

09.06.2026
ct no. 10
Sl. 24
AGM

WPA 825 of 2026
CAN 1 of 2026

M/s. Megaa Trade Company Limited
-Versus-
The Commissioner of Customs (Port) & Anr.

Mr. Debasish Roy.
Mr. Rajnish Kumar Kalawatia.
Ms. Muskan Sharma.
... for the petitioner.

Mr. Sunny Nandy.
Mr. Manmohan Singh Roop Roy.
... for the respondent no. 2.

Mr. Vipul Kundalia, Sr. Adv.
Mr. Kaustav Kanti Maiti.
Mr. Anindya Kaman.
Mr. Dhirodatto Chaudhuri.
... For the Customs.

1. Heard the parties through their counsels.
2. The petitioner in the instant case prays for the issuance of a mandamus directing the respondent authorities to re-export the entire consignment to China as mentioned in the letter dated 2.12.2025.
3. In the instant case the petitioner is an exporter having its office at 101A, 1/F Genpal Ind. Building, 56 Hoi Yuen Road, Kwun Tong, Hong Kong. The petitioner exported the goods under the Bill of Lading GGZ2667691A dated 23.09.2025 to M/s. Misty and Pallavi Steel Pvt. Ltd of Birgunj-17, Parsa, Nepal under Container

No. TZGU8816508, being the respondent no. 2 herein.

4. The core issue involved herein is whether the action of the respondent authorities in detaining the Nepal Bound transit consignment and refusing to permit reexport to China on account of bonafide packing error is illegal, arbitrary and violative of Section 53 of Customs Act, 1962 read with Indo-Nepal Treaty of Trade and Transit.
5. It is submitted that during the loading and packing of the said container, an error occurred. Instead of loading 100% EVA, only 90% EVA SLIPPER and 10% e-Cigarettes were loaded. The mistake is bonafide and petitioner is ready to bear all costs for re-export to China to rectify the error.
6. Due to such mistake committed at the end of the exporter, the importer in Nepal has refused to accept the delivery and declined to make payment for the consignment, as the consignment does not confirm to the agreed terms and conditions of the contract and does not match the order placed by the importer.
7. It is submitted that such mistake was brought to the knowledge of respondent no. 1 by way of a representation dated 2.12.2025. However, the same remains pending for consideration.

8. The detention is illegal as the goods are Nepal Bound Transit Cargo protected under Section 53 of the Customs Act 1962 and Clause 5A(i) of the memorandum to protocol of the treaty of transit between Government of India and Government of Nepal.
9. Learned counsel appearing for the respondent-Customs Authority vehemently opposes the prayer and raises an objection to the maintainability of the writ petition. It is submitted that the petition is premature in nature as the investigation is still under way and has not attained its finality.
10. The importer of Nepal refused to accept the delivery of the consignment which has been confiscated. Upon examination it was found that some of the goods are prohibited goods under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
11. Learned counsel further draws the attention of this Court to Clause 5 A (i) to the Memorandum of the Treaty of Transit between Government of India and Government of Nepal, when “there are valid reasons to do otherwise”. The presence of prohibited goods constitutes

such valid reasons. The clause 5A(i) is reproduced below.

“ (i) On arrival of the Nepalese containerized cargo, the Indian customs officer posted at the seaport, shall merely check the ‘one-time-lock’ of the container put on by the shipping agent or the carrier authorized by the shipping company. If found intact, the customs officer shall allow transportation of the containerized cargo, without examination, unless there are valid reasons to do otherwise.”

In this context the petitioners submission Clause 5A(i) is not applicable is disputed.

12. It is further submitted that two customs brokers have already been arrested and on the basis of their own statements, the modus operandi of the entire procedure of transmission of the consignment has been revealed.

13. After hearing the rival contentions of the parties and upon perusing the materials on record, this Court finds that the petitioner has been able to prima facie satisfy this Court but this court is not inclined to go into the merits of the case at this stage particularly since the investigation is pending and serious allegation regarding prohibited goods have been raised. It is settled principle that every State action must be informed by reason and conform to the procedure

establish by as held in Maneka Gandhi vs. Union of India reported 1978 (1) SCC 248.

14. However, the principle of natural justice demands that the petitioner shall file a comprehensive and detailed representation before the respondent no. 1 within a period of seven days from today. The respondent no. 1 shall peremptorily consider the said representation within three weeks from the date of receipt and pass a reasoned order in accordance with law upon affording an opportunity of hearing to the learned advocates representing the petitioner and the respondent nos. 2 (being the exporters and the importer of the consignment in issue).

1. It is made clear that the entire exercise has to be completed on or before 8th July, 2026.
2. However, it is further made clear that a notice of hearing shall be served separately upon petitioner/Exporte through their learned advocate 1. Mr. Rajnish Kumar Kalawatia, and to the respondent no. 2/Importer through their learned advocate Mr. Sunny Nandy.
3. Accordingly, WPA 826 of 2026 along with application being CAN 1 of 2026 is disposed of without going into the merits of this case.

4. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)