CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 26384 of 2013

(Arising out of **Order-in-Original** No.03/2013 – Adjn (Cus)(Commr) dated 25.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Shri Ashok Kharey, Director .. **APPELLANT**
M/s Maxx Access Ltd.,
Flat No. 918,
Block No. 2,
Manasarovar Heights,
Hasmathpet,
Hyderabad,
Telangana – 500 009.

VERSUS

Commissioner of Cusotms Hyderabad - Customs .. **RESPONDENT**
L.B. Stadium Road,
7th Floor,
Kendriya Shulk Bhavan,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri B. Venugopal, Advocate for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30292/2026

Date of Hearing: 02.02.2026
Date of Decision: 15.05.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed against the Order-in-Original No. 03/2013 – Adjn (Cus)(Commr) dated 25.03.2013 (impugned order) passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad, whereby, penalty of Rs. 20,00,000/- has been imposed upon the appellant under Section 112(a) and 114AA of the Customs Act, 1962.

2. The facts, in brief, is that, the Directorate of the Revenue Intelligence (DRI), Chennai Zonal unit, conducted investigation into import of furniture from China / Hong Kong by Indian importers including M/s Om Overseas. Investigation allegedly revealed systematic undervaluation of imported goods through issuance of dual invoices. As per investigation, the appellant, being Director of M/s Maxx Access Ltd., Hong Kong, coordinated procurement of furniture from Chinese manufacturers, facilitated visits of Indian buyers to China, finalized prices, supervised manufacture and export of goods and arranged issuance of two sets of invoices, mainly one invoice reflecting actual transaction value and another invoice refracting suppressed value for Customs purposes. It was further alleged that differential amounts between actual invoice value and declared Customs value were remitted through unofficial / private channels. Accordingly, proceedings were initiated proposing penalty under Sections 112(a) and 114 AA of the Customs Act.

3. The allegation against the appellant as per Show Cause Notice, as thus:

> "3.1 From the foregoing, it appears that:
>
> a) Shri Ashok Kharey, Director of M/s Maxx Access Ltd., has been in contact/invited the parties intending to import furniture from China and facilitated visit to the manufacturing units / furniture showrooms in China, assisted them in identifying the proper furniture required by them and in placing orders.
>
> b) Once the price and other terms such as advance payment etc., are finalized, the Indian Importers leave China. The rest of the activities such as getting the goods manufactured according to client's quality standards, procuring the same from such manufacturers and stuffing into the containers and exporting from China to India were taken care by Shri Ashok Kharey.
>
> c) The manufacturers in China issue an invoice for full / actual value of the goods in the name of M/s Maxx Access Ltd., the firm of Shri Ashok Kharey.
>
> d) Shri Ashok Kharey issues two sets of invoices, one for the actual values and another for the suppressed / reduced values in the name of his company M/s. Maxx Access Ltd., in favour of the Indian Importer. Similarly

in the case of imports from M/s. Shenzhen, Shri Mahesh received two sets of invoices.

e) The invoice with actual value, referred to as "LPI Statement" / "Actual Invoice is for the purpose of payment of full amounts by the Indian Importers to Shri Ashok Kharey and the other invoice with suppressed / reduced values, referred to as "BPI Statement" / "Commercial Invoice" / "Invoice" is issued for the purpose of submission to Customs Authorities at the time of assessment of duties and transferring of such suppressed / reduced amounts through banking channels.

f) The differential amount between the Actual Invoice and Invoice submitted to Customs is paid to Shri Ashok Kharey or to his wife Smt. Seema Kharey at Hyderabad as "Payment through private channels by the Indian importers. In a similar fashion, Shri Mahesh sent the differential amounts through private channels M/s. Shenzhen."

4. The appellant filed a reply and contested the allegations made in Show Cause Notice, upon adjudication the Learned Commissioner confirmed the allegations and imposed penalty. Hence, the present appeal.

5. Learned Counsel for the appellant submits that the appellant is merely Director of a foreign company, incorporated outside India and no proceedings could have been initiated against him without making a company itself a noticee. Further, without impleading the principal offender (Export Company), penalty proceedings against its director alone are not sustainable in law. It is further argued that prior to amendment of Section 1(2) of the Customs Act (with effect from 29.03.2018), the Customs Act had no extra-territorial jurisdiction / application and therefore, no penalty could have been imposed against the appellant. Learned Counsel for the appellant further submits that during the material period (September, 2006 to October, 2006), the Customs Act, 1962 had no jurisdiction and was applicable only within India. Learned Counsel has placed reliance upon the following decisions:

i) C.K. Kunhammed Vs Collector of Central Excise & Customs [1992 (62) ELT 146 (Tribunal)]

ii) Shafeek P.K. Vs Commissioner of Cutoms, Cochin [2015 (325) ELT 199 (Tri-Bang)]

iii) Guru Electronics Singapore Pvt Ltd., Vs Commissioner of Customs, Bangalore, [2009 (240) ELT 56 (Tri-Bang)]

iv) M/s Seville Products Ltd., Vs CC, New Delhi [2021 (3) TMI 775 CESTAT-New Delhi – I]

v) M/s Seville Products Ltd., VS Commissioner of Customs, Ludhiana [2021 (378) ELT 291 (Tri-Chan)]

vi)Ashok Kharey & Others [2025 (6) TMI 1441 – CESTAT Bangalore]

6. It is also submitted that no reliable evidence exist for establishing conscious involvement of the appellant in undervaluation.

7. Learned Authorized Representative reiterates the findings recorded in the impugned order and also, inter alia, submits that the investigation clearly established active involvement of the appellant in designing and executing the undervaluation mechanism through issuance of dual invoices and collection of differential consideration through unofficial channels.

8. Learned AR further submits that the appellant knowingly facilitated submission of suppressed invoices before Indian Customs Authorities and there by rendered imported goods liable to confiscation under the Customs Act. It is further argued that the offence was completed within India because undervalued invoices were utilized for Customs clearance in India, resulting in evasion of legitimate Customs duty. Department has placed reliance Bombay High Court decision Amritlakshmi Machine Works Vs Commissioner of Customs (Import) Mumbai [2016 (335) 225 (Bom)].

9. We have carefully considered the rival submission and perused the records with their submissions.

10. We find that the allegations against the appellant are not vague or general in nature. The Show Cause Notice specifically narrates the role played by the appellant in coordinating imports, arranging manufacture, supervising exports and issuing dual invoices. Investigation further revealed existence of "actual invoices" reflecting true transaction value and "commercial invoices" containing suppressed values intended for submission before the Customs Authorities in India. The appellant has not been able to satisfactorily rebut the documentary evidence recovered from investigation. The cumulative evidence establishes conscious and deliberate participation of the appellant in undervaluation of imported goods.

11. Section 112 (a) of the Customs Act provides penalty upon any person who does or omits to do any act which renders goods liable to confiscation or abetes commission of such act. The expression "any person" intentionally broad and encompasses every person, who knowingly participates in fraudulent importation or undervaluation irrespective of his designation or geographical location. In the present case, undervalued invoices prepared and facilitated by the appellant, formed the very basis for the assessment and clearance of imported goods in India.

12. Therefore, the appellant's act had direct nexus with improper importatoion into India and squarely attracts penal liability under Section 112 (a) of the Customs Act.

13. In case of C.K. Kunhammed, supra, the person was not in India either at the time of commission of offence or later, and the issue pertained to territorial applicability in entirely different factual circumstances where no direct evidence existed showing active participation in import fraud completed within India. In the present matter, the appellant was not a

remote foreign entity having incidental connection with imports. Investigation specifically establishes that he consciously facilitated under valuation intended for use before Indian Customs Authorities. Thus, the ratio of the said decision is clearly distinguishable on facts.

14. In the case of Guru Electronics Singapore Pvt Ltd.,, supra, the company was incorporated in Singapore, and penalty were imposed, the tribunal Bangalore was primarily examining liability of a foreign supplier in circumstances were direct evidence establishing intentional abetment of Customs fraud in India was absent. In the instant case, however, there is specific evidence regarding preparation of dual invoices, suppressed declarations and clandestine collection of differential considerations in India. Therefore, unlike the facts in Guru Electronics Singapore Pvt Ltd., supra, the present case involves active and conscious participation in evasion of Customs duty within India.

15. The appellant has reliance upon the decision of Shafeek P.K., decided by Tribunal Bangalore, supra, where accused was residing in Dubai for last 20 years and was not in India, where offence was allegedly committed is mis-placed because the said decision was based upon peculiar facts relating to absence of sufficient evidence connecting the person concern with the offending imports. In the present matter, extensive documentary evidence and investigation findings establish direct involvement of the appellant in the undervaluation mechanism. Hence, the factual foundation itself being materially different, the ratio cannot be mechanically applied. The decision in M/s Seville Products Ltd., supra, is also distinguishable on the basis of different factual matrix. In those matters, the Tribunal examined extra territorial applicability in the context of proceedings initiated primarily

against foreign suppliers without sufficient evidence demonstrating direct operational control over Customs declarations filed in India. In contrast, the present case involves deliberate issuance of manipulated invoices specifically intended for Customs clearance in India and direct coordination with Indian importers for suppressing assessable value. Once fraudulent invoices are knowingly created for use before Indian Customs Authorities and are actually utilized for clearance of imported goods in India, the offence attains territorial nexus with India. Therefore, the ratio of M/s Seville Products Ltd., supra, does not advance the case of the appellant.

16. Learned counsel has also relied upon a decision stated to be rendered in appellant's own case, Ashok Kharey & others, supra, decided by Tribunal Bangalore. However, it is settled law that every case must be examined on the basis on evidence available therein. The findings rendered in other proceeding cannot automatically conclude issues arising in the present appeal, particularly, when the Adjudicating Authority has recorded detailed findings based on evidence specific to this case. Moreover, the present proceedings involve direct evidence regarding use of false invoices for Customs clearance and therefore, stand on independent footing.

17. The main argument of the appellant is that prior to amendment in the section 1(2) of the Customs Act (dated 29.03.2018), the Customs Act had no extra-territorial application/ jurisdiction. We are unable to accept the said contention in the peculiar facts of the present case. The present proceedings do not seek to penalize of acts committed abroad in isolation. The acts allegedly committed abroad culminated into undervaluation of imported goods within India, resulting in evasion of Customs duty payable in India. The taxable event under Customs law is importation into India. Once

manipulated invoices were knowingly prepared and utilized for Customs clearance in India, the offence stood completed within Indian Territory. A person situated outside India, who consciously and deliberately participates in fraudulent importation into India, cannot seek immunity merely because of the conspiracy (acts of appellant) originated outside India. The Customs Authorities, therefore, rightly exercised jurisdiction against the appellant.

18. The contention of the appellant that no Show Cause Notice was issued or any penalty imposed upon principal offender and that, consequential, no penalty can be levied upon the appellant, is devoid of merit and liable to be rejected. We find no substances in the submissions. The principal offender is admittedly incorporated and situated outside India and, therefore, being a foreign entity beyond the territorial reach of the Indian Authorities during the material time, it did not fall within the effective enforcement jurisdiction of the Customs Department for the purpose of initiating penal action under the Customs Act, 1962. However, the appellant, though an officer of the said foreign company, had actively participated in the impugned transactions and the acts contributable to him were not confined to a foreign territory alone and had a direct and substantial nexus with activities under taken within India. The legal consequences of such acts, therefore, squarely arose within the territory jurisdiction of India. In these facts and circumstances, the provisions of the Customs Act were fully applicable to the appellant even prior to the statutory amendment. Merely because the appellant held office in a foreign company, he cannot claim immunity from liability or penal consequences arising out of acts personally committed by him which attracts penal provisions under Customs Act.

19. It is settled principle of law that where a person knowingly engages in acts that contravene statutory provisions and such acts have operative effect within India, he remains personally answerable under the law irrespective of the nationality and place of incorporation of entity with which he is associated.

20. Accordingly, we hold that appellant cannot avoid the imposition of penalty solely on the ground that the principal company, being incorporated outside India, was not issued any Show Cause Notice or subjected to any penalty proceedings. The liabilities of the appellant are independent and depends on his role in the commission of offending acts.

21. The Bombay High Court in Amritlakshmi Machine Works Vs Commissioner of Customs (import) Mumbai [2016 (335) ELT 225 (Bom)] held that penalty under Section 112 is not restricted to the importer who files the bill of entry and that it can extend to any other person whose act or omission renders the case liable for confiscation, including a person who abets such act.

22. Section 114 AA of the Customs Act provides for penalty against any person who knowingly or intentionally uses false or incorrect material or declaration in transaction of business relating to Customs. The evidence on record establishes that suppressed invoices were intentionally prepared for presentation before Customs Authorities in India. Such conduct squarely attracts ingredients of section 114 AA of the Customs Act. Deliberate under valuation of imported goods strikes at the very foundation of the Customs administration and causes substantial loss to public revenue. The Hon’ble Supreme Court has repeatedly held that economic offences involving fraud upon public revenue are required to be viewed seriously. The present case

reflects carefully designed mechanism involving dual invoicing and clandestine transfer of differential consideration. Such acts cannot be treated as procedural or technical violations.

23. Therefore, Penalty under Section 114AA of the Customs Act can be imposed where a person knowingly and intentionally makes, signs, uses or causes to be made, signed or used, any false or incorrect declaration, statement or documents in Customs business.

24. In view of the foregoing discussion, we hold that the appellant actively abetted undervaluation of imported good, knowingly facilitated use of false and suppressed invoices before Indian Customs Authorities. Therefore, Penalties imposed under Section 112(a) and 114AA by Adjudicating Authority of the Customs Act, 1962 are legally sustainable.

25. Accordingly, the appeal filed by the appellant is dismissed.

(Pronounced in the open court on 15.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha