N.S.R. Krishna Prasad v. Directorate of Enforcement

Whether a confessional statement recorded by Customs or Revenue Intelligence officers under Section 108 of the Customs Act is admissible without the caution required under Section 164(2) CrPC.

Date of Order: April 16, 1991
Case Law No: GIB-APHC-1991-01
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Statements were recorded in 1989 by officers of the Directorate of Revenue Intelligence from the petitioner and from another petitioner's husband, including one under Section 40 of FERA, in a case of mis-declared goods in a container. No caution that the person need not confess, and that the statement may be used against him, was given. Show cause notices for penalty and prosecution were then issued on the strength of these statements, and the petitioners asked for writs barring their use.

Final Verdict

The Court held that **unless the officer under Section 108 gives the caution embodied in Section 164(2) CrPC before recording a confessional statement, the statement is inadmissible in evidence for any purpose** and has to be eschewed. **The Court added that Section 108 does not compel a person to incriminate himself, so he may maintain a studied silence where the answers would incriminate him, and silence in that situation is not an offence under Section 193 IPC.**

The writ petitions were held maintainable, since penal action had already begun, and were allowed: the respondents were restrained from using or acting on the impugned statements for any penal action or prosecution under any enactment.

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