CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70052 of 2023

(Arising out of Order-in-Appeal No.617-CUS/APPL/LKO/2022 dated 05.09.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

Shri Pramod Kumar Verma, **.....Appellant**
(S/o late Rajendra Ram, R/o Ganeshpur,
Paramhans Nagar, Kandwa, Varanasi, U.P.
The Inspector CGST & Central Excise,
Headquarter, Varanasi)

VERSUS

Commissioner of Customs (Preventive),
Lucknow **....Respondent**
(5th Floor, Kendriya Bhawan, Aliganj, Sector-H,
Lucknow-226024)

APPEARANCE:

Shri Prakhar Shukla, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70770/2025

DATE OF HEARING : 04.07.2025
DATE OF PRONOUNCEMENT : 03.11.2025

This appeal is directed against Order-in-Appeal No.617-CUS/APPL/LKO/2022 dated 05.09.2022 of the Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow. By the impugned order, the First Appellate Authority has dismissed the appeal before him upholding Order-in-Original No.50-JC/2021-22 dated 03.11.2021 passed by Joint Commissioner, Customs (Preventive) Commissionerate, Lucknow vide which ordered for initiation against the Appellant under Section 136 of the Customs Act, 1962 and imposed penalty of Rs.10,00,000/- on the Appellant under Section 112 (b) of the Customs Act, 1962 and ordered for confiscation of Rs.8,25,500/- recovered from the residential premises of the Appellant.

2. Learned Counsel for the Appellant has submitted that the facts of the case are that the Appellant at the time was working as Air Customs Officer[1] at LBSI Airport, Varanasi. On 19.12.2019, acting upon specific information that certain groups of passengers are regularly carrying out smuggling of goods like gold, silver and other contraband items like cigarettes, saffron, etc. in their personal baggage, the Officers of DRI visited LBSI Airport, Varanasi. The DRI Officers also had specific input regarding connivance of some Custom Officers with these passengers through their kingpins.

3. That the Appellant was working as ACO at LBSI Airport, Varanasi only when the Assistant Commissioner, Shri B. K. Gupta and Superintendent Shri K. K. Singh pressured on him as during the period his main duty was in recovery cell of Customs (Preventive) Division, Varanasi. That on 19.12.2019, the Appellant also attended his duty at LBSI Airport Varanasi as per verbal order of his Superintendent Shri K. K. Singh and the Assistant Commissioner Shri B. K. Gupta and was clearing the passengers from departure side after clearing the Bangkok Flight at 9:30 Hrs by other Customs staff posted there. That at around 11:30 Hrs DRI Staff came there and forcibly took over the cell phones of all the Customs staff posted there and made the whole Customs staff including the Appellant sit in a side of office like hostage. The Customs staffs were not allowed to do their work and the DRI staff took over the whole work.

4. Thereafter, the Officers of DRI conducted Baggage examination of some specific passengers of three flights i.e. Air India Flight No. IX-184, Malindo Flight No. OD-290 & Thai Smile Flight No. WE-335, who had opted for Green Channel and were moving towards the Exit Gate of the Arrival Hall after Customs Clearance. During the examination of checked in baggage, hand baggage, etc., (i) 4,34,400 sticks of foreign origin cigarettes of different brands from Noticee No.2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 15, and 16 were recovered, (ii) 30 Kgs of Saffron was recovered from Noticee No.6, 7 & 8 &, (iii) 5501.99 grams of gold

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[1] ACO

collectively valued Rs.2,67,86,351/- was recovered from Noticee No.1, 9, 10 & 11. All the items recovered were believed to be liable to confiscation under Section 111 of Customs Act, 1962 and seized under Section 110 of the Customs Act, 1962.

5. Thereafter, the Statements of the Appellant and others, under hostage like situation, were recorded alongwith 16 passengers (Noticee No.1 to 16), Shri B. K. Gupta, Assistant Commissioner and Shri K. K. Singh, ACS. The statement of the Appellant was recorded after keeping him hostage for whole night without any dignity whereas other Officers like Shri B. K. Gupta, Assistant Commissioner and Shri K. K. Singh, ACS were allowed to go. That in the next morning i.e. 20.12.2019, the Appellant was brought out of airport for further investigation at DRI office Sigara and inquiry was started from the Appellant in one small room. The DRI officers were present and started taking statement dated 19/20.12.2019 under duress and pressure.

