**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 75347 of 2018**

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/49/2017 dated 31.10.2017 passed by the Commissioner of Customs(Port), Custom House, 15/1, Strand Road, Kolkata-700 001)

**M/s. Shri Santosh Kumar Prasad,** **: Appellant**
389, Shahpur Colony East,
Kolkata-700 053

**VERSUS**

**Commissioner of Customs (Port),** **: Respondent**
Customs House,
15/1, Strand Road, Kolkata-700 001

**APPEARANCE:**

Shri Nilotpal Chowdhury, Advocate for the Appellant
Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75479/2025**

DATE OF HEARING: 13.02.2025
DATE OF PRONOUNCEMENT: 26.02.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

Customs Appeal No. 75347 of 2018 has been filed by Shri Santosh Kumar Prasad (hereinafter referred to as " the Appellant ) against the imposition of penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only) on him under Section 112(b) of the Customs Act, 1962 vide the Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/49/2017 dated

31.10.2017 for his involvement in the present case and his role in past smuggling carried out by him.

2. The facts of the case are that based on a specific intelligence received by the Kolkata Zonal Unit of the Directorate of Revenue Intelligence (DRI) that a smuggling syndicate was attempting to smuggle cigarettes of foreign origin into India in the guise of Nepal import in a container bearing No. GESU5984886 (40 feet) through Kolkata Port and the goods are being mis-declared as Stationery Goods in the concerned Customs Transit Declaration (CTD) with the intention to replace the declared goods in India, the officers of the DRI initiated an investigation. The Officers located the above container at the Netaji Subhash Dock, Kolkata and subjected it to 100% examination. Upon examination, the Officers found that 649 cartons of "Gudang Garam International" brand filter cigarettes of Indonesian origin had been concealed inside the container declared to contain stationery goods.

3. After investigation, a Show Cause Notice dated 20.11.2015 was issued inter alia proposing confiscation of the illegally imported cigarettes in the guise of stationery items, along with penalty for the appellant herein for his role in the alleged offence.

4. On adjudication, the ld. adjudicating authority confiscated the goods and imposed penalties on the various persons involved in connection with the said smuggling activity vide the impugned order. In the impugned order, a penalty of Rs.50,00,000/- was imposed on the Appellant under Section 112(b) of the Customs Act, 1962.

4.1. Aggrieved against the imposition of penalty, the appellant has filed is appeal.

5. The appellant submits that the entire case against him is based upon the statements recorded behind his back. It is his submission that inspite of specific prayer by him, the opportunity of cross-examination of such persons who have given the statements, was not granted by the Ld. Adjudicating Authority. The Hon'ble Supreme Court of India in several occasions had categorically held that no reliance can be placed upon such statements to arrive at an adverse conclusion without granting opportunity of cross-examination. The appellant submits that in the present case, he had merely acted as per direction of Mr. Rajesh Kumar of Nepal and he had no personal interest in the present case. Moreover, he had no personal understanding on knowledge of diversion of goods in the Nepal-bound import consignment.

5.1. The appellant submits that the Ld. Adjudicating Authority while passing the Impugned order had merely considered the initial statements extracted from the appellant but had failed to consider the retraction given by him vide letter dated 28.07.15 before investigating authority. Such non-consideration of retraction by the Ld. Adjudicating Authority is bad in law.

5.2. The Ld. Adjudicating Authority at paragraph 29.3 of the impugned order had held that Shri Bhimendra Kumar Goyal is the main person in the alleged act of smuggling and at para 29.5, he had held that every act of the present appellant was as per their instructions of the said Rajesh Kumar of Nepal and as such, the appellant may not be liable for any penal consequence in the present case.

5.3. The appellant submits that penalty under Section 112(b) of the Customs Act, 1962 is imposable only when the person knowingly or having reason to believe about confiscable nature of the seized goods had involved with the same in any manner whatsoever. In the present case, there is no independent finding against him about his prior knowledge or reasons to believe that the goods seized were liable for confiscation. Hence, no penalty under Section 112(b) of the Customs Act, 1962 is imposable upon him.

5.4. The appellant submits that it is settled position of law that no person can be a witness in his own case. In other words, on the basis of confessional statement, if any, no person can be visited with penal consequence unless such confessional statement is corroborated with independent and cogent evidence on-record. If in the present case, the confessional statements of the present appellant, which were later retracted, are taken out of record. The appellant submits that there is no other evidence available on record to implicate and penalized him.

5.5. The appellant submits that it is a settled position of law that on the sole basis of retracted statement, no adverse conclusion can be arrived at against any person. Though, there are several persons accused in the present case, no one have stated that the appellant had knowingly or consciously involved himself in the alleged act of smuggling. Hence, on the basis of the appellant's own retracted statement, imposition of penalty upon him, is not maintainable in law.

5.6. In view of the above discussions, the appellant submits that there is no merit in the impugned order imposing penalty upon him and as such, the same is liable to be set aside.

6. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submitted that the Appellant played an active role in the commission of the offence. Appellant arranged the godown where the smuggled cigarettes were replaced. He has helped the smuggling of cigarettes on an earlier occasion also. Appellant helped in identifying the CHA for clearance of the imported goods. Thus, he submitted that penalty has been rightly imposed on them under Section 112(b) of the Customs Act, 1962 by the ld. adjudicating authority. Accordingly, he supported the imposition of penalties on the Appellants.

7. Heard both sides and perused the appeal records.

8. We observe that the appellant has filed this appeal against the penalty of Rs.50,00,000/- imposed on him in the impugned order for his role in the alleged offence of smuggling of cigarettes in the past and in the present case.

8.1. Regarding the role played by the Appellant, we observe that intelligence gathered by DRI officers indicated that a smuggling syndicate was attempting to smuggle cigarettes of foreign origin into India in the guise of Nepal import in a container bearing No. GESU5984886 (40 feet) and, on examination, the subject container which was declared to contain stationery goods in the concerned Customs Transit

Declaration (CTD) was found to contain 649 cartons of "Gudang Garam International" brand filter cigarettes of Indonesian origin. The allegation against the Appellant is that he has helped in transportation of the smuggled goods in the past and allowed the importer to offload the smuggled cigarettes in a godown on transit and replace the container with stationery items as declared in the CTD, on the way to Nepal. It is also alleged that the Appellant has helped them to store the stationery goods in a godown before replacement and thus played an active role removing the smuggled cigarettes in the same godown on an earlier occasion.

8.2. We observe that penalty has been imposed on the Appellant for abetting the alleged offence and for the role played by him in the past and the present offence. For the sake of ready reference, the role played by him, as indicated in paragraph 23.1 of the impugned order, is reproduced below: -

> "23.1 **Sri Santosh Kumar Prasad**: As has been discussed in the foregoing, Sri Santosh Kumar Prasad in his statements tendered before the officers of DRI, Kolkata under Section 108 of the Customs Act, 1962 had admitted about his active involvement in the illegal activity of smuggling of foreign origin cigarettes by way of diverting the same from Nepal bound import consignments into Indian market. Sri Santosh Kumar Prasad further admitted that he knowingly did the misdeed as per instruction of the said Rajesh Kumar of Nepal, the business associate of Sri Bhimendra

Kumar Goyal alias Munna for monetary gain. Sri Santosh Jaiswal admitted that Sri Santosh Kumar Prasad contacted him for arranging godown and he allowed Sri Santosh Kumar Prasad to break open the Container No. VMLU 3707024 (20') and replace the cigarettes with the other goods in his godown for a consideration of Rs. 40000/-. As per his own admission as well as the statements of different persons concerned like the said Sri Pravin Kumar Singh, Sri Srimonta Rakshit, Sri Man Singh, Sri Akhilesh Singh and Mr. Matin, Sri Santosh Kumar Prasad appears to be the main link man of this smuggling racket. Sri Santosh Kumar Prasad arranged the CHA, the transporter, the godown and the breaking open of the container. He arranged the declared stationery goods as per CTD for the containers GESU5984886 (40) and VMLU 3707024 (20'). As per his instruction, the container No. VMLU 3707024 (20') was broken open and the cigarettes were taken out of the container and in their place the stationery goods were put in matching with the CTD. The cigarettes taken out of the container No. VMLU 3707024 (20') were dispatched by Sri Prasad to Delhi, Ahmedabad, etc through couriers which were also arranged by him. Thus, it appears evident that Sri Santosh Kumar Prasad had been knowingly Involved in the illegal activity of smuggling of foreign origin goods without payment of Customs duty.

8.3. We observe that Shri. Man Singh was having a truck bearing registration No. WB-23B-6159, in which he has carried some goods in the container No. VMLU 3707024 (20’), as directed by the appellant, Shri Santosh Kumar Prasad. In the midnight of 29/30.04.2015 at about 00.30 hrs, the driver of the said truck called Shri. Man Singh and informed that Shri Santosh Kr. Prasad had taken his truck loaded with the container to a godown and he wanted to replace the goods of the container. Shri Man Singh allowed the appellant, Shri Santosh Kr. Prasad to do so as the goods belonged to him (Santosh Kr. Prasad). Thus, we observe that Shri. Santosh Kumar Prasad was instrumental in break open of the sealed container which was diverted to a godown en-route as per his direction. We find that after breaking open the container, the appellant was instrumental in taking out the cigarettes from the container and replacing it with stationery goods, matching with the CTD. The cigarettes taken out of the container No. VMLU 3707024 (20') were dispatched by Sri Prasad to Delhi, Ahmedabad, etc through couriers which were also arranged by him. Thus, we find that Shri Santosh Kumar Prasad had been knowingly Involved in the illegal activity of smuggling of foreign origin goods without payment of Customs duty. We observe that the appellant himself admitted all these facts in his statement dated 23.05.2015.

8.4. We find that the contents of the statement recorded from Shri. Santosh Kumar Prasad has been elaborated in para 6.2 of the impugned order, which is reproduced below:

> “6.2 It appeared that Sri Santosh Kumar Prasad had played a major role in the aforesaid illegal Import made on account of M/s Balaji Traders of

Nepal. Accordingly, statement of Sri Santosh Kumar Prasad, S/o Sri Jagannath Prasad, 389 Sahapur Colony East, Kolkata-700053 was also recorded 23.05.2015 under Section 108 of Customs Act, 1962 wherein he inter alia stated that he met one person named Rajesh Kumar of Nepal at Silliguri, who was a businessman of Nepal and used to come Siliguri frequently; thatSri Rajesh Kumar having mobile No. 009779818997395 was the main person of M/s Balaji Traders. On being shown the photograph of Sri Laxmi MahatoGhanuk, the proprietor of M/s Balaji Traders, Kathmandu, Nepal which appears on thephotocopy of PAN Card submitted by Sri Srimonta Rakshit, Sri Santosh stated that he had never seen the person. He further submitted that he had given the clearance job of the Nepal import cargo of M/s Balaji Traders to Sri SrimontaRakshit; thatduring the first week of April, 2015, he received a phone call from the said Rajesh Kumar to assist him in the clearance of the consignments of M/s Balaji Traders in India; thatas his own business was not running well, he agreed to the proposal of Rajesh Kumar to earn some extra money from such work; that Rajesh Kumar informed him that the documents related to the consignment of M/s Balaji Traders wouldbe sent through his (Rajesh) man and asked him to arrange for clearance of the Nepal bound Cargo of M/s Balaji Traders on 17.04.2015; thatas per the instruction of Rajesh Kumar he went to Kolkata Airport, where a person gave him the documents required for clearance of the said consignment; and as per the Instruction of Rajesh Kumar he collected the money from another person at Burrabazar; thathe knew one person named Sri Pravin Kumar Singh who handled clearance work of his (Santosh) Import consignment of shoes and house hold item.As Sri Pravin had never dealtwith Nepal bound cargo, Sri Praveen introduced him to one Sri Srimonta Rakshit, who agreed to do the job; thathe (Sri Santosh) provided all the documents to Sri Rakshit along with the money received from Rajesh Kumar and the consignment was cleared on 27.04.2015; that the consignment contained stationery goods as declared in Invoice No. MW/BT/150404 dated 04.04.2015 and packing list; that he arranged the transporter named Sanjeev Singh; that he earned Rs. 5000 from that

> consignment. He further submitted that similarly he received the documents including the Invoice No. MW/BT/150507 dated 07.05.2015 for the second consignment of the sald M/s Balaji Traders around 13.05.2015 along with the amount of Rs. 45000/- from Rajesh Kumar; that he was Instructed by Rajesh Kumar over phone to arrange for clearance of the sald consignment of Stationery Goods; that accordingly, he handed over those documents to Sri Srimonta Rakshit for clearance and gave him (Rakshit) Rs. 35000/-; that on 23.05.2015, he received a call from Sri Rakshit saying that the sald consignment of M/s Balaji Traders under Invoice No. MW/BT/150507 dated 07.05.2015 loaded in container No. GESU 5984886 would be examined by Customs and DRI officers and he was asked to come to NS Dock, Kolkata at Shed No. 3. On examination, it was found that the container contained "Gudang Garam International" cigarettes, made in Indonesia instead of Stationery Goods as declared; that he did not know how it happened as he knew nothing of the matter; thathe tried to contact Rajesh Kumar but he was not available. Sri Santosh Kumar Prasad provided his mobile numbers as 8296603250 and 9831238812."

8.5. From the above, we observe that as per his own admission as well as the statements of different persons concerned like Sri Pravin Kumar Singh, Sri Srimonta Rakshit, Sri Man Singh, Sri Akhilesh Singh and Mr. Matin, Sri Santosh Kumar Prasad is the main link man of this smuggling racket. Shri Santosh Kumar Prasad arranged the CHA, the transporter, the godown and instrumental in the breaking open of the container. He arranged the declared stationery goods for repalcement, as per CTD for the containers GESU5984886 (40) and VMLU 3707024 (20').

8.6. The appellant submitted that he has retracted his statement vide his letter dated 28.07.2015. However, we find that his statement was again recorded on 04.08.2015, wherein he has reiterated what he has stated in his earlier statements dated 23.05.2015 and 26.05.2015. Thus, we observe that the retraction was only an after thought, which need not be taken cognizance as he has affirmed his earlier statements again in his subsequent statement after the retraction. Thus, we hold that the statements given by the appellant can be relied upon against him to establish his role in the offence. As the role of the appellant in the offence committed has been established based on his own admission as well as the statements of different persons concerned like Sri Pravin Kumar Singh, Sri Srimonta Rakshit, Sri Man Singh, Sri Akhilesh Singh and Mr. Matin, we hold that the appellant is liable for penalty as per Section 112(b) of the Customs Act, 1962.

8.7. In view of the above findings, we hold that the Appellant had knowingly or consciously involved himself in the alleged act of smuggling. Thus, we hold that the appellant has abetted the illegal smuggling activities and thereby connived with the smuggling racket for smuggling of cigarettes in to the country. Accordingly, we hold that the ld. adjudicating authority has rightly imposed penalty on the Appellant under Section 112(b) of the Customs Act, 1962. However, regarding the quantum of penalty imposed, we observe that the appellant is an intermediary acted as per the directions of Shri. Rajesh Kumar of Nepal. He was not the ultimate beneficiary of the smuggled goods. Thus, we observe that the penalty imposed on him is very high and it can be reduced to commensurate with the role played by him in the offence. Accordingly, we reduce the penalty imposed on the appellant in the impugned order from Rs.50,00,000/- to Rs.25,00,000/-.

9. In view of the above, we hold that the appellant is liable penalty under Section 112(b) of the Customs Act, 1962. However, we reduce the penalty imposed on the appellant from Rs.50,00,000/- to Rs.25,00,000/-. The appeal filed by the appellant is disposed of on the above terms.

(Order Pronounced in Open court on 26.02.2025)

**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

RKP