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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76686 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2025 dated 25.06.2025 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Vikash Kumar **: Appellant**
S/o. Bagishwar Sharma,
Deputy Commissioner, G.S.T. Commissionerate,
Flat No. 7-B-1, Area-I, Shrachi Greenwood Elements,
Rajarhat, New Town, Kolkata – 700 157 (West Bengal)

VERSUS

Commissioner of Customs (Airport & A.C.C.) **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001 (West Bengal)

AND

Customs Appeal No. 76751 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/12/2025 dated 25.06.2025 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Vikash Kumar **: Appellant**
S/o. Bagishwar Sharma,
Deputy Commissioner, G.S.T. Commissionerate,
Flat No. 7-B-1, Area-I, Shrachi Greenwood Elements,
Rajarhat, New Town, Kolkata – 700 157 (West Bengal)

VERSUS

Commissioner of Customs (Airport & A.C.C.) **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri A.K. Patnaik, Consultant,
For the Appellant

Shri S. Chitkara, Authorized Representative,
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 NOs. 75651-75652 / 2026

DATE OF HEARING: 21.05.2026

DATE OF DECISION: 25.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

Shri Vikash Kumar, S/o. Bagishwar Sharma, Deputy Commissioner, G.S.T. Commissionerate, Flat No. 7-B-1, Area-I, Shrachi Greenwood Elements, Rajarhat, New Town, Kolkata – 700 157 (West Bengal) [hereinafter referred to as the "appellant"] has filed the present appeals challenging the imposition of penalties of Rs.10,00,000/- (Rupees Ten Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) under Section 112(a) and (b) of the Customs Act, 1962 on him vide the Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2025 and Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/12/2025 both dated 25.06.2025 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Kolkata.

2. Brief facts of the cases are that acting on specific intelligence gathered by the Special Investigation Branch (SIB) of Airport & A.C.C. Commissionerate, Kolkata, it was revealed that 05 consignments [live consignments] (in respect of Appeal No. C/76686/2025) and 26 consignments (C/76751/2025) had been removed without complying with the established procedure and payment of legitimate Customs Duty thereon, for which separate proceedings have been initiated by the Revenue. The investigating agency alleged the involvement of the Airport Authority of India/AAICLAS staff and staff of Ground Handling Agency, namely, M/s. Bhadra International India Limited (BIIL) in the modus operandi, amongst others, thereby leading to evasion of huge Customs Duty and loss to the government exchequer.

Five (05) live consignments:

3. The Revenue alleged clandestine removal of goods from the Customs Area without complying with the established procedure at ACC, Kolkata in respect of 05 live consignments, which are as under:-

(i) Air Way Bill No. 17658439592

(ii) Air Way Bill No. 17656329022

(iii) Air Way Bill No. 17656233004

(iv) Air Way Bill No. 176 5191 8716

(v) Air Way Bill No.17656389023

3.1. It has been alleged that restricted and prohibited goods were imported in the name of normal goods and subsequently they were concealed and removed from the ACC Customs area at Kolkata without filing Bills of Entry.

(I) Air Way Bill No.17658439592

(a) The goods declared as Wall Paper (2578 KG) imported under the IEC holder namely M/s. KEI Industries Ltd. were seized on 18.08.2017, which on examination were found to be Cigarettes (22,86,540 sticks) of different foreign brands having estimated assessable value of Rs. 1,82,08,540/- that having chargeable duty of Rs. 2,27,97,196/-.

(b) The investigation revealed that the IEC was used by the fraudsters without the knowledge of its owner. Therefore the importer (IEC holder) i.e. M/s. KEI Industries Ltd. has been absolved by the previous adjudicating authority vide Order in Original No. KOL/CUS/COMMISSIONER//AP/Admn./21/2018 dt. 06.09.2018.

(II) Air Way Bill No.17656329022

(a) The goods declared as Mobile Phones/Accessories (2609 KG) imported under the IEC holder namely M/s Arcturus System Pvt. Ltd. were seized on 06.09.2017, which on examination were found to be "Branded shoes, Branded sandals, Branded watches, Branded Mobiles, Mobile Batteries, Electronic wrist bands/bracelet, Ladies handbag with "remote, battery and circuit inside", Microphone, Car keys, Remotes, Resistor, Adhesive tapes etc." having estimated assessable value of Rs. 2,28,32,500/- that having chargeable duty of Rs. 65,12,773/-.

(b) The said consignment was also containing goods that were reported to be poker game cheating instruments used for doing frauds during the game of poker for gambling purpose, which has rendered the goods to be prohibited in nature under section 11 of Customs Act, 1962.

(c) Further, the said consignment was again re-examined on 04.12.2017 on some intelligence, where upon after opening 06 nos. LCD screen separators, 35205 nos. of memory cards were found concealed inside, whose assessable value was ascertained to be Rs. 1,56,69,697 having chargeable/leviable duty amount of Rs. 28,41,780.

(d) Accordingly, total estimated assessable value of the consignment was re-ascertained to be [2,28,32,500.00 + 1,56,69.697.00] Rs. 3,85,02,197/-.

(e) The investigation revealed that the address of IEC was occupied by some other firm and also no delivery order was issued against the said consignment imported in the name of IEC holder. Accordingly, the importer (IEC holder) i.e. M/s Arcturus System Pvt. Ltd. has been absolved by the previous adjudicating authority vide Order in Original No. KOL/CUS/COMMISSIONER//AP/Admn./21/2018 dated 06.09.2018.

(III) Air Way Bill No. 17656233004

(a) The goods declared as Car Washer and Blanket (231 KG) imported under the IEC holder namely M/s AIFA Medichem Pvt. Ltd., found inside the ASRS location of Air Cargo Complex, were seized on 06.09.2017, which on examination were found to be "Protein supplements, UPS devices, Cap, liquid Shakers, sacks"

(b) Further, the said consignment was again examined on 22.11.2017 on some intelligence, whereupon ten (10) pieces of gold bars weighing a total of 10 kgs were found concealed inside two (2) UPSs, whose assessable value was ascertained to be Rs. 2.98 crores.

(c) Hence, total amount of the consignment was estimated to be Rs 3,1615,278/- [Assessable value of other goods Rs. 10,48,600 + duty of other goods Rs. 7,66,678 + value of gold Rs. 2,98,00,000/-] by SIB.

(d) The investigation revealed that the consignee was fake /non-existent.

(IV) Air Way Bill No. 176 51918716

(a) The goods declared as Car Washer (56 KG) imported under the IEC holder namely M/s A.K. International were seized on 06.09.2017, which on examination were found to be having only "two pieces of blanket, each having gross weight 2.90 kgs".

(b) The investigation has alleged that the goods imported vide Air Way Bill No.17651918716 had been removed by Shri Sampad Narayan Mukherjee, staff of AAI with the connivance of Shri Somnath Majumder and Shri Himadri Chakraborty, both staffs of M/s Bhadra International India Pvt. Ltd. (BIIL) in terms of the description of sequence of events pertaining to replacement of the contents of the packages as described by Shri Somnath Majumder, Shri Mukesh Rauth and Shri Himadri Chakraborty.

(c) The investigation revealed that the consignee was fake /non-existent.

(V) Air Way Bill No. 17656389023

(a) The goods declared as Machinery Parts (2059 KG) imported under the IEC holder namely M/s. Winmax Refractory (P) Ltd., found inside the ASRS location of Air Cargo Complex, were seized on 18.08.2017, which on examination were found to be "old and used refrigerators". Further, the gross weight of all the pellets was found to be approx 381.5 Kgs only and they were found packed in white polythene packing along with handwritten Air Way Bill number. The investigation revealed that the consignee was fake /non-existent.

(b) It is alleged that valuable cargo of the said consignment has been taken out by Shri Sampad Narayan Mukherjee and replaced from another 08 pellets (in white polythene and handwritten airway bill number) containing old and used broken Refrigerators with the connivance of Shri Rahul Ranjan, Assistant Manager (Cargo).

3.1. The Revenue has thus alleged smuggling and clandestine removal of goods, viz. precious goods like Gold, high valuable goods like Memory card & restricted items like Cigarettes, protein supplements etc., without complying with the established procedure of Customs clearance like filing of Bill of Entry paramountly on initial basis. The investigation agency has gathered circumstantial evidences, Statements of persons involved in the instant picture of perpetrated Customs fraud and also recovery of valuable goods before they could be removed from the Customs area by the smuggling syndicate.

Twenty Six (26) consignments:

4. Proceedings pertaining to missing goods/consignments of twenty six (26) Airway Bills, wherein the value of the goods is Rs. 50,12,61,725/ and Duty involved is Rs 12,67,03,863/- were also initiated. The details of the said consignments are tabulated in the table given below. The Investigation agency has done the valuation in proportionate to Weight of each Air Way Bill, as available in each Airway Bill pertaining to the Air Way Bill no, used as Base Reference of similar period. Accordingly, the valuation for these 26 missing consignments is as under:-

Sl. No.	Air Way Bill	Value Re-Determined (in Rs.)	Customs Duty Determined (in Rs.)
1	176-37473800	3121868	3908596
2	176-53886136	13429283	3262799
3	176-53178742	21834399	2715146
4	176-53180326	946449	1184959
5	176-53388845	24261254	5894552
6	176-53181402	1031205	1291075
7	176-52702241	14757454	3585494
8	176-56109896	14757454	3585494
9	176-55598955	36390665	4525244
10	176-56532022	22549389	5478634
11	176 56532700	21029372	5109328
12	176-56533083	30223265	7343091
13	176-56391145	26342055	6400106

14	176-56391742	7317319	9161325
15	176-56391753	7147805	8949093
16	176-37 473590	2274302	2847439
17	176-50147565	18520605	4499795
18	176-53917533	670990	840083
19	160-89292254	9710405	2359255
20	176-50144426	146230377	18184006
21	176-51918646	409657	512893
22	176-53187212	18815754	4571504
23	176-54458784	21988606	5342386
24	176-50143796	1667592	405161
25	176-51951771	9125459	11425127
26	176-56232562	26708745	3321280
Total		50,12,61,725	12,67,03,863

5. During the course of investigation in these cases, statements of various persons/entities believed to be involved in the alleged offence and smuggling syndicate, namely, were recorded and the same were examined.

5.1. Thereupon, after due process, proceedings were initiated against various persons, including (i) Shri Sampad Narayan Mukherjee, staff of AAI & Secretary of AAI Staff Union (Cargo) (ii) Shri Himadri Chakraborty, employee of M/s. BIIL (iii) Shri Rahul Ranjan, Shift Duty Manager (Import), AAI (iv) Shri Girish Sharma, Jt. General Manager (Cargo), AAI (v) Ms. Shabana Jahangir, one of the directors of M/s. Shabana Travels (P) Ltd. (vi) Airport Authority of India (vii) Md. Salim, tenant of the premises occupied by M/s. Shabana Travels (P) Ltd. (viii) Shri Sujoy Kumar Sarkar, Senior Superintendent (Telecom), AAI

(ix) Shri Vikash Kumar, then Dy. Commissioner, G.S.T. Commissionerate [the appellant herein] (x) Shri Raj Kumar (xi) Shri Kislay, then Inspector, G.S.T. Commissionerate (xii) Shri Somnath Majumdar, CHAIII, M/s. BIIL and (xiii) M/s. Bhadra International India (P) Ltd., amongst others, by way of Show Cause Notices Nos. (1) S2-01/2018 SIB(AP) dated 13.02.2018 and (2) 06/2021-22 dated 29.03.2022.

5.2. The above Show Cause Notices culminated in the Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2025 and Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/12/2025 both dated 25.06.2025 (hereinafter collectively referred to as the 'impugned orders') wherein, inter alia, penalties of Rs.10,00,000/- (Rupees Ten Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) under Section 112(a) and (b) of the Customs Act, 1962 came to be imposed on the present appellant, namely, Shri Vikash Kumar by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal.

6. The scope of the present Appeals is restricted to the limited role of the appellant before us, namely, Shri Vikash Kumar, as alleged, in the impugned offence and as to whether the same warrants imposition of penalty on him under Section 112(a) and (b) of the Customs Act, 1962 as ordered by the lower authorities in these cases, or not.

7. At the outset, it has been explained by the Ld. Counsel appearing on behalf of the appellant that the impugned orders have alleged the connection of the appellant in the instant case solely based on the following: -

(a) Statement of a private person Shri Raghav Kumar Jha recorded by SIB, ACC, Kolkata, dated 06.11.2017 and 07.11.2017 linking the appellant with one Md. Salim, alleged co-Director of M/s. Shabana Travels, who used to keep smuggled goods in the garage of M/s. Shabana Travels. It is alleged that the appellant was a close associate of Md. Salim.

(b) 10 kgs. of smuggled gold, one bag containing personal belongings of Shri Kislay, Inspector, recovered from the premises of M/s. Shabana Travels Pvt. Ltd. on 06.11.2017, which bag, as per Shri Kislay's statement, was kept in the residence of the appellant.

7.1. Therefore, in the background of the above, the involvement of the appellant in the alleged offence is to be decided.

8. The Ld. Counsel appearing on behalf of the appellant has made detailed submissions in support of his contentions, which can, inter alia, be summarized as under: -

(i) Witness on whose Statements the appellant was linked was not examined in spite of the Hon’ble High Court’s order. The disputed bag stated to be found from alleged place of crime to implicate appellant was neither recovered nor seized as per record of Revenue. Hence, the penalty imposed on appellant is clearly bad in law. Thus, instant appeal is limited to penalty erroneously imposed on the Appellant, who was an outsider so far as violation of the Customs law is concerned, as he was posted at GST establishment, but the alleged crime took place at Air Port under Customs Act.

(ii) The appellant is implicated in the impugned order without any evidence and the mandate of law. Hence excluding non-tested statements of Sh. Raghav Jha & imaginary bag of Sh. Kislay, there is nothing to connect appellant in both the aforesaid SCNs, justifying imposition of the penalty on him in the impugned orders.

(iii) This case is basically related to some alleged cause of action of smuggling at the Air Port Customs, Kolkata and the appellant is not given the scope to know the charge framed against him, to inspect evidences or materials used against him, to cross-examine witness relied against him, since Revenue failed to adduce any document showing seizure of any bag from the place of crime and failed to produce witness whose versions are relied against the appellant.

(iv) At paragraph 82.7 of impugned order, the Revenue admitted that the appellant did not do any improper importation of goods since there is no cogent, tangible or corroborative evidence on record to show that he made any declaration, statement or document which is false or incorrect in any material particular in the transaction of any businesses for the Act. There is also nothing on record to show that the appellant was in any manner concerned with import of any goods at ACC, Kolkata. Since above ingredients, which are essential for imposing penalty under Section 112 (a) are absent in this case, the appellant is not liable for penal action under Section 112 (a) of the Act.

(v) Further as per record of the Revenue the Appellant did not do any act of omissions, or abetment relating to any goods which are liable for confiscation under Section 111 of the Act. Hence, the provisions of section 112 (a) of the Act are not applicable to implicate the Appellant, in the instant case.

(vi) It is a matter of fact that in the absence of the so-called statement of Sh. Raghav Kumar Jha dated 06.11.2017 & 07.11.2017 and so-called alleged recovery / seizure of any such bag of Sh. Kislay from M/s Shabana Travels dated 06.112017, the appellant is no-where in the picture of the instant case.

(vii) According to Rule-of-Law it was the responsibility of Revenue to prove their narration of the story of crime against the appellant, which they failed to fulfil, by not producing their witness Raghav Jha to affirm so-called statement by facing cross-examination as per section 138(B) of the Act and the Revenue also failed to adduce any evidence of recovery and seizure of any such bag of Sh. Kislay from M/s Shabana Travels.

(viii) Evidently, the Revenue completely failed to establish that the appellant had ever dealt with or was involved in carrying, removing, harboring, keeping, concealing, or purchasing of goods which are liable for confiscation under the

Act, because the non-verified statement of Sh. Raghav Jha is not relied upon in the OIO and the alleged bag of Sh. Kislay is not recovered nor seized from M/s Shabana Travels on 06.11.2017. Hence the provisions of Section 112 (b) of the Act is also not applicable to implicate/connect the Appellant as he has never dealt with any improperly imported goods.

(ix) The appellant in this context relies on the law led down in the case of *Rajeev Khatri Vs. Commissioner of Customs (Export) - (High Court of Delhi) (04 Jul 2023)* which is similar to the case of the Appellant. Relevant operative parts of the order are as under for instant reference:

> *"Abetment necessarily requires knowledge of the offending Act for imposing penalty under Section 112 of the Customs Act" ………..*
>
> *"……Whereas in the latter case, it would be necessary to establish that a person committing the crime had the intent or the knowledge of committing such a crime;."*
>
> *"…This is because, abetment, necessarily requires, at the minimum, knowledge of the offending Act.*
>
> *" ……It is apparent that, the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under Section 111 of the Customs Act, is a necessary element for the offence of abetting the doing of such an act. The penalty imposed on the Appellant under Section 112(a) of the Customs Act is set aside. Appeal allowed."*

(x) On 18.08.2017 the said SIB officers of ACC, Kolkata, seized all items landed in AWB No.17656233004, out of 05 consignments after 100% examination including scanning and weighment before witnesses, when total weight of the package was recorded as 241.5 Kgs. The said SIB officers suppressed scanning report of such suspected consignments, left the seized smuggled UPSs containing gold with Airport Authority staff, at ACC, Kolkata, who are alleged to be involved in clandestine removal of goods from import shed.

(xi) Order No. 03/2017 dated 18.08.2017 under Section 110(1) of the Customs Act, 1962 of Shri Vishal Kumar, Appraiser of Customs, SIB (Airport) has been referred to by the appellant stating that on 06.09.2017 the same SIB officer of ACC, Kolkata, Sh. Vishal Kumar, Appraiser, again for the 2nd. time examined the already seized goods of August 2017 like UPSs containing smuggled gold, which was earlier seized and left with the Air Port Authority staff at ACC, that too, without putting any seal and drawing any Panchanama on 06.09.2017, which clearly exposed the specious conduct of that SIB officer, Sh. Vishal Kumar.

(xii) Seizure documents of AWB No.17656233004 dated 18.08.2017 on UPSs containing gold disclosed gross weight as 241.5 kgs, but the same consignment containing smuggled gold was recorded as 231.0 kgs on 06.09.2017. This raises serious question on seizing officer, his reports and the record of Adjudication which is silent on such differential weight of 1.5 kg.

(xiii) The appellant submits that the disputed action of Revenue is as follows: -

- August 2017 SIB got intelligence on smuggling of prohibited goods at ACC, Kolkata.
- 18.08.2017 - Sh. Vishal Kumar, seized all goods of MAWB No.17656233004 u/s 110(1) of the Act.
- 06.09.2017 - Sh. Vishal Kumar, again seized goods of MAWB No.17656233004 u/s 110(1) of the Act.
- 06.11.2017 - one Raghav Jha, in his statement stated that UPS and gold smuggled by Md. Salim, stored at Shabana Travels. So, SIB suspected UPSs seized on 18.08.2017 & 06.09.2017 and left at ACC.
- 07.11.2017 statement again recorded from Shri Raghav Jha where he involved the appellant.
- 06.11.2017, 07.11.2017 & 10.11.2017 - statements recorded from Ms. Shabana Jahangir.
- 13.11.2017, 14.11.2017 & 20.11.2017 - statements recorded from Sh. Kislay, Inspector.
- 20.11.2017 - statement recorded from the appellant.
- 22.11.2017 - after implicating the appellant with M/s. Shabana Travels and Md. Salim, 10 kgs. of gold was seized at ACC, Kolkata.

(xiv) That the aforesaid flow of action indicates that immediately after getting intelligence on smuggling of gold and UPSs on 06.11.2017 officers of SIB, ACC, Kolkata, Sh. Vishal Kumar and his team instead of seizing smuggled gold from Air Cargo Complex, engaged in implicating the appellant from 06.11.2017 for 16 days till 21.11.2017 by leaving the said suspected consignment of gold at the mercy of the Air Port Authority staffs who according to the same SIB officers are engaged in clandestine removal of smuggled goods without filing Bill of Entry from the import shed. Thus, inaction of the SIB officers raises serious question on conduct of investigating and adjudicating authorities too.

(xv) That the investigating power of officers of SIB, ACC, Kolkata, reached height of arbitrariness when they deliberately ignored the recovery of smuggled gold exposed on 06.11.2017 and left those suspected UPSs with Air Port Authority, whom Revenue accusing clandestine removal of smuggled goods from ACC area. On the other hand, the said SIB officers engaged in recording statement from Kislay and then from the appellant on 20.11.2017 on an imaginary bag of Shri Kislay to mislead the process. These potent facts and evidences are not considered in the impugned order; hence the penal action on appellant is bad in law.

(xvi) Record of SIB officers in respect of said suspected AWB No.17656233004 from where smuggled gold was recovered, discloses that said consignment was seized twice by Sh. Vishal Kumar, Appraiser first on 18.08.2017 and 2nd. time on 06.09.2017, wherein no Panchanama was drawn on 06.09.2017; scanning & weighment report of such package is suppressed. Then, for the reason best known, the same consignment was examined again by Sh. Amit Kumar Yadav, SIB Officer on 22.11.2017 who searched two UPSs from same AWB No. 17656233004 and seized 10 kgs. of smuggled gold u/s 110 of the Customs Act, the UPSs which were already seized two times on 18.08.2017 and 06.09.2017 by Sh. Vishal Kumar, Appraiser of same SIB, ACC, Kolkata. That such act of the SIB officers is un-known to law and suspicious.

(xvii) That referring to non-tested statement of Raghav Jha and imaginary bag of Sh. Kislay, Revenue issued SCN No. 06/2022 dated 29.03.2022 on twenty-six (26) consignments allegedly cleared with the same/similar modus operandi during 01.04.2017 to 04.08.2017 and the appellant was penalized, because of his alleged link with Md. Salim and with M/s Shabana Travels (P) Ltd, which they failed to prove in the process of adjudication.

8.1. Without prejudice to the above, the appellant has also urged the following grounds to buttress his contentions: -

a. For that, Government Agencies must strictly adhere to the legal standards, procedures / rules they set for themselves; failure to do so, will invalidate the actions.

b. For that, in the instant case, Revenue failed to follow their mandatory legal standards, rules & procedures and suppressed vital materials of the case as it will go in favor of the appellant.

c. For that, Revenue evidently failed to produce the private person Sh. Raghav Kumar Jha to affirm the statement referred by Revenue to be used against the Appellant in support of the penalty imposed on him.

d. For that, Revenue failed to adduce any evidence of recovery and seizure of so-called bag of Sh. Kislay and smuggled gold from M/s Shabana Travels.

e. For that, Revenue failed to connect the appellant in the alleged offence under Customs Act, hence the penalty imposed on him is without the mandate of law.

f. For that, custodian of law / procedure at ACC, Kolkata, was officers of Customs & SIB officers posted there, but not the Appellant, as he was never posted in ACC, Kolkata, nor he was the importer, hence, he had no scope to deal with import cargo of ACC, Kolkata, as per his history of posting. He joined Customs House Kolkata on 18.05.2011 as an officer of Indian Revenue Service of 2009 batch employee code–3874.

g. <u>Posting particulars of the Appellant;</u>

- 18.05.2011 to 27.06.2011 Customs House, Kolkata
- 28.06.2011 to 01.06.2012 CC(P) Kolkata
- 01.06.2012 to 13.06.2012 Barasat Customs Divn.
- 13.06.2012 to 19.07.2013 Krishnagar Customs
- 29.07.2013 to 15.01.2014 CGR-I Divn. C. Ex.
- 16.01.2014 to 13.11.2014 Rishra Divn. C.Ex.

- 13.11.2014 to 22.07.2015 Kol. (IV) C. Ex.
- 23.07.2015 to 21.02.2017 Kolkata Customs House
- 01.03.2017 to 09.11.2017 Haldia Comm. Hq.
- 10.11.2017 Appellant received order of suspension.

Headquarter, during suspension, fixed at;

- 14.11.2017 to 30.09.2020 Principal CC off. Kolkata
- 09.10.2020 09.01.2024 GST Comm. BBSR.

h. For that, the appellant had not made, signed or used, any declaration, statement or document of any import or export goods at ACC, Kolkata, hence not violated section 114AA of the Act, as held in the impugned order. Hence, the SCNs, in as much as they propose imposition on penalty on the appellant, are bad in law.

i. For that, the smuggled gold kept inside UPSs imported under AWB No. 17656233004 (IGM No. 1200879) was seized three times under Customs Act, 1962, by said SIB officers, 1st. on 18.08.2017, 2nd. on 06.09.2017 and 3rd. on 22.11.2017 which is un-known to law. Hence investigation report submitted by such officers amounts to 'Malice in Law' and therefore cannot be used against the Appellant in support of the penal action.

j. For that, it may be noted that new IRS officers are initially posted in field formations to gain experience of work and here, before the appellant could even get posting experience of any Land Customs Station (LCS) & Air Cargo Complex (ACC), he got his life's bitterest experience when implicated in the instant case without any evidence.

k. For that, it is unbecoming on the part of the SIB officers like Sh. Vishal Kumar, who did not remove the seized property of Revenue for safe custody and did not draw any Panchanama on 06.09.2017 for seizure of consignment of AWB No. 17656233004 from which gold was recovered on 22.11.2017.

l. For that, in the impugned order, statement of Raghav Jha, was not relied upon as he has not affirmed the statement as per section 138(B) of the Act despite notice being given to him three times. Hence, Revenue failed to connect the appellant for alleged carrying, removing, harboring, keeping, concealing, or purchasing of any goods and thus he is not liable for penal action u/s 112 (b) of the Act, too.

m. For that, the SIB officers suppressed the scanning report and break up of weight of the package and other goods and thereby suppressed the quantity of gold actually smuggled at ACC. Kolkata at the relevant time.

n. For that, the SIB officers to escape from their own accountability falsely implicated the appellant; by fabricating fake statements from their planted persons and hence they avoided cross-examination.

o. For that, according to the Adjudication Manual of Revenue, imposing penalties on innocent individuals can erode trust between government and the public.

p. For that, the said SIB officer Sh. Vishal Kumar was also posted at ACC, Kolkata, during the period from April 2017 to August 2017 for which SCN was issued relating to other 26 consignments which were cleared on involvement of such officer of SIB like Sh. Vishal Kumar in the same & similar manner which is exposed in the subject 05 live consignments. Hence, it is clear that the appellant has been falsely implicated by the said SIB officers in order to cover up their crime at ACC, Kolkata.

q. For that, no reasonable person can believe that doubtful smuggled gold package of more than 241 kgs high valued items could be left un-guarded, that too, without any seal after seizure from 18.08.2017 till 22.11.2017 for 97 days (i.e. August 14 days, Sept. 30 days, Oct. 31 days & Nov. 22 days) as done by said SIB officers like Sh. Vishal Kumar and his team and escape from the clutch of the law, implicating the appellant.

r. That in this regard the appellant relies on the decision of the Hon'ble High Court, Calcutta in case of *Ajay Saraogi v. Union of India [AIR On Line 2023 Cal 1837].* Such as;

"Statements of witnesses cannot be relied upon for imposition of penalty upon any person unless such witness is produced for cross-examination. The appellant submitted that cross-examination of witness, has never happened in the present case. As such, the statements cannot be used against the appellant herein for any penal action."

Thus, if the statements of the said witness Raghav Kumar Jha are taken out of record, there shall be nothing in the present case for imposition of any penalty upon the present Appellant.

s. The Customs Act, 1962, is a comprehensive legislation that governs the import and export of goods in India, safeguarding the country's trade policies and revenue interests. Sections 138B of the Act pertain specifically admissibility of statements / documents in proceedings related to customs violations. Compliance with these provisions is crucial to ensure fair investigation, and adjudication of Customs cases. Thus, attention is invited to Sections 138B, on their compliance requirements, their role in investigation and adjudication.

t. Section 138B of the Customs Act deals with the admissibility of statements made during the course of investigations in customs proceedings. It allows for the inclusion of any statement made by a person before a customs officer during an investigation, provided certain conditions are met. Section 138B ensures, statements made to customs officers can be admissible as evidence during trial or adjudication if they fulfill following conditions:

- Voluntary Nature of the Statement: The statement must be made voluntarily by the person during the course of an inquiry or investigation. This means the statement should not be the result of coercion, threats, or undue influence.

- The Person's Availability for Cross-examination: The person who made the statement must be made available for cross-examination in the proceedings.

- Right to Fair Hearing: In the interest of fair trial, the accused or their representative must be provided an opportunity to question the person making the statement. This ensures that statements used as evidence are subject to scrutiny and meet legal standards of reliability and truthfulness.

If these conditions are violated, the statement may not be accepted as evidence.

u. In *State of Punjab vs. Barkat Ram (1962),* the Hon'ble Supreme Court held that statements made during customs inquiries are admissible as long as they are given voluntarily and without coercion. The Court emphasized that statements obtained under duress could not be used as evidence in customs trials.

v. In the case of *Union of India vs. K. M. Shankarappa (2002)*, the Supreme Court reiterated that the availability of the person for cross-examination is crucial for the admissibility of statements under Section 138B. The Court observed that the credibility of a statement hinges on the opportunity for the accused to test the statement's veracity through cross-examination. Whereas, in the instant case Revenue failed to produce their witness Sh. Raghav Kumar Jha to affirm his statements for which in the impugned order his statement was not taken cognizance and in absence of such statement Revenue has failed to connect the appellant in the case. Hence the imposition of penalty on the appellant is bad in law.

w. In view of the aforesaid judicial observation as well as admission of the Original Authority in the impugned order, if untested / verified statements of the said private person Sri, Raghav Kumar Jha are taken out of the record and removed from this case as inadmissible under the Indian Evidence Act r/w Bharatiya Sakshya Adhiniyam, 2023, there is nothing on record to show that the appellant was in any manner concerned with the case at any point of time either in case of the 05 AWBs of live consignments or the 26 AWBs relating to the consignments cleared during the period from April 2017 to August 2017 by justifying imposition of penalty on the appellant.

8.2. In view of the above submissions, the appellant prays for quashing the penalties imposed upon him under Section 112(a) and (b) of the Customs Act, 1962 vide the impugned orders, being unjust, arbitrary and bad in law.

9. On the other hand, the Ld. Authorized Representatives of the Revenue appears before us have justified the order of imposition of penalty on the appellant. It is the contention of the Revenue that from the from the statement of Shri Raghav Jha, it is clear that the appellant was a close associate of Md. Salim, who was the carrier of smuggled goods as staff of M/s. Shabana Travels and providing godown for storage of such goods which were clandestinely removed from ACC, Kolkata. It is also argued by the

Ld. Departmental Representatives that the fact that the SIB, ACC, upon search of the premises of M/s. Shabana Travels on 06.11.2017 found one bag with personal documents of Kislay, Inspector/co-noticee, which was also found to have concealed 10 kgs. of gold, which bag was kept with the appellant during his transfer while staying in the same apartment, further proves the connivance and link of the appellant with M/s. Shabana Travels Pvt. Ltd. and Md. Salim. Therefore, it is the Revenue's contention that the impugned orders have rightly penalized the appellant and that the same are required to be upheld.

10. Heard both sides and perused the records placed before us.

11. The dispute in these appeals pertains to implication of the appellant solely on the statement of one Shri Raghav Kumar Jha, on the basis of which it has been inferred that the appellant is a close associate of one Md. Salim, who was the carrier of smuggled goods, as staff of M/s. Shabana Travels and providing godown for storage of such goods which were clandestinely removed from ACC, Kolkata, without filing Bill of Entry.

11.1. The Special Investigating Branch (SIB), ACC searched M/s. Shabana Travels on 06.11.2017 and during the course of the search, is said to have seized one bag with personal documents of Shri Kislay.

11.2. Shri Kislay, Inspector, GST, is said to have kept that bag with appellant herein during his transfer while staying in same apartment, which was recovered with concealed 10 kgs Gold from the premises of M/s Shabana Travels. Hence, the Revenue has alleged that the link of the appellant with M/s

Shabana Travels Pvt. Ltd. and Md. Salim has been established, for which he has been penalized by way of the present proceedings.

12. By way of these appeals, the appellant has challenged the imposition of penalty on him under Section 112(a) and (b) vide the impugned orders primarily on the ground that he was in no way connected with the seizure of gold from the godown of M/s. Shabana Travels.

12.1. The relevant findings of the ld. adjudicating authority as to the role of the appellant, as mentioned in paragraph 75.7 of the impugned Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2025 dated 25.06.2025 (pertaining to 05 live consignments) is reproduced below: -

> *"75.7. Role of Shri Vikash Kumar (Noticee No. 12)*
>
> *I find that Shri Vikas Kumar was on the rank of Deputy Commissioner posted in GST Commissionerate during the material time period. He has been alleged to be the Co-Noticee as Shri Raghav Jha stated that a Deputy Commissioner of Customs and Central Excise living near Rajarhat in Green Elements Building was a close associate of Md. Salim, who was found to be carrier of smuggled goods & providing godown for storage of the smuggled goods from ACC in the instant case."*

12.2. From the above, it is evident that the appellant has been implicated in the offence and indicted, as a co-noticee to the Show Cause Notice, on the basis of the statement given by Shri Raghav Jha, saying that "a Deputy Commissioner of Customs and Central Excise living near Rajarhat in Green Elements Building was a close associate of Md. Salim", who is alleged to be a person involved in this case as the carrier of smuggled goods and providing godown for storage of the same.

12.3. It is imperative to mention that Shri Raghav Jha, in his statement referred to above, has not specifically named the appellant herein or his link therein in the alleged offence.

12.4. It is on record that the alleged statement of Shri Raghav Jha has not been relied upon by the ld. adjudicating authority in the impugned order. For the sake of ready reference, the said observation recorded by the ld. adjudicating authority at paragraph 75.7.3 of the impugned Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/11/2025 dated 25.06.2025 regarding relevance of the Statement of Shri Raghav Jha is as under: -

> **"***75.7.3 …*
>
> *….Herein,* ***I shall not be relying upon the statement of the witness viz. Shri Raghav Jha, who has evaded the Cross-examination proceedings inspite of giving Notice three times to appear*** *on 05.12.2024, 20.12.2024 & 07.03.2025 in the interest of natural justice & Hon'ble High court directions."*

(Emphasis supplied)

12.5. It can be seen that the said Statement of Shri Raghav Jha has not been relied upon by the ld. adjudicating authority to substantiate the allegations contained in the Show Cause Notice vide the impugned order. Hence, the Statement of Shri Raghav Jha, which has already been discarded, cannot be a basis for the purpose of implicating the appellant herein in the case.

13. Further, another ground for implication of the appellant in the offence, is that some belongings pertaining to Shri Kislay, Inspector (co-noticee to the Show Cause Notice) had been recovered from the premises of M/s. Shabana Travels and that the said belongings had also been kept by Shri Kislay at the residence of Shri Vikash Kumar, the appellant herein.

13.1. The appellant has rebutted to the above by contending that the Department has failed to substantiate their allegation of a bag containing the belongings of Shri Kislay has been recovered from the godown of M/s. Shabana Travels. The appellant has produced the list of items seized from the premises of M/s. Shabana Travels on 06.11.2017. The list of items seized from the said premises, as has been placed on record by the appellant, is reproduced below for ease of reference: -

DUPLICATE ANNX – P/5 (2) 129

Name: Shabana Jahangir

Address: AANANDLOK, 4th Lane, 1st Floor, Near Bablatalla 217-B Bus Stand, PIN – 700 136

Place of Search: As above.

Articles Seized	Nos.	Description	Where Seized
1) Some loose papers.	08	official correspondence	At AANANDLOK 4th Lane, 1st Floor, Near Bablatalla 217-B Bus stand, PIN – 700 136
2) Loose paper of Md. Salim	06	Loose papers authenticated by Shabana Jahangir	
3) Original tenancy agreement of Md. Md. Salim	01	Agreement 1	

No Bag

Search Started at 03:00 A.M./P.M. Search Completed at 04:45 A.M./P.M.

REMARKS:-

Kumar 30/04/2024

स्वरूप कुमार शी
SWAROOP KUMAR SHEE
मूल्यनिरूपक / APPRAISER
सीमा शुल्क सदन, कोलकाता
CUSTOM HOUSE, KOLKATA

Received.
Shabana Jahangir 06/11/2017.

Signature & Addresses of witnesses:-

1) GOPAL CHANDRA PAL
Swastcolony Rajbari Colony
KOL-81

2) Nicky Siddique
Dharpachorbagan – A/18 - KOL-13

Shabana Jahangir 06/11/2017
Signature of the owner of the articles seized

Asish
Signature of the Customs Officer conducting search

13.2. A perusal thereof shows that no such bag belonging to Shri Kislay, Inspector has been mentioned in the said Seizure List. Thus, we find force in the submission that there is no substance in the allegation of a bag belonging to Shri Kislay being recovered from the premises of M/s. Shabana Travels, for the purpose of implicating the appellant herein.

13.3 In this context, it is also relevant to note that an inspection of the documents recovered from the premises of M/s. Shabana Travels was conducted on 10.01.2025 wherein it has been categorically mentioned that there is no Panchanama drawn in respect of the search conducted on 06.11.2017 relating to Ms. Shabana Jahangir and no such Panchanama could be found. For better appreciation of the facts, the inspected document as prepared on the date of inspection, is scanned and reproduced below: -

ANNX - P/6 (30

Inspection of Documents

An Inspection of documents has been carried out at SIB, ACC, NSCBI Airport, Kolkata-700052 on 10.01.2025 in pursuant with the letter bearing reference no. C.No. II(10)A-2/CON/GST BBSR/2022 dated 22.11.2024 of Shri Sujit Mallick, Additional Commissioner & IO, GST & Central Excise Bhuwaneswar Commissionerate. Below mentioned officers were present:

1. Shri Pramod Kumar Maurya, Additional Commissioner & Presenting Officer
2. Shri Vikas Kumar, Deputy Commissioner & CO
3. Shri A K Patnaik, Deputy Commissioner (Retired), Defence Assistant
4. Shri Saikat Saha, Assistant Commissioner of Customs, SIB, ACC, Kolkata
5. Shri Tridib Das, Appraiser, SIB, ACC, Kolkata
6. Shri Pramod Kumar Giri, EO, SIB, ACC, Kolkata
7. Shri Pankaj Kumar Soni, EO, SIB, ACC, Kolkata

All the seven (07) documents mentioned in letter dated 22.11.2024 have been produced in original for verification by the charged officer. However, corresponding Panchnama in respect of Search List dated 06.11.2017 relating to Shabana Jahangir could not be found.

10/01/2025 Shri Pramod Kumar Maurya, | 10/01/25 Shri Vikas Kumar | Shri A K Patnaik 10-01.2025.

No other search list relating to Shabana Travels except dated 6/11/17 available for inspection.

10/01/2025 Shri Saikat Saha | 10.01.25 Shri Tridib Das, | 10.1.2025 Shri Pramod Kumar Giri,

10/01/25 Shri Pankaj Kumar Soni,

13.4. The document extracted hereinabove also goes on to show that there is no evidence available on record to prove the role of the appellant herein in the alleged offence of smuggling of 10 kgs. of gold.

13.5. We also find force in the contention of the appellant that, but for the statements dated 06.11.2017 and 07.11.2017 of Shri Raghav Kumar Jha and the alleged recovery/seizure of a bag purportedly belonging to Shri Kislay from the premises of M/s. Shabana Travels on 06.11.2017, the appellant does not figure anywhere in the entire investigation. Except for the aforesaid allegations, no independent material has been brought on record to connect the appellant with the alleged acts of smuggling.

13.6. It is a settled proposition of law that the burden lies upon the Revenue to establish the allegations levelled in the Show Cause Notice through cogent and admissible evidence. In the present case, we find that the Revenue has failed to produce Shri Raghav Kumar Jha for cross-examination in terms of Section 138B of the Customs Act, 1962 so as to affirm the truthfulness of the statements relied upon in the proceedings. Further, no reliable evidence has been adduced regarding the alleged recovery and seizure of the bag belonging to Shri Kislay from M/s. Shabana Travels. In absence of compliance with the statutory mandate under Section 138B and in the absence of corroborative evidence, such untested statements cannot be made the sole basis for sustaining penal action against the appellant.

13.7. We also find merit in the submission of the appellant that the officers entrusted with the custody, supervision and procedural compliance relating to imported cargo at ACC, Kolkata were the Customs officers and SIB officers posted therein, whereas the appellant admittedly was never posted at ACC, Kolkata, nor was he an importer or person connected with the clearance of imported cargo handled there.

In such circumstances, no role attributable to the appellant in relation to the alleged import consignments has been established.

13.8. At this juncture, we find it relevant to take note of the submission of the appellant that the gold concealed inside UPS units imported under AWB No. 17656233004 (IGM No. 1200879) was allegedly seized on three separate occasions, i.e., on 18.08.2017, 06.09.2017 and 22.11.2017, which prima facie creates serious doubt regarding the manner in which the investigation was conducted. Such irregularities in the investigation process materially affect the credibility and evidentiary value of the investigation report relied upon for imposing penalty upon the appellant. In the absence of cogent corroborative evidence independently establishing the involvement of the appellant, the penal action cannot be sustained merely on the basis of assumptions and unverified allegations.

13.9. In view of the foregoing, the impugned order to the extent of imposition of penalty of Rs.10,00,000/- on the appellant under Section 112(a) and (b) of the Act is found to be devoid of merit.

14. Similarly, apart from the 5 live consignments, there is also no evidence on record to implicate the appellant herein in respect of smuggling of gold on earlier occasions also pertaining to 26 consignments. The ld. adjudicating authority, on identical grounds, has imposed penalty on the appellant under Section 112(a) & (b) ibid. for his role in the alleged smuggling activity. The ld. adjudicating authority at paragraph 75.9 of the Order-in-Original No. KOL/CUS/A&A/Pr. COMMISSIONER/ADJN/12/2025 dated 25.06.2025, has adopted identical findings as to the role of the

appellant herein, as in the case of the 5 live consignments, for the purpose of imposition of penalty under Section 112(a) and (b) ibid.

14.1. It is seen that the subsequent Show Cause Notice No. 06/2022 dated 29.03.2022 pertaining to these twenty-six consignments allegedly cleared during the period 01.04.2017 to 04.08.2017 has also proceeded substantially on the basis of the aforesaid statements and the alleged recovery of the said bag. The appellant has been sought to be implicated primarily on account of his alleged acquaintance with Md. Salim and M/s. Shabana Travels (P) Ltd. However, the Revenue has failed to establish any direct or indirect nexus of the appellant with the alleged smuggling activities through any legally admissible evidence during the course of adjudication.

14.2. In view of our detailed findings in the preceding paragraphs of this order, we do not concur with the conclusion arrived at by the ld. adjudicating authority in the above order for the purpose of imposition of penalty on the appellant. Accordingly, we are of the view that the impugned order, in respect of the aforesaid 26 consignments, to the extent of imposition of penalty of Rs.5,00,000/- on the appellant under Section 112(a) and (b) ibid. suffers from legal infirmity.

15. It is also pertinent to note that for imposing penalty under Section 112(a) and (b) of the Customs Act, it must be established that the appellant in this case has played an active role in removing, selling, etc. or there was smuggling of the impugned goods by the appellant in connivance with Md. Salim. For ease of reference, the relevant provisions of the Customs Act are extracted hereunder: -

> ***"112. Penalty for improper importation of goods, etc.***
>
> *"Any person,-*
>
> *(a)who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
>
> *(b)who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-*
>
>> *(i)in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001).], whichever is the greater;*
>>
>> *(ii)in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees,] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001).] whichever is the greater;*
>>
>> *(iii)[in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value*

> *thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees] [Inserted by Act 36 of 1973, Section 3 (w.e.f. 1.9.1973).],[whichever is the greater; [Inserted by Act 36 of 1973, Section 3 (w.e.f. 1.9.1973).]*
>
> *(iv)in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees],[whichever is the highest; [Inserted by Act 36 of 1973, Section 3 (w.e.f. 1.9.1973).]*
>
> *(v)in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], [whichever is the highest.] [Inserted by Act 36 of 1973, Section 3 (w.e.f. 1.9.1973).]"*

15.1. We find that penalties have been imposed upon the appellant under Sections 112(a) and 112(b) of the Customs Act, 1962 on the allegation that the appellant had knowingly concerned himself with the alleged smuggling activity involving foreign-origin gold. However, on careful scrutiny of the records, we find that no cogent or independent evidence has been brought on record to establish the involvement of the appellant in the alleged act of smuggling or in any activity connected with the improper importation, possession, transportation, concealment or dealing with the impugned goods.

15.2. It is on record that the entire case against the appellant primarily rests upon the statement of one Shri Raghav Jha, who, in his statement, merely referred to "a Deputy Commissioner of Customs and Central Excise" residing near Rajarhat as being acquainted with one Md. Salim. Significantly, the appellant has not been specifically named in the said statement, nor has any categorical role been attributed to him in relation to the alleged smuggling activity. Such vague and generalized references, in our considered view, cannot form the basis for sustaining penal liability under the stringent provisions of Section 112 of the Act. In fact, we note from paragraph 82.7 of the impugned order that the Revenue itself has admitted that the appellant did not undertake any improper importation of goods and that there is no cogent, tangible or corroborative evidence on record to establish that he had made any declaration, statement or document which was false or incorrect in any material particular in relation to any transaction under the Act. It is also an admitted position that there is nothing on record to show that the Appellant was in any manner concerned with the import of goods at ACC, Kolkata.

15.3. We further find that except for the allegation that the appellant was acquainted with one Shri Kislay, from whose bag gold was subsequently recovered during investigation, there is no material available on record to demonstrate conscious knowledge, active connivance, abetment or involvement on the part of the appellant in the alleged smuggling operations. Mere acquaintance or association with a co-noticee, in the absence of any incriminating evidence establishing participation in the alleged offence, cannot ipso facto render a person liable to penalty under the Customs Act.

15.4. It is a settled position of law that penalty under Section 112(a) is imposable only when a person does or omits to do any act which renders the goods liable to confiscation under Section 111 of the Act, or abets the doing or omission of such act. Similarly, penalty under Section 112(b) requires conscious dealing with goods which the person knows or has reason to believe are liable to confiscation. Thus, the essential ingredients of knowledge, mens rea and active involvement are required to be established by the Revenue through tangible and convincing evidence. In the present case, we find that the investigation has failed to establish any direct or indirect nexus between the appellant and the alleged smuggling syndicate. No recovery of smuggled gold or incriminating documents has been effected from the appellant. No evidence relating to financial transactions, communication records, movement of goods, facilitation of transport, or sharing of proceeds has been brought on record to connect the appellant with the alleged illegal activity. The findings in the impugned order appear to be founded largely on assumptions and presumptions without any substantive corroboration.

15.5. It is trite law that suspicion, however grave, cannot take the place of legal proof. Penal provisions, particularly those carrying civil consequences under the Customs Act, are required to be construed strictly, and the burden lies upon the Revenue to establish the role of the appellant through reliable and admissible evidence. In the absence of any such evidence establishing conscious involvement or abetment, the penal provisions of Sections 112(a) and 112(b) cannot be invoked against the appellant merely on the basis of conjectures or peripheral association with other noticees.

15.6. Accordingly, we are of the considered view that the ingredients necessary for invocation of Sections 112(a) and 112(b) of the Act are wholly absent in the present case insofar as the appellant is concerned. The penalties imposed upon the appellant are therefore unsustainable in law and are liable to be set aside.

16. In view of the discussions hereinabove, the penalties imposed on the appellant herein vide the impugned orders, under Sections 112(a) and (b) of the Customs Act, 1962, are set aside being unsustainable in the eyes of law. The impugned orders thus stand modified to the above extent.

17. The appeals are thus disposed of in the above manner.

(Order pronounced in the open court on **25.05.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd