 Nos.
	Eclectus Parrot (Female) (Live Exotic Bird)	3 Nos.
	Grey Parrot (Live Exotic Bird)	12 Nos.
	Total	35 Nos.

4.1. During the course of investigation, enquiries were conducted with various persons connected with the transportation of the consignment, including representatives of the cargo operator, transport personnel and the persons allegedly concerned with booking and receiving the consignment. Statements were recorded under Section 108 of the Customs Act, 1962 from, inter alia, Shri Domnic Jacob Sequeira, Shri Gouse Gaffar Shaikh and other persons connected with the movement of the consignment. Various documents relating to booking of the cargo, transportation and ownership of the birds and animals were also examined during investigation.

5. Based upon the statements recorded and the material collected during investigation, the Department formed a prima facie view that Shri Domnic Jacob Sequeira was the principal person concerned with the possession, transportation and alleged importation of the wildlife in question. The investigation further sought to establish the involvement of certain other individuals in facilitating transportation of the birds and animals from Kolkata to Pune. The Department entertained the view that the seized wildlife had been brought into India without lawful import documents and thereafter transported within the country in an attempt to conceal their foreign origin.

6. In his statement recorded under Section 108 of the Customs Act, 1962, Shri Domnic Jacob Sequeira inter alia stated that, during his visit to Bangkok, he had met one Ms. Sukanda, who was engaged in dealing with live birds and animals. According to him, she proposed that the live exotic birds and animals would be transported from Bangkok to India via Myanmar through the Indo-Myanmar border near Aizawl, with logistical assistance being provided by her associate, Kima of Aizawl. Shri Domnic Jacob Sequeira further stated that he had agreed to the proposal, finalised the purchase of various species of exotic birds and animals from Ms. Sukanda, made payment towards the proposed consignment, and thereafter remained in contact with Kima (Lalfingkima Sailo) regarding the movement of the consignment from Aizawl to Kolkata. He stated that although he had never met Kima personally, they remained in contact over mobile phone and that Kima had provided him with his addresses at:

(i) College Veng, H. No. 256, Aizawl, Mizoram; and

(ii) T-33 College Veng, Tlangnuam, Near ITI Road, Aizawl.

6.1. On the basis of the above statement, further investigation was conducted at the premises at T-33 College Veng, Tlangnuam, Near ITI Road, Aizawl, whereafter the supplier was found to be one Lalfingkima Sailo, who had allegedly played a significant role in facilitating the transportation of the live exotic birds and animals after their alleged entry into India through the Indo-Myanmar border. It was alleged that Shri Sailo, in connivance with Ms. Sukanda and another person named Racer, arranged logistical support for collection of the live birds and mammals at Melbuk and their onward transportation to Kolkata through Lengpui Airport, Aizawl. The Department further relied upon his written submissions made before the officers of DRI, Aizawl and DRI, Kolkata, as well as the statement of Dr. Vanlalchhandama, to allege that Shri Sailo had misused the doctor's letterhead and seal for preparing forged veterinary fitness certificates required for booking the consignments through air cargo. It was further alleged that such certificates had been prepared at the instance of Shri Domnic Jacob Sequeira to facilitate transportation of the live birds and animals without attracting suspicion. The investigation also recorded that Shri Sailo admitted to having arranged transportation of four consignments to Shri Domnic Jacob Sequeira and one consignment to another purchaser at Chennai, which, according to the Department, demonstrated his active involvement in the alleged smuggling and transportation of the exotic wildlife into India.

6.2. The investigation also led to seizure of a Mahindra Scorpio motor vehicle, which, according to the Department, had been utilised for transportation of the wildlife recovered from the Domestic Air Cargo Terminal. The Department alleged that the vehicle had been knowingly used for carriage of goods liable to confiscation and was, therefore, itself liable to confiscation under the relevant provisions of the Customs Act.

6.3. During the course of investigation, the role of Shri Balasaheb Appasaheb Dhumal, the registered owner of the Mahindra Scorpio vehicle bearing Registration No. MH-42-AH-5496, also came to be examined. The vehicle, which was intercepted within the Domestic Air Cargo enclosure at NSCBI Airport, Kolkata, was alleged by the Department to have been intended for transportation of the seized live exotic birds and animals from Kolkata to Pune and was accordingly seized under Section 110 of the Customs Act, 1962 on the reasonable belief that it was liable to confiscation under Section 115 of the Act. Investigation revealed that the vehicle stood registered in the name of Shri Balasaheb Appasaheb Dhumal and had allegedly been hired by Shri Domnic Jacob Sequeira through one Navnath for a consideration of Rs.30,000/-. Shri Balasaheb Appasaheb Dhumal was subsequently summoned during the investigation and his statement was recorded, wherein in his defence, he stated, inter alia, that he became aware of the

alleged use of his vehicle for transportation of the seized birds and animals only after the vehicle had returned from Kolkata.

7. During the investigation, the officers also conducted searches at the residential premises of Shri Domnic Jacob Sequeira at Pune. During such search, an additional 19 numbers of live birds, also alleged by the Department to be exotic species of foreign origin, were recovered and seized. During the search conducted at the residential premises of Shri Domnic Jacob Sequeira at Pune, the following live birds, alleged to be exotic species, were recovered and seized:

Sl. No.	Species Recovered	Quantity
1.	Agapornis (commonly known as Love Birds of African Origin)	14 Nos.
2.	Sun Parakeet (also known as Sun Conure)	1 No.
3.	Love Bird of South American Origin	1 No.
4.	Great Billed Parrot	2 Nos.
5.	White Cockatoo	1 No.
	Total	19 Nos.

7.1. According to the Department, no documentary evidence establishing lawful importation or licit acquisition of these birds was produced during the search. Consequently, these birds were also seized under the provisions of the Customs Act on the allegation that they represented smuggled goods.

8. In the light of the above, it was gathered by the Revenue that Shri Domnic Jacob Sequeira was the principal recipient and intended consignee of the alleged smuggled consignment of live exotic birds and animals and was stated to have coordinated the procurement, transportation and onward distribution of the consignment through Myanmar and Aizawl to Kolkata, allegedly by using forged documents and maintaining regular contact with Shri Lalfingkima Sailo.

8.1. Shri Gouse Gaffar Shaikh was alleged to have assisted Shri Domnic Jacob Sequeira in taking delivery of the consignment at Kolkata and transporting the same to Pune, besides having allegedly assisted in similar transportation on earlier occasions.

8.2. Shri Lalfingkima Sailo was alleged to have coordinated the logistics for transportation of the live birds and animals from the Indo-Myanmar border to Aizawl and thereafter to Kolkata through air cargo, besides allegedly arranging forged veterinary fitness certificates and other documents required for booking the consignments.

8.3. On the basis of the aforesaid allegations, the Department proposed penal action against the concerned noticees under the provisions of the Customs Act, 1962.

9. Upon completion of investigation, a Show Cause Notice came to be issued proposing, inter alia:

(a) Absolute confiscation of the 35 exotic live birds/mammals seized from the Kolkata Domestic Air Cargo Terminal;

- (b) Absolute confiscation of the 19 exotic live birds seized from the residential premises of Shri Domnic Jacob Sequeira at Pune;
- (c) Confiscation of the Mahindra Scorpio vehicle allegedly used for transportation of the wildlife; and
- (d) Imposition of penalties upon Shri Domnic Jacob Sequeira, Shri Gouse Gaffar Shaikh and Shri Lalfingkima Sailo under Section 112 of the Customs Act, 1962.

9.1. The main allegation in the Show Cause Notice was that the wildlife constituted smuggled goods of foreign origin which had entered India in violation of the Foreign Trade Policy & Foreign Trade (Development & Regulation) Act, 1992, the provisions of section 3(2) & 3(3) of FTDR Act, 1992 read with Section 11 of the Customs Act, 1962 and allied statutory provisions, and that the noticees had knowingly dealt with, transported and possessed such goods, which were liable for under Section 111 (d) of the Customs Act, 1962.

10. The noticees contested the allegations by filing detailed written replies and participating in the adjudication proceedings. It was contended, inter alia, that the Department had failed to establish that the birds and animals were of foreign origin or had been illegally imported into India; that many of the birds were captive-bred within India; that the burden of proving smuggled nature had not been discharged by the Department; that no evidence of actual illegal importation had been produced; that possession of exotic birds by itself did not establish smuggling; and that the proceedings rested primarily upon assumptions rather than legally admissible evidence.

11. Upon adjudication, the Additional Commissioner of Customs, by Order-in-Original No. 98/ADC(P)/CUS/WB/19-20 dated 16.03.2020, ordered absolute confiscation of the 35 birds/mammals seized from the Kolkata Domestic Air Cargo Terminal as well as absolute confiscation of the 19 birds seized from the Pune residence of Shri Domnic Jacob Sequeira. The adjudicating authority also ordered confiscation of the Mahindra Scorpio vehicle alleged to have been used for transportation of the wildlife and imposed penalties of Rs.50,00,000/- upon Shri Domnic Jacob Sequeira and Rs.24,00,000/- upon Shri Gouse Gaffar Shaikh under Section 112(b) of the Customs Act, 1962, besides imposing penalty upon Shri Lalfingkima Sailo.

12. Aggrieved thereby, Shri Domnic Jacob Sequeira, Shri Gouse Gaffar Shaikh and Shri Balasaheb Appasaheb Dhumal preferred appeals before the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001. Upon consideration of the records and submissions, the Ld. Commissioner (Appeals), vide the impugned Order-in-Appeal dated 26.11.2021, partly modified the adjudication order by directing release of the 19 birds seized from the residential premises of Shri Domnic Jacob Sequeira at Pune, release of the Mahindra Scorpio vehicle bearing Registration No. MH-42-AH-5496, reduced the penalty imposed upon Shri Domnic Jacob Sequeira to Rs.3,00,000/- under Section 112(b) of the Customs Act, 1962 and set aside the penalty imposed upon Shri Gouse Gaffar Shaikh.

13. Against the said order, Shri Domnic Jacob Sequeira has preferred the Appeal bearing No. C/75062/2022 seeking, inter alia, release of the remaining 35 birds/mammals seized from the Kolkata Domestic Air Cargo Terminal, which were confiscated by the authorities, and praying for setting aside of the penalty sustained against him.

13.1. The Revenue has, on the other hand, preferred the connected appeals bearing Nos. C/75916/2023, C/75982/2023 and C/75984/2023 against the above order challenging the directions issued by the Ld. Commissioner (Appeals) for release of the 19 birds seized at Pune, release of the Mahindra Scorpio vehicle in question, reduction of the penalty imposed upon Shri Domnic Jacob Sequeira and setting aside of the penalty upon Shri Gouse Gaffar Shaikh.

14. As all these appeals arise out of the same set of facts and involve common questions of fact and law, the same are taken up together for disposal by this common order.

15. The Ld. Counsel appearing for the noticees/assesseees has, inter alia, made the following submissions:

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(i) It is submitted that the live stock forming the subject matter of the present proceedings does not fall within the ambit of Section 123 of the Customs Act, 1962. Accordingly, the statutory burden of proving licit import or lawful possession could not have been cast upon the noticee, and the burden to establish that the goods were smuggled squarely rested upon the Department.

(ii) In support of the aforesaid contention, reliance is placed upon Final Order No. 50001/2021 passed by the Hon'ble CESTAT, Principal Bench, New Delhi as well as Order Civil No. 12032 of 2020 passed by the Hon'ble Allahabad High Court.

(iii) It is further submitted that the Department has placed substantial reliance upon the statement of the co-noticee, Shri Lalfingkima Sailo. According to the learned Counsel, Shri Sailo himself stated that he had received delivery of the live stock from one person namely "Racer" at Melbuk in Mizoram and thereafter dispatched the same to the noticee through Domestic Air Cargo.

(iv) It is argued that no reliance can be placed upon the statement of the co-noticee in the absence of any independent corroboration. Although complete particulars of the said person "Racer" were allegedly made available to the DRI authorities, no investigation or enquiry was conducted with him. It is further contended that Shri Sailo himself admitted that the delivery of the live stock was taken at Melbuk, which admittedly falls within the territory of India.

(v) He further submits that the appellate authority has relied upon only a selective portion of the statement of Shri Domnic Jacob Sequeira, wherein he had stated that one Ms. Sukanda of Bangkok intended to send the birds through Myanmar to Shri Lalfingkima Sailo. However, the very same statement also records that Shri Sailo had informed him that the birds would be brought with the assistance of a Government official and that the noticee himself had no knowledge as to the manner in which the same would be brought. According to the learned Counsel, the authorities have relied only upon isolated portions of the statement while ignoring the remaining part thereof, without conducting any further investigation or collecting any corroborative evidence.

(vi) It is, therefore, contended that in the absence of any independent evidence establishing illicit importation, the live stock cannot be characterised as smuggled goods merely on the basis of suspicion or on the basis of uncorroborated statements recorded during investigation.

(vii) It is further submitted that the live stock in question had been procured domestically. In this regard, it is pointed out that the live stock was received by Shri Lalfingkima Sailo at Melbuk, which is in the State of Mizoram, and was thereafter transported to Kolkata through Domestic Air Cargo, which itself demonstrates domestic movement of the goods.

(viii) Furthermore, it is submitted that the valuation adopted by the DRI itself supports the noticees' cases. It is contended that the Department adopted the prevailing street price for determining the value of the live stock, which, according to the learned Counsel, itself establishes that such birds and animals were available in the domestic market at Kolkata. Although the method of valuation is disputed as being incorrect, it is argued that the Department's own reliance upon domestic market prices militates against its allegation that the goods were smuggled into India.

(ix) It is accordingly submitted that the Department has failed to discharge the burden cast upon it under the Customs Act and has proceeded merely on assumptions and presumptions without adducing any cogent evidence to establish that the live stock had been smuggled into India.

(x) It is finally submitted that the Commissioner (Appeals) failed to appreciate the aforesaid aspects while upholding the confiscation of the live stock seized at the Kolkata Domestic Air Cargo Terminal.

15.1. The Ld. Counsel for the assesseees/noticees accordingly prayed that the confiscated live stock be ordered to be released unconditionally and that the penalties imposed upon the noticees be set aside.

16. On the other hand, the Ld. Authorized Representative appearing for the Revenue reiterated the findings recorded in the Order-in-Original dated 16.03.2020 and submitted that the live birds and animals in question had been smuggled into India in contravention of the provisions of the Foreign Trade Policy and the Foreign Trade (Development and Regulation) Act, 1992, read with Sections 3(2) and 3(3) of the said Act and Section 11 of the Customs Act, 1962. It was thus contended that the adjudicating authority had rightly ordered confiscation and imposed penalties based on the evidence gathered during investigation. Insofar as the appeals preferred by the Revenue are concerned, the learned Departmental Representative adopted the grounds set out in the respective Memoranda of Appeal and contended that the Ld. Commissioner (Appeals) had erred in directing release of the 19 live birds seized from the residential premises of Shri Domnic Jacob Sequeira, directing release of the Mahindra Scorpio vehicle in question, reducing the penalty imposed upon Shri Domnic Jacob Sequeira and setting aside the penalty imposed upon Shri Gouse Gaffar Shaikh. It was accordingly prayed that the impugned Order-in-Appeal be set aside to the aforesaid extent and the Order-in-Original be restored.

17. Heard the parties and considered their submissions.

18. After considering the submissions made by both the sides, we find that the sole allegation against the appellant/buyers/noticees is that they have illegally smuggled the exotic birds and mammals in question into India through illicit means and unauthorized routes.

19. It is evident from the record, as stated by Shri Lalfingkima Sailo, the supplier of the birds/mammals in question, in his statement, that he had received the live consignment of exotic birds / mammals from one person by the name of "Racer" of Melbuk in Mizoram. In such circumstances, the question that arises is: can it be alleged that the appellant/buyers/noticees have procured the exotic birds and mammals in question (35 numbers and 19 numbers) through illicit means and without following the procedure laid down under law for importation of the same?

20. We find that exotic birds and mammals are not notified items within the meaning of Section 123 of the Customs Act, 1962. Therefore, the onus in this case lies on the Revenue to prove that the exotic birds/mammals in question are of foreign origin and that the appellant/buyers have smuggled the same into India through illicit means.

20.1. In fact, from the statement recorded from Shri Lalfingkima Sailo, it is clear that the said exotic birds and mammals were handed over to him by one Racer, at Mizoram, who in turn has supplied these birds/mammals to the appellant/buyer in the domestic area. Under such circumstances, we are of the view that the appellant/buyers/noticees have discharged their onus as regards procurement of the exotic birds and mammals in question, maybe of foreign origin, but through licit means within India. Therefore, the burden is cast on the Revenue to prove, by means of tangible and corroborative evidence, that the said exotic birds / mammals have been procured by the said persons through illegal or illicit means in violation of the relevant Act/Rules, which the Revenue has failed to prove.

21. We further find that an identical issue had come up before this Tribunal in the case of Rajesh Agarwal @ Raju Sagar v. Commissioner of Customs, Indore decided vide Final Order No. 50001/2021 dated 07.01.2021 in Customs Appeal No. 50170 of 2021 [CESTAT, New Delhi] wherein it was observed as under:

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"5. Having considered the rival contentions, I find that it is a case of town seizure and not interception at the point of entry in India. Admittedly, the appellant have purchased the exotic birds/animals in domestic area within India, which has been corroborated by the two suppliers based at Indore namely Golu and Monu who are also the co-noticees. Further, there is no evidence on record that the said Golu and Monu have smuggled the exotic birds/animals in India. Further, I find that the Revenue has failed to establish the allegation of smuggling with any cogent evidence,

either by the appellant or the other two co-noticees. The burden of proof lies on Revenue to support its allegation of smuggling.

6. Further, the Hon'ble Allahabad High Court in the case of Dinesh Chandra (supra) have held that CITES do not govern the domestic trade, possession or breeding by any person including aviaries, but only international trade. It was further observed that 'internal trade' i.e. domestic trade within India, of 'exotic species' is not found in any schedule of the Wildlife (Protection) Act, 1972 and was never prohibited. Only 'external trade' i.e. international trade is governed by the conditions of Foreign Trade Policy. The Hon'ble Allahabad High Court further held that domestic trade in exotic birds/ animals is not prohibited and substantial export of the exotic birds from India is seen since several years in view of large scale breeding of exotic species in India. It is further held that no documents are specified and no permission is required as per Customs Act for keeping, breeding, buying, selling and exhibiting of such exotic birds/ animals within the country. It is further held that the exotic birds/animals are not notified under Section 123 of the Customs Act. Thus, there is no presumption of smuggling on the person who is in possession of such exotic birds/ animals, also do not attract the provisions of Chapter IV-A of the Customs Act. It was also held that mere acquisition, purchase or possession of exotic birds/animals does not violate provisions under the Customs Act. It is only at the entry point, at the time of import, any consignment of exotic birds/ animals intercepted, upon establishing violation of the statutory provisions or CITES, the same would be liable for confiscation. It was held that the Central Government has consciously kept the exotic birds /animals out of the purview of Wildlife (Protection) Act, 1972 by not including them in its schedules, and has thus ipso facto permitted their domestic trading, possession and captive breeding.

6.1. I find that similar view was taken by the Hon'ble Bombay High Court in Anil Naidu vs. UOI & Ors. by its judgment dated 11.09.2019 in Criminal Writ Petition No. 807 of 2019.

6.2. I find that similar view has also been taken by the Hon'ble Rajasthan High Court in its judgment dated 14.10.2020 in Writ Petition No. 7491 of 2020 in the case of Vivek Swami vs. UOI & Ors. wherein, in the Writ Petition the prayer was to direct the 'Central Board of Indirect Taxes' to issue suitable circular/instructions to enable the citizens in possession of exotic species to make declaration under the 'voluntary disclosure scheme' without any fear under the Customs Act, 1962, and further direction on the Officers of CBIC in the nature of 'writ of prohibition' for seeking any information relating to the acquisition of birds/animals in his possession, which the petitioner is contemplating to declare under the voluntary disclosure scheme issued by the Central Government. The Rajasthan High court relying on the aforementioned ruling of the Allahabad High Court in Dinesh Chandra (supra) have observed that the Customs Act and the Foreign Trade (Development and Regulation) Act, are applicable only qua international trade of exotic life species. It was also observed that the Wildlife Department headed by the. Chief Wildlife Warden have got no jurisdiction in the matter of possession, breeding, domestic trade and transportation of exotic life species, since the same is not covered by the Wildlife Protection Act, 1972.

7. In view of my aforementioned findings and the ruling of the Hon'ble High Courts, I allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits including return of the seized exotic birds/ animals forthwith. The respondent is directed to return the seized birds/animals etc. within a period of seven (7) days from the date of receipt or service of copy of this order."

22. In view of the discussion hereinabove and by following the ratio of the decision cited supra, we hold that as the exotic birds and mammals in question are not notified under Section 123 of the Customs Act, 1962, the burden lies on the Revenue to prove that the appellant/buyers/noticees have procured the same through illicit means and are smuggled in nature. The Revenue having failed to do so in this case, in the circumstances, the exotic birds / mammals in question (35 numbers and 19 numbers) cannot be held liable for confiscation. Consequently, the confiscation of the above said numbers of exotic birds and mammals stands set aside.

22.1. Further, as the Revenue has failed to prove their case, we also hold that no penalty can be imposed on the appellant/buyer in the facts and circumstances of the case. Therefore, the penalty imposed on the appellant/buyer, namely, Shri Domnic Jacob Sequeira stands set aside. For the same reasons, we do not find any infirmity in the setting aside of the penalty imposed on Shri Gouse Gaffar Shaikh vide the impugned order.

22.2. Further, the vehicle in question is also not liable for confiscation and accordingly, the same is directed to be released, without imposition of any redemption fine thereon.

23. In these terms, the appeals are disposed of.

(Order pronounced in the open court on 03.07.2026)

Citations:

1. **2020 (10) TMI 646 - RAJASTHAN HIGH COURT**
Vivek Swami S/o Dhirendra Kumar Swami Versus Union Of India, Central Board Of Indirect Taxes, Directorate Of Revenue Intelligence, Through Director, Ministry Of Environment, Forest And Climate Change, Wildlife Crime Control Bureau, Through Its Addl. Director, Central Bureau Of Investigation, Through The Director, State Of Rajasthan
2. **2020 (7) TMI 750 - ALLAHABAD HIGH COURT**
Dinesh Chandra Versus U.O.I. Thru. Addl. Prin. Chief. Conservator Of Forest & Others
3. **2019 (12) TMI 72 - BOMBAY HIGH COURT**
Anil Naidu s/o Chandrakant Naidu, Indore Versus Union of India, thr. the Commissioner of Customs, Nagpur & Ors.)
4. **2021 (1) TMI 523 - CESTAT NEW DELHI**
Rajesh Agarwal @ Raju Sagar Versus Commissioner of Customs, Indore