6. That question and answer done in hostage situation of Customs official did not go well with the Appellant and as a result, the Appellant answered the questions as per the DRI official's wish and dictation. The incriminating statements provided in the illegal custody of Customs official without any representatives of the Appellant is inadmissible. That the Appellant in another round of statement dated 20.01.2020, was getting pressured from various corners and still exonerated himself from any malicious activities. Appellant in his statement stated that he was under constant threat by his seniors for his career leading to some mis-happenings in the past. However, nowhere in the statement any implicating statements were made by the Appellant in relation to the series of incidents that took place on 19.12.2019. Also, the Appellant specifically stated that he has not received any gratification and was not aware of any money transactions being done.

7. That both the statements of the Appellant are completely different when it comes to any incriminating evidences against the Appellant in the events leading to the day. Such

contradiction is due to the immense pressure of the DRI officials while taking the first statement in a hostage like situation. In the second statement, the Appellant was under pressure again but tried to exonerate himself showing the facts that no money transaction was known to him. That the Appellant has also been falsely implicated on the basis of Role played and circumstantial evidence produced by the Customs officers as per the Show Cause Notice[2] dated 17.06.2020. In such SCN, the role played is based on the evidence on phone where in para 11 (i) (a) there is a photo being recognised by the Appellant, but it is not revealed in relation to which incident and what person, in para 11 (i) (b) there is one audio clip related to clearance of gold; again it is without the corroboration to the date of the incidence, in para 11 (i) (c) another audio clip which can be of any person has been correlated to the incident without any audio verification with person caught on airport; in para 11 (i) (d) recovery done at the Appellant's house on 19.12.2019 being cash amounting to Rs.8,25,500/- is not having specifics as to such cash is given by whom and in regard to which incident. Moreover, the Appellant explained that the recovered cash belongs to his mother and was given as gift to his wife for their daughter's marriage as having the same on record as Notarized Affidavit (**Page No.208 of Appeal**). Rest two paras 11 (i) (e) and 11 (i) (f) are based on the statement made under the influence and pressure of overnight illegal custody of the Appellant. Even if para 11 (i) (e) is to be believed as evidence, the amount of recovery at LSBI airport is in crores and the Appellant used to receive Rs.2,000/- only as clearance of contraband items is itself contradictory. All the recovery of cash done from Appellant's residence was done on the date of incident; cannot be made admissible for the incident as the Appellant was illegally detained by the Customs officials on the said night having no idea as to what was recovered. Also, if the statement made in illegal custody is to be believed, the Appellant received Rs.2,000/- only as gratification

[2] SCN

per clearance, then a recovery of Rs.8,25,500/- is highly arbitrary in such case.

8. The Appellant's Counsel also submitted the departmental order dated 21.12.2023 having Order No.02/Satarkta/2023 passed by Vikas, IRS, Commissioner, CGST & CE Commissionerate, Varanasi. In such order the penalty under Rule 11 (v) of the CCS (CCA) Rules, 1965 was imposed and the same has been completed also as being reduction of pay to three stages for one year. However, the Appellant has appealed the order before the Chief Commissioner of CGST and Central Excise Lucknow. The appeal has been filed on 31.01.2024 and the same remains pending adversely effecting the Appellant's career.

9. On merits, the Ld. Counsel submits that there is no corroborative evidence to the statements made by the Appellant which has been retracted and no cross-examination was granted to the Appellant which is violation of principles of natural justice. In that circumstances Appeal order dated 05-09-2022 is to be set aside. To support their contention they relied on the following decisions :-

(*a*) *Sudarsan Jana* vs. *Commissioner of Customs (P), Kolkata* [2017 (357) E.L.T. 656 (Tri. - Cal)].

(*b*) *Vinod Solanki* vs. *UOI* [2009 (233) E.L.T. 157 (S.C.)].

(*c*) *A.L. Jalaludeen* vs. *Dy. Dir. of Enforcement Directorate, Chennai* [2010 (261) E.L.T. 84 (Mad.)].

(*d*) *UOI* vs. *Kisan Ratan Singh* [2020 (372) E.L.T. 714 (Bom.)].

(*e*) *Sachin Kumar* vs. *Commissioner of Customs, Mangalore* [2020 (374) E.L.T. 775 (Tri. - Bang)].

(*e*) *Rajendra Prasad* vs. *Commissioner of Customs, Patna* [2001 (136) E.L.T. 925 (Tri. - Cal)].

10. The learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

11. Heard both the sides and perused the appeal records.

12. In light of the submissions made from both the sides, I have considered the case and find that the Appellant's work was restricted to airport duty appointed by the senior officials Shri K.K. Singh, ACS and Shri B. K. Gupta, Assistant Commissioner. This fact and the Appellant's version of career related threat, that if the Appellant did not act as per the directions of his seniors, has relevance. The position of senior officials making duty appointing chart of the Appellant shows that they are in position to influence overall performance of the Appellant. That the Appellant has served his punishment given by the Department as per the order dated 21.12.2023 having Order No.02/Satarkta/2023 and yet has appealed for getting himself exonerated from any liability. The appeal is pending before Commissioner of CGST and Central Excise, Lucknow.

