

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75242 of 2022

(Arising out of Adjudication Order No. 02/CUS/CC(P)/WB/2021-22 dated 28.01.2022 passed by the Commissioner of Customs (Preventive), West Bengal, Kolkata, Custom House, 3rd Floor, 15/1, Strand Road, Kolkata – 700 001)

Shri Dharanidhar Ghosh

Daspara (Majdia Station Road),
Village and Post Office: Majdia, P.S.: Krishnaganj,
District: Nadia, West Bengal – 741 507

: Appellant

VERSUS

Commissioner of Customs (Preventive)

Custom House, 3rd Floor,
15/1, Strand Road,
Kolkata, West Bengal – 700 001

: Respondent

APPEARANCE:

Shri Arijit Chakraborty, Advocate,
Shri Nilotpal Chowdhury, Advocate,
For the Appellant

Shri A.K. Choudhary, Authorized Representative,
For the Respondent

CORAM:

**HON'BLE SHRIR. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 77886/2025

DATE OF HEARING: 30.10.2025

DATE OF DECISION: 09.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by Shri Dharanidhar Ghosh (herein after referred as the Appellant) against imposition of penalty of Rs.50,00,000/- on him in the Order No. 02/CUS/CC(P)/WB/2021-22 dated 28.01.2022 passed by the Commissioner of Customs

(Preventive), West Bengal, Kolkata, Custom House, 3rd Floor, 15/1, Strand Road, Kolkata.

2. The facts of the case are that on 05.10.2016, one Ratan Biswas was apprehended by DRI, Kolkata at Sealdah Railway Station and recovered 33 pieces of foreign marked Gold Biscuits weighing in total 3632.140 gms. from his possession. Accordingly, he was apprehended on the reasonable belief that he was transporting the said gold pieces without any valid documents for licit purchase of the same. During the course of interrogation, Shri. Ratan Biswas in his statement named the present appellant i.e. Shir Dharanidhar Ghosh as the person who handed him over the said Gold Biscuits for delivery to one Sourav at Burrabazar, Sonapatty.

2.1. On the basis of such statement of the apprehended person, search was conducted on 21.10.2016 at the residence of the appellant by Krishnanagar Customs Division, wherein nothing incriminating was found. Further search was conducted on 09.03.2017 by DRI, Kolkata wherein also nothing incriminating was found. The wife of appellant produced all required documents before the visiting DRI Officers.

2.2. On completion of the investigation, a show cause notice dated 30.03.2017 was issued to Shri. Ratan Biswas proposing confiscation of the said 33 pieces of gold along with the proposal for imposition of penalty on him. In the said Notice, the appellant was also implicated as a co-noticee on the allegation that he has connived with apprehended Ratan Biswas and knowingly/consciously involved himself in smuggling of foreign origin gold, for which penalty

was proposed to be imposed upon him under Section 112(a) & 112(b) of the Customs Act, 1962.

2.3. During the course of adjudication, the appellant sought for cross-examination of the said Ratan Biswas, which was not allowed and Adjudication Order dated 22.09.2017 was passed by imposing penalty of Rs.50 lakh upon the present appellant under Section 112(b) of the Customs Act, 1962. The appellant preferred a writ petition being WP 639 of 2017 before the Hon'ble High Court, Calcutta who vide Order dated 30.04.2018, set-aside the Adjudication Order dated 22.09.2017 with remark that "This order will, however, not prevent the authorities from proceeding afresh in accordance with law, against the petitioner."

2.4. During the course of denovo adjudication, cross-examination of Ratan Biswas was held on 14.12.2021 wherein he reiterated that the gold was given to him by Shri Dharanidhar Ghosh i.e. the appellant herein.

2.5. The Ld. Commissioner of Customs (Prev.), WB, Kolkata i.e. the respondent herein passed the Adjudication Order dated 28.01.2022, wherein he has inter alia imposed a penalty of Rs. 50 lakh upon the present appellant under Section 112(b) of the Customs Act, 1962. The appellant has filed this appeal before this Tribunal against the penalty imposed on him.

3. The Appellant submits that from the findings recorded at Para 17.2 and sub-paragraphs thereto of the impugned Adjudication Order, it would be evident that the entire basis of imposition of penalty upon the appellant is the confessional statement

dated 05.10.2016 of the co-accused/co-noticee Ratan Biswas, which was confirmed during cross-examination. The Appellant submits that apart from the statement of the co-accused, there is no other evidence brought on-record to implicate the appellant in the present case. Even during the course of investigation, nothing incriminating was found by DRI, Kolkata against the appellant.

3.1. The Appellant submits that he is engaged in the business of running a medical shop and foreign exchange to run his life, livelihood and family, which has got no connection with the alleged smuggling of gold. This has been confirmed by the investigation officers who conducted the search at his business premises.

3.2. The Appellant submits that one of the evidences relied upon by the investigation against him is the Mobile Phone bearing 9732573850, which was said to have been provided by Shri Ratan Biswas and said to be used by the appellant. In this regard, the Appellant submits that during investigation the said mobile number was found to be registered in the name of one Biswajit Chowdhury and no investigation was ever done with such user of the said mobile number. However, the Ld. Commissioner has concluded that the said mobile number was used by the appellant and arbitrarily proceeded to impose penalty upon him, which is bad in law.

3.3. The Appellant submits that imposition of penalty solely on the basis of statement of co-accused without any corroborative evidence, is not maintainable under the Customs Act, 1962. In the present case, there is no evidence on-record

corroborating the statement of the co-accused Shri Ratan Biswas to implicate him in the alleged offence. Thus, the Appellant submits that the penalty imposed on him is not maintainable in law. In this regard, reliance is placed upon the following decisions:

1. 2007 (220) ELT 3(S.C.) Para 16
2. 2008 (223) ELT 619 (Tri-Del) - Para 4 read with 2010 (260) ELT 180 (Del.)
3. 2014 (301) LT 170 (P&H) Para 17
4. 2016 (340) ELT 590 (Tri.-Kol.) Para 4.2 to 6
5. 2023 (385) ELT 722 (Tri.-Kol.) Para 17/19/20 v.

3.4. The Appellant submits that from the statement of the co-accused Ratan Biswas it would be evident that such statement was exculpatory in nature and a dire attempt on the part of the said apprehended person/co-accused to shrug of his responsibilities with respect to the Gold Biscuits recovered from his possession. Such an exculpatory statement of co-accused, in absence of any independent corroboration, cannot form the sole basis for imposition of penalty upon the appellant, when more particularly the alleged mobile number was also found to be registered in the name of some other person, who had not been investigated in the present case.

3.5. Without prejudice to the submissions supra, the Appellant further submitted that the quantum of penalty imposed upon the present appellant in the present case is contrary to the provisions of law. In terms of clause (ii) of Section 112 of the Customs Act, 1962 since the seized goods in the present case

is not 'prohibited' in nature and hence, the quantum of penalty under Section 112 ibid cannot be more than 10% of duty sought to be evaded. The Appellant submitted that the quantum of import duty sought to be evaded on the seized goods comes to Rs. 10,53,211/-Hence, any penalty imposed beyond 10% of such duty would amount to imposition of penalty without jurisdiction and hence, not maintainable in law.

3.6. In view of the above submissions the Appellant prayed for setting aside the penalty imposed on him.

4. The Ld. A.R. submitted that Shri. Ratan Biswas in his statement categorically stated that the Appellant was the person who handed over the gold pieces to him. He reiterated his statement during the course of cross-examination of Ratan Biswas held on 14.12.2021. Thus, the Ld. adjudicating authority has rightly imposed penalty on the appellant for abetting the offence of smuggling of the gold pieces.

5. Heard both sides and perused the appeal documents.

6. We observe that the present appeal has been filed by the Appellant against the penalty of Rs.50,00,000/- imposed on him in the impugned order. It is on record that the gold was recovered from Shri Ratan Biswas and in his statement Shri. Ratan Biswas implicated the Appellant as the person who handed over the gold pieces to him. Shri. Ratan Biswas reiterated his statement during the cross examination held before the adjudicating authority on 14.12.2021.

6.1. We observe that the only evidence implicating the Appellant in the alleged offence of smuggling of

gold pieces is the statement of the co-accused Ratan Biswas. In this regard, we agree with the submission of the Appellant that such statement is exculpatory in nature and it is an attempt on the part of the said apprehended person/co-accused to shrug of his responsibilities with respect to the Gold Biscuits recovered from his possession. We are of the view that in the absence of any independent corroboration, such an exculpatory statement of the co-accused cannot be the sole basis for implicating the Appellant in the alleged offence and imposition of penalty on him.

6.2. We observe that one of the evidences relied upon by the investigation against the Appellant is the Mobile Phone bearing 9732573850, which was said to have been provided by Shri Ratan Biswas and said to be used by the appellant. In this regard, we find that during investigation the said mobile number was found to be registered in the name of one Biswajit Chowdhury and no investigation was ever done with such user of the said mobile number. However, without conducting any verification from Shri. Biswajit Chowdhury, the Ld. Commissioner has concluded that the said mobile number was used by the appellant and arbitrarily proceeded to impose penalty upon him.

6.3. From the statement of Shri. Ratan Biswas, we observe that he has named the present appellant as the person who handed him over the said Gold Biscuits for delivery to one Sourav at Burrabazar, Sonapatty. But, the Investigation has not found out Shri Sourav who was said to be the receiver of the gold as per the statement of Shri. Ratan Biswas. Thus, we observe that the investigation has not

substantiated the statement of the co-accused Shri. Ratan Biswas with any corroborative evidence. Hence, we hold that in the absence of any independent corroboration, such an exculpatory statement of the co-accused cannot be the sole basis for implicating the Appellant in the alleged offence and imposition of penalty upon the appellant.

6.4. In support of the above view, we rely upon the following decisions :

(i) *Mohtesham Mohd. Ismail v. Special Director, Enforcement Directorate* - [2007 \(220\) E.L.T. 3](#) (S.C.) = [2007] 79 SCL 611 (SC).

That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.

(ii) *Prakash Kumar v. State of Gujarat* - (2007) 4 SCC 266.

The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.

(iii) *Assistant Collector of Customs v. Amrik Singh - 2014 (301) E.L.T. 170* (P & H).

The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the Act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

(iv) *AnisurRahaman v. Commissioner of Customs (Prev.), West Bengal - 2003 (160) E.L.T. 816* (Tri. - Kolkata).

Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty - The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole basis for penalizing the appellant.

(v) *Jahed Mondal v. Commissioner of Customs (Prev.), West Bengal - 2002 (149) E.L.T. 319* (Tri. - Kol.) = 2002 taxmann.com 1885 (CEGAT - Kol.) (Paras 8 & 11.).

Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons

cannot be a factor or criteria in determining the guilty conduct of the appellant.

(vi) *Narayan Das v. Commissioner of Customs, Patna* - [2004 \(178\) E.L.T. 554](#) (Tri.- Kolkata) Para-6.

6.5. Thus, we hold that mere exculpatory statement of the co-accused about handing over of the gold by the appellant cannot be the basis for implicating the Appellant in the alleged offence and imposing penalty on him under Section 112(b) of the Customs Act, 1962, in the absence of any other corroborative evidence. Accordingly, we hold that no penalty imposable on the Appellant in this case and hence we set aside the penalty imposed on the Appellant in the impugned order.

7. In the result, we set aside the penalty imposed on the Appellant in the impugned order and allow the appeal filed by the Appellant.

(Order pronounced in the open court on 09.12.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)