

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75788 of 2021

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/577/2021 dated 27.07.2021 passed by Commissioner of Customs, Kolkata)

Shri Manoj Shah, : **Appellant**

S/o-Late Mahabir Prasad Shah, Prop. Of M/s. Mangilal Kishorilal,
Dinbazar, Jalpaiguri, Pin-735 101.

VERSUS

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

With

Customs Appeal No. 75789 of 2021

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/576/2021 dated 27.07.2021 passed by Commissioner of Customs, Kolkata)

Shri Ratan Ghosh, : **Appellant**

E-148, Ramgarh Colony, P.O.-Naktala, P.S.-Netajinagar,
Kolkata-700 001.

VERSUS

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

With

Customs Appeal No. 75794 of 2021

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/577/2021 dated 27.07.2021 passed by Commissioner of Customs, Kolkata)

Shri Ashim Ghosh, : **Appellant**

Vill-Basanta, P.O.-Trimohini, P.S.-Hili, Dist.-Dakshin Dinajpur,
Pin-733126.

VERSUS

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

APPEARANCE:

Shri Arijit Chakraborty & Shri Nilotpol Chowdhury, Advocates for the Appellant

Shri S.Debnath, Authorized Representative for the Respondent

CORAM:**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)****HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)****FINAL ORDER NO. 77221-77223/ 2025**

DATE OF HEARING :22.07.2025

DATE OF DECISION:22.07.2025

Order : [Per Shri Ashok Jindal]

All the appeals are arising out of a common order wherein penalties on all the appellants have been imposed under Section 114 of the Custom Act, 1962 of Rs. 4 lakh each.

2. The facts of the case are that on 17.04.2017 DRI Siliguri intercepted one Kishori Kumar Pal and the alleged seized cash US \$ 58,850 from his possession. The said Shri Kishori Kumar Pal stated in his statements dated 18.04.2017 and 19.04.2017 that he collected such cash foreign currency from appellant no. 2 at the instance of appellant no. 3 and such cash was for smuggling out of India as consideration against smuggled gold and same was to be handed over to appellant no. 1. The said statement of Shri Kishori Kumar Pal was retracted before the Ld. CJM, Siliguri on on his production 20.04.2017. Thereafter no statement was recorded on Shri Kishori Kumar Pal and proceedings were initiated against the appellants for imposition of penalty by way of issuance of the Show Cause Notice. The matter was adjudicated, penalties have been imposed of Rs. 4 lakh each.

3. Aggrieved from the said imposition of penalties appellants are before us.

4. The Ld. Counsel appearing on behalf of the appellants submits that penalties have been imposed

on the appellants based on the statements recorded by DRI on 18.04.2017 & 19.04.2017 wherein it was stated by Shri Kishori Kumar Pal that he has collected the foreign currency from appellant no. 2 on the instance of appellant no. 3 to be handed over to appellant no.1. But the said statement was retracted on earliest possible opportunity before the Judicial Magistrate and in cross examination of Shri Kishori Kumar Pal nothing incriminating has come out. In that circumstances merely on the basis of statement of third party which has been retracted the penalties are not imposable on the appellant.

5. On the other hand Ld. Authorized Representative supported the impugned order.

6. Heard the parties. Considered the submissions.

7. We find that the statement which is based to impose penalties on the appellant have been retracted by the person who made the statement before the Ld. CGM, Siliguri and during the cross examination also the witness of Shri Kishori Kumar Pal has stated that he was forced to make the statement on 18.04.2017 and 19.04.2017 by DRI and he did not know anyone in the name of Shri Ashim Ghosh or Shri Ratan Ghosh Shri Manoj Shah who are the appellants before us. As penalties has been imposed based on third party statement which has been retracted in that circumstances, the penalties on the appellant are not imposable. Therefore, the penalties imposed on the appellants are set aside.

8. In result appeals are allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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