13. I find that the evidences presented in this case have a lot of reliance on statements and recovery from the Appellant. It is a fact that recovery from the Appellant has an explanation from the Appellant side, while the Department has not given any specifics linking seizure to the smuggling. It is a settled law that statement of third party and confession of co-accused is not substantive evidence in absence of corroboration thereof. Mere possibility of abetment is not similar to preponderance of probability. In case of **Commissioner vs. Kamal Bajaj - 2016 (333) E.L.T. A178 (Tri. - Del.)** it is held that, "Mere possibility of abetment is not similar to preponderance of probability. After discussing evidence against each of Customs Officer, which by and large was confined to aforesaid two points of third party statement and telephonic talks for which no transcript was available, it was held that there is no illegality or perversity in the order of Commissioner in exonerating Customs Officers." On merits also, I find that except the statements recorded by the DRI dated 19/20.12.2019 which were not supported by the Appellant on the first opportunity available on 20.01.2020, no other corroborative evidence has been brought on record. On facts as stated above and under the circumstances of the case, penalty on the Appellant is not imposable.

14. Further, I find that in the case of Rajendra Prasad (supra), this Tribunal has observed as under:-

> ***"4.*** *Shri R.K. Roy, learned JDR, countering the arguments of the learned Consultant, reiterates the findings of the original authority and the appellate authority. He submits that the corroborative evidence can be used as a substantial evidence, as held by the Honourable Supreme Court in the case of Naresh J. Sukhawani v. Union of India reported in 1996 (83) E.L.T. 258 (S.C.) wherein it was held that the statement of the co-accused, recorded under Section 108 of the Customs Act, 1962, inculpating himself as well as the petitioner can be used as a substantive evidence. Shri Roy has also invited my attention to the decision of the Honourable Tribunal in the case of Mohmedbhai Asrafbhai Kimsarwala v. Collector of Customs reported in 1991 (52) E.L.T. 573 (Tribunal), wherein it was held that the statement of an accomplice without corroboration would not be sufficient to prove the guilt, and when there is a knowledge of involvement, personal penalty can be imposed. It was also held that before acceptance of the statement of the accomplice, some corroboration from some independent source is called for.*
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> ***5.*** *After hearing both sides and on going through the Order-in-Original and the Order-in-Appeal, it is observed that the appellants were penalised solely on the statement of Shri Shiv Kumar Sharma, the driver. Except the statement of Shri Shiv Kumar Sharma, there is no other independent evidence to corroborate the statement of the co-accused. It is an accepted legal proposition which has been accepted by the Apex Court in various judgments that the statement of co-accused, when not corroborated by any independent evidence, cannot be taken as a Gospel Truth. Therefore, reliance on the statement of the co-accused without corroboration is unacceptable in law. The reliance of Revenue on the judgment of the Hon'ble Supreme Court in Naresh J. Sukhawani is of no avail inasmuch as the statement of the co-accused in that case inculpates himself as well as the petitioner. In the instant case, the co-accused shifted the entire guilt on the appellants. In view thereof, the personal penalties imposed on the appellants are not warranted. Therefore, I have no hesitation in holding that the personal penalties are required to be set aside. Accordingly, I do so."*

15. After hearing both sides, and on going through the Order-in-Original and the Order-in-Appeal, it is observed that the Appellant is penalised solely on the statement given under duress and the evidence such as recovery of cash has not been found proper. The Appellant has been linked to the crime without giving proper opportunity of hearing. The Appellant has not been given opportunity to cross examine any witness and object on any of the evidences presented or recovery done. Also, the recovery done from the Appellant's home on same day when the Appellant was held hostage cannot be said proper proof as the explanation given by the Appellant and his family for the amount recovered cannot be overlooked. In case of Commissioner of Customs (Preventive), Kolkata, vs. Amit Jalan, (2024) 23 Centax 266 (Tri.-Cal.), it has been held that statements made cannot be accepted blindly without corroborative evidence as, 'the issue is, can that statement be accepted blindly without corroboration, and the answer is no.'

16. In view of the above discussion, I hold that Order-in-Appeal No.617-CUS/APPL/LKO/2022 dated 05.09.2022 of the Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow cannot be sustained and the same is set aside. Accordingly, the appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on - **03.11.2025**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS