**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**Customs Appeal No.75454 of 2021**
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.Kol/Cus(Prev.)/WB/AKR/309-310/2021 dated 18.03.2021 passed by Commissioner (Appeals) of Customs, Kolkata)

**Shri Mohit Sonkar**
(Ground Floor, 3B Chowringhee Lane, Kolkata-700016)

**Appellant**

*VERSUS*

**Commissioner of Customs (Preventive), Kolkata**
(15/1, Strand Road, Kolkata-700001)

**Respondent**

**APPERANCE :**

Shri Anup Chattopadhyay, Authorised Representative for the Appellant
Shri Faiz Ahmed, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**FINAL ORDER NO…75107/2024**

DATE OF HEARING : 31.01.2024
DATE OF DECISION : 31.01.2024

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein a penalty of Rs.15.00 lakhs has been imposed under Section 112 (a) of the Customs Act, 1962.

2. The facts of the case are that the case of gold smuggling was booked by the Department against one Shri Sumon Gope and Shri Ratan Karmakar. During the course of investigation, Shri Sumon Gope made a statement that he has taken delivery of dollar from the appellant to export it to the Bangladesh. On the basis of the statement of Shri Sumon Gope, the statement of the appellant was recorded and the appellant nowhere made any admission that he has sold any Dollar

to Shri Sumon Gope, who was involved in smuggling of gold, but the authorities below after relying on the statement of Shri Sumon Gope, a penalty of Rs.15.00 lakhs has been imposed on the appellant. Against the said order, the appellant is before me.

3. The ld.Authorised Representative appearing on behalf of the appellant submits that the statement of the appellant was recorded, but no transaction was took place with any smuggling activities. He also stated that he does not know Shri Sumon Gope, whose statement has been relied upon to impose penalty on him. He further submits that Shri Sumon Gope also retracted his statement during cross examination. In that circumstances, on the basis of third party statement, penalty cannot be imposed without any corroboration. He, therefore, prayed that the penalty imposed on the appellant be set aside.

4. On the other hand, the ld.A.R. for the Revenue submits that the penalty has been imposed on the basis of statement of co-accused. Therefore, the appellant has rightly penalized by the authorities below.

5. Heard both the parties and considered the submissions.

6. I have gone through the statement of the appellant recorded in the impugned order. I find that there is no relation between the co-accused Shri Sumon Gope and the present appellant. As there is no relation established between the co-accused, in that circumstances, on the basis of statement of third party, penalty cannot be imposed on the appellant.

7. In that circumstances, I set aside the impugned order quo imposing penalty on the appellant. Accordingly, the penalty imposed on the appellant is set aside.

8. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

**(Ashok Jindal)**
**Member (Judicial)**

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