

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

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 77222 of 2019**

(Arising out of Order-in-Appeal No. KOL/CUS(Airport)/AA/503/2019 dated 17.07.2019 passed by the Commissioner of Customs (Appeals), 3<sup>rd</sup> Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Shri Suvadeep Dutta**

**: Appellant**

104A/4, A.P.C. Avenue, East Sinthee Road, Dum Dum,  
Kolkata – 700 030

**VERSUS**

**Commissioner of Customs (Airport & Admn.)**

**: Respondent**

Custom House, 3<sup>rd</sup> Floor, 15/1, Strand Road,  
Kolkata – 700 001

**APPEARANCE:**

Shri Nilotpall Chowdhury, Advocate, for the Appellant

Shri Sourabh Chakravorty, Authorized Representative, for the Respondent

**CORAM:**

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

**FINAL ORDER NO. 76912 / 2025**

DATE OF HEARING: 25.06.2025

DATE OF DECISION: 15.07.2025

**ORDER:**

The present appeal has been filed by Shri Suvadeep Dutta (hereinafter referred to as the "appellant") against the penalty of Rs.30,00,000/- (Rupees Thirty Lakhs only) imposed on him vide the Order-in-Original No. 146/2017 JC dated 15.12.2017 which has been upheld by the Ld. Commissioner (Appeals) by way of the impugned Order-in-Appeal No. KOL/CUS(Airport)/AA/503/2019 dated 17.07.2019.

2. The facts of the case are that on 14.01.2015, one person by name Shri Avijit Sarkar was intercepted at Netaji Subhas Chandra Bose International Airport by Officers of Air Intelligence Unit (AIU) of Customs, Kolkata acting on the intelligence that some ground staff members employed in the Airport were involved in smuggling of gold which were being handed over to them by passengers arriving from Bangkok. Accordingly, on 14.01.2015, Shri Avijit Sarkar, holding Airport Entry Pass No. T0002568 with the Organisation M.K. Enterprise, with Designation: Utility Hand, was intercepted by the Customs Officers. On search of his person, 04 (four) pieces of 24 karat gold bars weighing 3000 grams and valued at Rs.82,50,000/- (Rupees Eighty Two Lakh and Fifty Thousand only) were recovered from his shoes. The recovered gold, the pair of shoes worn by Shri Avijit Sarkar and the wrapping materials, were seized under Section 110 of the Customs Act, 1962.

3. In his statement recorded under Section 108 of the Customs Act, 1962, Shri Avijit Sarkar has *inter alia* stated that he is an employee of Alliance Air and another person, named Ajit, of Airport Authority of India, had lured him into smuggling the said gold bars in lieu of monetary consideration of Rs.10,000/-; that he was instructed by the said person to stay in cabin no. 3 of the toilet near the arrival immigration office immediately on arrival of Flight No. TG-313; that he had been informed that on arrival of the Flight No. TG-313, one person would enter into the adjacent cabin and deliver the gold bars through the lower gap of the partition.

3.1. Further, in his statement, Shri Abhijit Sarkar have *inter alia* stated that the appellant (Shri

Suvadeep Dutta) had asked him to come to Spice Garden bar cum restaurant near Chinar Park, Teghoria; that from there, he was brought by the appellant in his car to the car parking basement at the Airport and there, the appellant had handed over a pair of shoes to him. It has been stated by Shri Abhijit Sarkar that thereafter, the appellant and Ajit took him near Gate No. 3C of the Airport and explained his job, whereby he was also intimated that another consignment would arrive soon and he would be given the job again; that he knew that Ajit was an employee of Airport Authority of India and was posted at their administrative building.

4. Thereafter, Ajit, who was identified as Shri Ajit Kumar Majhi, attendant in the Airports Authority of India, in his statement dated 16.01.2015 recorded under Section 108 of the Customs Act, 1962, inter alia stated that after taking delivery of gold, every time he used to escape through the departure area and never went through arrival exit. It was further informed by Shri Ajit Kumar Majhi that the appellant was in need of some quick money and accordingly, the appellant had arranged Avijit to collect gold from the toilet in the immigration office.

5. During his statement, Shri Ajit Kumar Majhi stated that he received an information on his mobile along with the image of the passport of a passenger named Shaikh Mohammad Yaqub Zulfikar who would be coming from Dubai by Emirates Airlines Flight No. EK-570 on the following day i.e., 17.01.2015. Following the said information, the above named passenger was intercepted and five (05) kgs. of gold was recovered from his possession.

6. On completion of the investigation, a Show Cause Notice dated 30.06.2015 was issued, proposing confiscation of the gold in question along with imposition of penalty, *inter alia*, on the appellant herein.

6.1. On adjudication, the Ld. Joint Commissioner of Customs, Air Intelligence Unit Cell, NSCBI Airport, Kolkata vide the Order-in-Original No. 146/2017 JC dated 15.12.2017 ordered absolute confiscation of the 04 (four) pieces of gold bars collectively weighing 3000.00 grams and valued at Rs.82,50,000/- under Section 111(d) and 111(i) of the Customs Act, 1962. He also *inter alia* imposed a penalty of Rs.30,00,000/- on Shri Suvadeep Dutta (appellant herein) under Section 112(a) and 112(b) of the Customs Act, 1962.

6.2. On appeal before the Ld. Commissioner (Appeals), the penalty imposed on the appellant was upheld, vide the impugned order dated 17.07.2019.

7. The appellant has made various submissions, which are summarized below: -

- (i) The entire case has been made out against him on the basis of statements of two persons, namely, Shri Avijit Sarkar and Shri Ajit Kumar Majhi. It is submitted that there were several contradictions in the statements given by these two persons. Other than the said statements, there is no other evidence available to implicate the appellant in the present case. It is the settled position of law that under such circumstances, opportunity of cross-examination must be given, to cross examine the persons who have given the statements. However, in this case, the request for cross-

examination of the said two persons has not been allowed by the Id. adjudicating authority.

- (ii) It is also the settled position of law that no penal action can be initiated against a person unless the said person is given an opportunity to defend himself. In the present case, the adjudication order has been passed without considering the defence submitted by him.
- (iii) The appellant also submits that in his statement dated 17.04.2015, he had stated that he was not present at the Spice Garden Bar Cum Restaurant with the apprehended person. No investigation has been caused to find out as to whether the appellant was in fact present at the restaurant on the said night or not. The investigating authority as well as the adjudicating authority have proceeded on the basis of mere inculpatory statements given by the apprehended persons viz., Shri Avijit Sarkar and Shri Ajit Kumar Majhi, to arrive at an adverse conclusion against the appellant, without any other cogent or material evidence.
- (iv) There is no compliance of Section 138B of the Customs Act, 1962. It is contended that during the course of adjudication, the adjudicating authority has proceeded solely on the basis of different statements recorded by the Customs authorities during the course of investigation. Such statements cannot have any relevance due to non-compliance of Section 138B of the Act.
- (v) It is also submitted that Shri Avijit Sarkar, the person who carried the gold, appeared before the Id. adjudicating authority on 03.10.2017

and submitted that the said gold does not belong to him. However, the Id. adjudicating authority has not allowed cross-examination of Shri Avijit Sarkar, as required under Section 138B of the Customs Act. Thus, the appellant contends that the imposition of penalty on the basis of purported statements of co-accused is not sustainable.

- (vi) It is the appellant's further submission that no gold was recovered from him nor was he having any knowledge about the act done by Shri Avijit Sarkar. Therefore, it is contended by the appellant that he had no knowledge as to the confiscable nature of the goods in question and accordingly, the ingredients for imposing penalty on him under Section 112 of the Customs Act are not available in this case.

7.1. In view of the above submissions, the appellant contended that no penalty is imposable on him and accordingly, prayed for setting aside the penalty imposed on him vide the impugned order.

8. On the other hand, the Ld. Authorized Representative of the Revenue submitted that Shri Avijit Sarkar has categorically informed that the appellant has played an active role by abetting the said offence. Therefore, he submits that the Id. adjudicating authority has rightly imposed penalty on the present appellant. Accordingly, the Ld. Authorized Representative of the Revenue supported the impugned order.

9. Heard both sides and perused the appeal records.

10. I find that the present appeal relates to the imposition of penalty on the appellant under Section 112(a) and 112(b) of the Customs Act, 1962.

10.1. It is a fact on record that three (03) kgs. of gold were recovered from one person by name Shri Avijit Sarkar at the NSCBI Airport, who has stated to have received the same from a passenger arriving from Bangkok by Thai Airways flight no. TG-313 on 14.01.2015. In his statement, Shri Avijit Sarkar informed that one Shri Suvadeep Dutta, the appellant in this case, and another Shri Ajit Kumar Majhi, have lured him into smuggling out the said gold bars in lieu of a monetary consideration of Rs.10,000/-. It has been revealed by the said Shri Avijit Sarkar that he had been instructed by the said persons to stay in the cabin no. 3 of the toilet near the arrival immigration office immediately on arrival of the flight no. TG-313, wherein one person arriving by the flight no. TG-313 would enter into the adjacent cabin and deliver the gold bars through the lower gap of the partition. Shri Avijit Sarkar has also disclosed that he had been provided the said pair of shoes for concealing the gold by Shri Suvadeep Dutta (appellant) and Shri Ajit Kumar Majhi. Thus, from the statement recorded from Shri Avijit Sarkar and Shri. Ajit Kumar Majhi, it is evident that the appellant had provided the said pair of shoes in the instant case to him, for concealing gold after receiving the same from an unknown passenger, in the toilet. Thus, I observe that the role of the appellant in abetting the offence of smuggling of the said gold bars is clearly established.

11. In fact, from the various statements recorded in this case, it is clear that the entire plan for smuggling the said gold bars have been worked out much in

advance, in the Spice Garden Bar Cum Restaurant. The statement of Shri Ajit Kumar Majhi recorded on 15.01.2015 clearly indicates that he had contacted Shri Suvadeep Dutta from his Mobile No. 9836354149. Shri Ajit Kumar Majhi also stated that on the night of 14.01.2015, he was waiting in the car parking basement of the Airport where the three persons, namely, Suvadeep, Avijit and Debhasis arrived and he (Ajit) explained Avijit that the passenger would be arriving with gold by Thai Airways Flight No. TG-313. It has been categorically stated that all along, during the course of such planning, Shri Suvadeep Dutta (appellant) was present there and his contact number has been mentioned as 08337045353.

11.1. Thus, from the statement of Shri Ajit Kumar Majhi as well it is evident that the appellant has played a crucial role, in arranging the shoes as well as facilitating Shri Avjit in receiving the said gold and smuggling out the same from the International Airport.

12. I also find that Shri Suvadeep Dutta (appellant) had been summoned on various dates i.e., 15.01.2015 and 17.01.2015, but he did not appear. Later, on 24.03.2015, an anticipatory bail petition was moved by the appellant before the Ld. District & Sessions Judge, Barasat, who rejected the prayer and directed the appellant to appear before the Customs authorities. On 02.04.2015, the appellant surrendered before the Ld. Chief Judicial Magistrate and was granted bail. As directed by the Court, the appellant appeared before the Customs Authorities and his statement was recorded on 17.04.2015. If the appellant had no role to play in the alleged offence, it



is not clear as to why he sought anticipatory bail and avoided recording of statements by the Customs authorities.

13. I also take note of the appellant’s submission that he was not present in the Spice Garden Bar Cum Restaurant on the night of 14.01.2015 and also that he did not accompany the other persons/co-accused in his car. However, analysis of the call records in this case has clearly revealed that the appellant was making frequent calls to Shri Ajit Kumar Majhi from 13.01.2015 to 15.01.2015, as below: -

Ajit Kumar Majhi	Suvadeep Dutta	13.01.2015	14.01.2015	15.01.2015
8337045353	9830006193	11 calls, 740 sec	19 calls, 1540 sec	2 calls, 155 sec
	9836354149	-	----	17 calls, 2144 sec
	9674632904 (Hiyat Sekh)	-----	6 calls, 252 sec	-----

13.1. Thus, I do not find any merit in the submission of the appellant that he was not present in the Spice Garden on 14.01.2025.

14. Further, it is observed that the Id. adjudicating authority has given a categorical finding regarding the role of the appellant, in the impugned order, which is reproduced below for the sake of ready reference: -

*"Suvadeep Dutta: He all along denied of having any link in the case and claimed that he was at his home during the period. He further claimed that he met*

*Ajit Kumar Majhi long back and never met Ajit again. But, from the call records and from various statements it has been clearly established that he was always in touch with Ajit Kumar Majhi. He handed over the SIM card bearing no. 9051086957 to Avijit Sarkar, he was at Spice Garden that evening, he took Avijit Sarkar and "Debashis Chowdhury in his car. He introduced Avijit Sarkar to Ajit Kumar Majhi and he directed Avijit Sarkar over the number 9674632904, specially procured for the purpose, during attempted removal of the smuggled gold from the immigration toilet. His car was used to reach the place of crime and he handed over the shoes to Avijit Sarkar for keeping and concealing the smuggled gold bars. He also procured two SIM cards bearing nos. 9674632904 and 9051086957 to use in their Covert operation. Thus, he not only arranged the persons but also provided them with logistic support.*

*However, nobody has come forward to claim the ownership of the seized gold bars till date.*

*All these circumstantial evidences point out that Suvadeep Dutta, while recording his statement under section 108 of the Custom Act, 1962 deliberately denied his involvement in the instant case. Thereby, he not only tried to hoodwink the authorities, but also tried to mislead the investigation. He did not co-operate with the Customs authorities and tried to keep himself at a safe distance in order to cover up his crime. But, it is evident that he was involved in said smuggling ab initio and was well aware of all the developments. Thus, his mere denial cannot absolve him of the crime committed at his initiation."*

14.1. From the above findings recorded by the Id. adjudicating authority, it is clear that the evidences available on record establish the role of the appellant in the alleged offence.

15. In view of the above, I find that the appellant is liable to be penalized for the offence committed by him in the instant case. However, regarding the quantum of penalty, I find that the penalty of Rs.30,00,000/- imposed by the Id. adjudicating authority in the impugned order is on the higher side, being not commensurate with the role played by him in the offence. Accordingly, I find that the penalty imposed on the appellant under Section 112(a) and 112(b) of the Customs Act, 1962 can be reduced from Rs.30,00,000/- (Rupees Thirty Lakh only) to Rs.10,00,000/- (Rupees Ten Lakh only).

16. In view of the above discussions, I hold that the appellant liable for imposition of penalty under Section 112(a) and 112(b) of the Act for his role in the offence. However, considering the role played by him, I reduce the quantum of penalty imposed to Rs.10,00,000/-.

17. The appeal is thus disposed of on the above terms.

(Order pronounced in the open court on **15.07.2025**)

Sd/-

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

Sdd