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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75701 of 2022

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/KAR/261/2022 dated 09.06.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Custom House, Kolkata-700001.)

...Appellant

VERSUS

Shri Rajesh Mehta

.....Respondent

(House No.8, 2nd Floor, Road No.75, Opposite Gurunanak College, West Punjabi Bagh, New Delhi-110026.)

APPEARANCE

Shri S.Debnath, Authorized Representative for the Revenue
IN PERSON for the Respondent

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

FINAL ORDER NO. 76039/2026

DATE OF HEARING : 04.08.2026
DATE OF DECISION : 04.08.2026

Per : ASHOK JINDAL :

Revenue is in appeal against the impugned order.

2. The facts of the case in brief are that -

i. Intelligence was gathered by DRI KZU to the effect that illegal importation was done by one Sri Balvinder Singh of M/s B.S. Imports (IEC 0509090168) who had imported two consignments of cigarettes vide Bills of Entry No 6597764 dated 23.01.2020 and 6597761 dated 23.01.2020 with no statutory COTPA warning on the packages, for actual diversion in the domestic market. Pertinent herein to mention the said Bills of Entry dated 23.01.2020 was filed for re-exportation of the goods to Spain-Barcelona.

ii. That the respondent states that vide letter dated 06.12.2019. Shri Balvinder Singh approached the Commissioner of Customs (Port), requesting to grant permission for re-exportation of the seized goods to Spain-Barcelona.

iii. That the respondent states that on 17.09.2020 an order was issued by the DRI authority to M/s Phonex Logistic Pvt. Ltd. whereof it was intimated that in exercise of the power vested upon by him U/s 110/1) of the Customs Act. 1962, the goods were kept under detention. In the said order it is stated that since it is not practicable to seize the goods, order in terms of Section 110(1) ibid has been issued. However, no reasonable belief concerning detention and/or seizure is intimated vide the said order of detention Apropos herein to be mentioned, from bare perusal of the order dated 17.09.2020 and it could be found that although examination in presence of examining officer and the appraising officer was done on 12.06 2020, the detention order has been issued on 17.09.2020 by the DRI authority Therefore in the cause therefore there has been a delay of more than 3 months Photocopy of the said Order dated 17.09.2020 is enclosed with appeal petition.

iv. That the respondent states that in course of investigation on 14.02.2020 Shri Singh was made to write statements against the respondent. In this context. vide letter dated 27.06.2020 Shri Singh stated that his earlier statement dated 14.02.2020 was recorded under coercion and threat.

v. That the respondent states that several summons were issued to the respondent which were duly complied vide letter dated 11.09.2020. 17.09 2020, 08.10.2020 & 18.12.2020 whereof, he intimated that he had no knowledge of the two Import Consignments.

Vi That in corollary to the said facts the respondent states that the respondent herein was issued with a Show Cause Notice DRI F No DRI/KZU/AS/ENQ-07/2020/4823 dated 22.12.2020 (in short "SCN"), whereupon proposition as to imposition of penalty in terms of Section 112(a) and/or 112(b) of the Customs Act. 1962 (in short CA, 62") and in terms of Section 114AA was made in the SCN. Pertinent herein to mention that the alleged role of the appellant has been described in Para 14.2 which read as follows: Para 14.2 Role of Mr. Rajesh Mehta.

a) Shri Balvinder Singh categorically stated he lent his IEC to Mr Rajesh Mehta for import of mis-declared Cigarettes.

b) He instructed Mr. Balvinder Singh to come to Kolicata for clearance job and also stated to talked with several Customs Broker for such clearance work.

c) He intentionally did not attended Summons and co-operate with investigation. He was actively involved in the transportation/carrying/keeping/harbouring or dealing with the impugned smuggled goods knowingly;

d) Mr. Rajesh Mehta appears to be the kingpin who is controlling the entire activities of the smuggling syndicate refers foregoing para, hatched a conspiracy along with others for smuggling of the aforesaid Cigarettes it appears that he is the main beneficiary of the seized goods His acts of commission and/or omission as well as the facts of his been concerned in carrying removing depositing keeping, concealing, selling or purchasing of the aforesaid Cigarettes which renders the goods liable for confiscation rending him liable for penalty under section 112(a) and/or 112(b) of the Customs Act. 1962."

vii. On 26.01.2021, the respondent had duly submitted a written reply to the SCN through his Ld. Advocate thereby denying and disputing each and every allegations as is levelled against the respondent herein. Furthermore, prayer as to cross-examination was made before the Ld. Adjudicating Authority with an additional prayer for dropping of the instant SCN proceeding was made Copy of the said reply to SCN is enclosed with the appeal petition.

ix. On 02.08.2021, Order-in-Original No.KOL/CUS/JC/58/ADJN.(PORT)/2021 was issued upon the respondent whereof penalty to the tune of Rs.2,00,00,000/- in terms of Section 112(a)(i) and Rs.2,00,00,000/- in terms of Section 114AA of the Customs Act was imposed as well as the 90,00,000 sticks of Cigarettes was ordered for absolute confiscation in terms of 111(b), 111(d) and 111(m) ibid, such order has been passed, inter alia, on the basis that : "I find that Mr. Rajesh Mehta, who used the IEC of Mr. Balvinder Singh, is the master mind and real beneficial owner of the goods, which are liable for confiscation U/s. 111(d) and 111(m) of the Customs Act, 1962. Since he hatched all the conspiracies in the case and knowingly and intentionally used Balvinder Singhs name and IEC to clear these consignment. He is rightly liable for imposition of penalty U/s. 114AA of the Customs Act, 1962."

3. Against the said order, the respondent filed appeal before the Ld.Commissioner(Appeals).

4. The Ld.Commissioner(Appeals) on going through the records dropped the penalty imposed on the respondent. Against the said order, the Revenue is in appeal before us.

5. The Ld.AR for the Revenue admits that from the facts of the case, it is evident that Shri Balvinder Singh who had lend his IEC to facilitate the impugned import of cigarettes retracted his statement only at the time of cross-examination held on 07.07.2021 after a gap of almost 16 months, therefore, statement of Shri Balvinder Singh which was recorded on 14.02.2020 before the DRI officer was completely voluntary in nature and was recorded under Section 108 of the Customs Act, 1962. Soon after its recording, Shri Balvinder Singh did not raise any objection as to the manner in which it was recorded. In the said statement, he on his own passed on the blame entirely on Shri Rajesh Mehta, which is duly seconded by Shri Debasish Mukherjee, who accompanied Shri Balvinder Singh to DRI office on 14.02.2020, when the statement was recorded. Therefore, it is evident that the retraction of the statement dated 14.02.2020 by Shri Balvinder Singh before the adjudicating authority after a lapse of sixteen months was just and afterthought. His lame excuse of nervousness and scariness for giving such statement before Investigating Officer having such far reaching consequences is not at all acceptable. Therefore, it is prayed by the Revenue that the impugned order may be set aside.

6. Heard the respondent in person and perused the records.

7. Admittedly in this case penalties on the appellant have been imposed on the basis of statement of Shri Balvinder Singh which was recorded during the course of investigation. Although the said statement was never retracted, but during the cross-examination Shri

Balvinder Singh stated that there was no role of the respondent in this case and he failed to submit substantial documents to prove his ownership and also accepted friendly relationship with the respondent. From the above, it does not mean that the respondent was involved in the said activity of smuggling of goods. Moreover, during the cross-examination the witness has been hostile and the statement during cross-examination is admissible.

8. In that circumstances, the Ld.Commissioner(Appeals) has rightly dropped the proceedings against Shri Rajesh Mehta. Therefore, we do not find any infirmity in the impugned order dropping the penalties against the respondent.

9. In view of this, we do not find any infirmity in the impugned order. The same is upheld and the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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