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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No.76013 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/KS/489-490/2023 dated 21.06.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Swapan Ghoshal, **: Appellant**
S/o. Late Biswanath Ghoshal,
97, Dr. Lal Mohan Bhattacharya Road, Kolkata-700014

VERSUS

Commissioner of Customs(Prev.), **: Respondent**
3rd Floor, Custom House, 15/1
Strand Road, Kolkata-700001

AND

Customs Appeal No.76014 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/KS/489-490/2023 dated 21.06.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Debopreo Acharya, **: Appellant**
S/o. Late Binay Shankar Acharya,
44/A/1, Kolkata Municipality Corporation,
Kasba, 24 Pgs(North)-700001

VERSUS

Commissioner of Customs(Prev.), **: Respondent**
3rd Floor, Custom House, 15/1
Strand Road, Kolkata-700001

APPEARANCE:

Ms. Atika S. Ahmed, Advocate for the Appellant
Shri R. Chakraborty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs.76496-76497/ 2026

DATE OF HEARING: 18.09.2026
DATE OF PRONOUNCEMENT: 15.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present Appeal has been filed against the Order-in-Appeal No. **KOL/CUS/CCP/KS/489-490/2023 dated 21.06.2023**, whereby the learned Commissioner (Appeals), Kolkata, has upheld the Order-in-Original No. **10/ADC(P)/CUS/WB/2021-22 dated 10.05.2021** and *inter alia* sustained the penalty imposed upon Shri. Swapan Ghoshal and Debopreo Acharya (herein after referred as the Appellants) under Section 112 of the Customs Act, 1962.

2. The facts of the case are that on 04.11.2014, officers of the Directorate of Revenue Intelligence intercepted two persons, namely **Shri Saheed Kafogothi Meduge and Shri Abdul Samad Hanifa**, in the vicinity of Park Street, Kolkata. Six gold bars/pieces said to be of foreign origin, weighing approximately **6 kilograms** and valued at approximately **Rs.1,57,02,000/-**, were seized from the possession of the aforesaid two persons. The case against the Appellants was that they were allegedly the intended recipient of the gold.

2.1. On completion of the investigation, a Show Cause Notice bearing DRI No. DRI/KZU/ASENQ-39/2014/403 dt. 28.04.2015 was issued proposing confiscation of the seized goods and imposition of penalty upon the Appellants under Section 112 of the Customs Act, 1962. During adjudication, the Appellants specifically denied the allegations.

2.2. On adjudication, the Ld. Additional Commissioner (Prev.) of Customs passed the Order-in-Original dated 10.05.2021, wherein the Ld. Adjudicating authority has *inter alia* imposed penalties of Rs. 8,00,000/- upon Shri Debopreo Acharya and Rs. 5,00,000/- upon Shri Swapan Ghoshal, the Appellants herein. Subsequently, the

said penalties were sustained by the Ld. Commissioner (Appeals) vide Order-in Appeal dated21.06.2023. Aggrieved against the confirmation of penalties, the Appellants have filed these appeals.

3. The Appellants submits that they were not the persons from whose possession the aforesaid gold was seized. The Appellants were also intercepted by the investigating officers as they were present near the park hotel wherefrom the carriers of gold had been intercepted. They were alleged to be the recipient of the gold, on the basis of statements given by others. Other than the statements given by the accused persons, there is no other evidence available on record to implicate them in the alleged offence.

3.1. The Appellant submits that penalty under Section 112 of the Customs Act, 1962 can be imposed only when it is established that the Appellant have some association with goods liable for confiscation. The Department must establish, inter alia, that the person:

(a) did or omitted to do an act which rendered the goods liable to confiscation or abetted such act; or

(b) acquired possession of, or was in some manner concerned with carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing or otherwise dealing with the goods; and, where the relevant clause so requires, that he knew or had reason to believe that the goods were liable to confiscation.

3.2. Thus, the statutory ingredients cannot be established merely by demonstrating that the goods were smuggled or liable to confiscation. The Department must further establish the Appellant's

own role in relation to those goods. In the present case, the impugned order does not disclose any convincing independent evidence establishing that the Appellants possessed the gold/transported the gold/concealed or harboured the gold/financed the transaction/arranged the delivery/received the gold/purchased or sold the gold/exercised ownership or control over the gold and/or otherwise consciously dealt with the gold knowing or having reason to believe that the same was liable to confiscation.

3.3. The case against the Appellants substantially built on the Statements recorded from Third persons. The evidentiary value of such statements has to be examined in the context of the statutory safeguards governing their use in adjudication proceedings. In the present case, the Appellants have specifically challenged the statements and have disputed the voluntariness of their own statement. Once the Appellants specifically disputes the correctness and voluntariness of the statements relied upon against him, the adjudicating authority is required to examine whether there exists independent corroboration establishing the alleged role of the Appellant. The impugned order, however, does not satisfactorily demonstrate such independent corroboration. In order to rely upon the statements, the provisions of Section 138B of the Customs Act, 1962 must be complied with. The Hon'ble Calcutta High Court in ***Sampad Narayan Mukherjee v. Union of India & Ors., 2019 (366) E.L.T. 280 (Cal.)***, has held, inter alia, that where a statement recorded under Section 108 is introduced as evidence in adjudication proceedings, the maker of the statement is ordinarily required to be made available for cross-examination, subject to the

statutory exceptions contemplated by Section 138B. In the present case, the examination-in chief, as mandated under Section 138B has not been complied with and hence the statements cannot be relied upon against the Appellants herein.

3.4. The Appellants submits that they did not claim ownership of the seized gold. Consequently, the Department cannot place the statutory burden under section 123 of the Customs Act, 1962, applicable to the person from whose possession the goods were seized upon the Appellants merely because his name allegedly surfaced during investigation.

3.5. The Appellants submits that where Section 112(b) is invoked, the statutory expression **"which he knows or has reason to believe are liable to confiscation"** assumes central importance. The Hon'ble CESTAT, Kolkata in ***Mayeen Uddin v. Commissioner of Customs (Prev.), Shillong, 2020 (371) E.L.T. 779 (Tri.-Kolkata)*** emphasised the significance of the words "which he knows or has reason to believe" occurring in Section 112(b). Similarly, in ***Shankeshwar Metal Corporation v. Commissioner of Customs (Imports), Mumbai, 2014 (312) E.L.T. 344 (Tri.-Mumbai)***, the Tribunal considered the requirement of mens rea/knowledge in the context of Section 112(b). The Appellants submit that these principles are directly relevant because there is no independent evidence demonstrating that the Appellants knew, or had reason to believe, that the goods allegedly intended for them were liable to confiscation. **Knowledge cannot be presumed merely because the Department alleges that a person was to receive goods.**

3.6. Thus, the Appellant prayed for setting aside the penalties imposed on them in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that 6 kilograms of gold has been seized from two persons, namely **Shri Saheed Kafogothi Meduge and Shri Abdul Samad Hanifa.** The Appellants were also intercepted by the investigating officers as they were present near the park hotel wherefrom the carriers of gold had been intercepted. It is alleged that the Appellants were the recipient of the gold, on the basis of statements given by third persons, who are the accused persons in this case. We find that other than the statements given by the accused persons, there is no other evidence available on record to implicate the Appellants in the alleged offence.

6.1. The Hon'ble Calcutta High Court in ***Sampad Narayan Mukherjee v. Union of India & Ors., 2019 (366) E.L.T. 280 (Cal.)***, has held, inter alia, that where a statement recorded under Section 108 is introduced as evidence in adjudication proceedings, the maker of the statement is ordinarily required to be made available for cross-examination. In the present case, we find that the examination-in chief, as mandated under Section 138B has not been complied with and hence the statements cannot be relied upon against the Appellants herein.

6.2. We have perused the role of Appellants from the findings in the impugned order. For ready reference, their role as mentioned in paras of the Order-in-Original are reproduced below:

(v) He came in contact with David in the course of property dealings:

(vi) Out of two delivery men; he knew Shahid and for this reason, Debaprio took him to receive the gold.

6.3. A perusal of the role of the Appellants reveals that there is no evidence available on record to substantiate the allegation that the Appellants were the recipient of the gold. The allegation is based on the statements given by third persons, who are the accused persons in this case. We find that other than the statements given by the accused persons, there is no other evidence available on record to implicate the Appellants in the alleged offence.

6.4. We find that penalties have been imposed on the Appellants under Section 112(b) of the Customs Act, 1962. For imposing penalty under the said section, it must be established that the Appellant had the knowledge that the goods seized are liable for confiscation. In this reagrs, we observe that the statutory expression **"which he knows or has reason to believe are liable to confiscation"** assumes central importance. The CESTAT, Kolkata in ***Mayeen Uddin v. Commissioner of Customs (Prev.), Shillong, 2020 (371) E.L.T. 779 (Tri.-Kolkata)*** emphasised the significance of the words "which he knows or has reason to believe" occurring in Section 112(b). Similarly, in ***Shankeshwar Metal Corporation v. Commissioner of Customs (Imports), Mumbai, 2014 (312) E.L.T. 344 (Tri.-Mumbai)***, the Tribunal considered the requirement of mens rea/knowledge in the context of Section 112(b). We find that these principles are directly relevant in this case, because there is no independent evidence demonstrating that the

Appellants knew, or had reason to believe, that the goods allegedly intended for them were liable to confiscation. **Knowledge cannot be presumed merely because the Department alleges that a person was to receive goods.**

6.5. Thus, we find that there is no independent evidence demonstrating that the Appellants knew, or had reason to believe, that the goods allegedly intended for them were liable to confiscation. Accordingly, we hold that the penalty imposed on the Appellants under section 112(b) of the customs Act, 1962 are not sustainable and hence we set aside the same.

7. In view of the above findings, the penalties imposed on the Appellants are set aside and the appeal filed by the Appellants are allowed with consequential relief, if any, as per law.

(Order Pronounced in Open court on 15.10.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP