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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75573 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/04/2024 dated 05.01.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Ajoy Chand Chatterjee **: Appellant**
Proprietor of M/s. Chatterjee & Co.,
Purba Satgachia, P.S. Kalna,
District: North Burdwan, PIN – 723 422 (West Bengal)

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata, PIN – 700 001 (West Bengal)

APPEARANCE:

Shri Abhijit Biswas, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76112 / 2026

DATE OF HEARING / DECISION: 05.08.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned Order-in-Appeal No. KOL/CUS/PORT/KS/04/2024 dated 05.01.2024 passed by the Commissioner of Customs (Appeals), Kolkata, whereby the appeal filed against the Order-in-Original No. KOL/CUS/JC/PORT/GR.V/11/2023 dated 31.01.2023 passed by the Joint Commissioner of Customs (Port), Group-V, Customs House, Kolkata, was rejected and the findings therein were upheld.

2. The facts of the case are that the appellant, during the period October 2006 to November 2006 (hereinafter referred to as the "said period"), was engaged in the import of heavy earth-moving machinery and other goods classifiable under Chapter 84 of the Customs Tariff Act, 1975. During the said period, the appellant imported two consignments of the subject goods from M/s. EB McSun Pte. Ltd., Singapore, an overseas supplier stated to be engaged in the supply of heavy earth-moving machinery. The consignments were imported against the prescribed shipping documents, including commercial invoices, and Bills of Entry filed before the Customs authorities.

3. The subject consignments were duly presented for assessment and examination and were thereafter cleared by the Customs authorities without objection being raised with regard to the declarations made by the appellant or the valuation thereof. It is pertinent to note that the imports pertained to a period prior to the introduction of the self-assessment regime by the Finance Act, 2011, and the declared values and accompanying import documents were assessed and accepted by the concerned Customs officers at the relevant time.

4. The matter was, however, subsequently reopened on the basis of an investigation undertaken by the Directorate of Revenue Intelligence (DRI), which commenced approximately three to four years after the subject imports, when Shri Lim Eng Bee, Managing Director of M/s. EB McSun Pte. Ltd., was intercepted by the DRI at Bangalore on 27.11.2009 on the suspicion that he was involved in facilitating undervaluation of goods exported to India in collusion with various Indian importers. During the course of

investigation, statements of Shri Lim Eng Bee were recorded under Section 108 of the Customs Act, 1962, wherein he allegedly admitted to the practice of undervaluing goods exported to India and to having facilitated such undervaluation in collusion with certain buyers/importers in India. Shri Lim Eng Bee was thereafter arrested and produced before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

5. In connection with the investigation, and as part of the proceedings relating to his bail, Shri Lim Eng Bee is stated to have produced before the learned Additional Chief Metropolitan Magistrate certain documents purportedly relevant to the investigation into the alleged undervaluation of goods exported by M/s. EB McSun Pte. Ltd. to various Indian importers, including the present appellant. The documents allegedly included parallel commercial invoices purportedly reflecting values higher than those declared before the Customs authorities. A laptop stated to have belonged to Shri Lim Eng Bee and to have been in his possession at the time of his interception on 27.11.2009 was also seized by the DRI and forwarded for examination to the Government Examiner of Questioned Documents (GEQD), Directorate of Forensic Science. Upon examination of the digital storage media contained therein, the investigation allegedly recovered two soft copies of commercial invoices purportedly issued in the name of the present appellant in respect of the subject consignments.

5.1. On the basis of the disclosures allegedly made by Shri Lim Eng Bee, the investigation was thereafter extended to other persons stated to be connected with the alleged undervaluation arrangement, including Shri Abhijit Ray Burman, who was stated to have been acting as an agent of M/s. EB McSun Pte. Ltd. in India, and Shri Ranaji Ganguly, who was alleged to have been associated with the transactions and was also stated to be the nephew of Shri Ajoy Chand Chatterjee. Statements of the said persons, as well as of the present appellant, were subsequently recorded during the course of investigation. The Revenue alleged, on the basis of the aforesaid statements and documents, that the subject consignments were covered by two sets of invoices, one set reflecting the lower value declared before Customs and another allegedly reflecting the actual higher value of the goods, with the difference having been paid to the overseas supplier.

6. On the basis of the aforesaid investigation, a Show Cause Notice dated 16.09.2011 was issued to the appellant and the other persons concerned, alleging, inter alia, that the appellant had imported the subject goods during the said period by resorting to undervaluation with intent to evade payment of Customs duty. The declared assessable value of Rs.14,71,884/- was proposed to be rejected under the Customs Valuation Rules, 1988, and the differential Customs duty amounting to Rs.20,68,060/- was proposed to be recovered from the appellant, along with applicable interest under Sections 28(1) and 28AB of the Customs Act, 1962. The imported goods were further proposed to be held liable to confiscation under Section 111(m) of the Act and penalties were proposed under Sections 112(a), 114A and 114AA of the Act.

6.1. The appellant contested the allegations and submitted its replies to the Show Cause Notice vide letters dated 22.02.2021 and 12.10.2022, disputing, inter alia, the allegation of undervaluation and the evidentiary basis relied upon by the Department.

6.2. The matter was thereafter adjudicated by the Joint Commissioner of Customs (Port), Group-V, Customs House, Kolkata, who, vide Order-in-Original dated 31.01.2023, inter alia confirmed the allegations contained in the Show Cause Notice, rejected the declared assessable value and redetermined the value of the imported goods, resulting in confirmation of differential duty of Rs.20,68,060/-, along with applicable interest, and ordered confiscation of the subject goods. Penalties were also imposed upon the appellant under the provisions of the Customs Act, 1962, including a penalty of Rs.20,68,060/- under Section 114A and Rs.2,00,000/- under Section 112(a) of the Act.

6.3. Aggrieved by the aforesaid adjudication order, the appellant preferred an appeal before the Commissioner of Customs (Appeals), Kolkata. The Ld. Commissioner (Appeals), vide the impugned Order-in-Appeal dated 05.01.2024, rejected the appeal and upheld the findings and consequential liabilities imposed under the Order-in-Original.

6.4. Against the said order, the appellant is before us.

7. The Ld. Counsel appearing for the appellant submits that the present proceedings arise out of the very same investigation which had also culminated in proceedings against Shri Ranaji Ganguly, Proprietor of M/s. D.D. Impex, wherein differential Customs duty,

along with applicable interest and penalties, had been demanded on the allegation of undervaluation. It is submitted that the case of Shri Ranaji Ganguly, arising from the same investigation and substantially the same evidentiary foundation, has already been adjudicated by this Tribunal vide *Final Order No. 75319 of 2025 dated 05.02.2025 in Customs Appeal No. 78278 of 2018 [2025 (2) TMI 1286 – CESTAT, Kolkata],* wherein the allegation of undervaluation was held to be unsustainable. It is, therefore, submitted that the same view ought to follow in the present appeal, particularly when the allegation against the present appellant emanates from the very same investigation and the same evidentiary material which had fallen for consideration in the aforesaid proceedings.

7.1. The Ld. Counsel further points out that, following the aforesaid decision in the case *of Shri Ranaji Ganguly (supra),* this Tribunal has also allowed the appeals preferred by Shri Abhijit Ray Burman in two separate proceedings, one of which was arising from the very same Order-in-Original dated 31.01.2023 pertaining to the present appeal. It is submitted that, in the said proceedings, the Tribunal vide *Final Order Nos. 77884-77885 of 2025 dated 09.12.2025 in Customs Appeal Nos. 75355 of 2024 & anr. [2025 (12) TMI 833 – CESTAT, Kolkata],* following the decision rendered in the case of *Shri Ranaji Ganguly (supra),* had held the allegations against Shri Abhijit Ray Burman to be unsustainable and consequently allowed the said appeals. According to the Ld. Counsel, the said findings are of considerable relevance to the present appeal, since the allegations against the appellant also emanate from the same investigation and the same alleged undervaluation racket.

7.2. Apart from the aforesaid submissions, the Ld. Counsel has also advanced various submissions on the merits of the case and relied upon a number of judicial precedents in support thereof. He accordingly prays that the impugned order, to the extent it rejects the declared assessable value and redetermines the same, confirms the consequential differential Customs duty along with interest and penalties, and orders confiscation of the imported goods with redemption fine, be set aside and the appeal be allowed.

8. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

9. Heard the parties and considered their submissions.

10. On going through the materials placed on record, we find that the Revenue's case suffers from various infirmities. Firstly, the invoices allegedly submitted by Shri Lim Eng Bee (Noticee No. 4) are admittedly unsigned documents. In the absence of authentication or signature, no presumption under Section 139 of the Customs Act, 1962 can be mechanically drawn in respect of such documents. More importantly, the invoices purportedly extracted from the storage devices of Shri Lim Eng Bee were not subsequently put to him for confirmation or clarification, nor was any statement of his obtained specifically with regard to the authenticity of the said documents or the anomalies allegedly emerging therefrom. Instead, the investigation sought the opinion of Shri Abhijit Ray Burman (Noticee No. 3),

who neither prepared the said invoices nor owned the electronic devices from which they were allegedly extracted. Such material therefore lacks evidentiary value.

10.1. Further, the computer-generated/printed copies of invoices relied upon in the impugned order are concerned, we find from the Show Cause Notice as well as the impugned order that the statutory requirements contemplated under Section 138C(2) of the Customs Act, 1962 have not been shown to have been fulfilled so as to render the said computer printouts admissible in evidence in terms of Section 138C(1) of the Act. In the absence of compliance with the statutory safeguards governing electronic records, such documents cannot, by themselves, constitute a legally sufficient foundation for fastening the serious charge of undervaluation upon the appellant.

10.2. We also take note of the fact that substantial reliance has been placed in the Show Cause Notice and the impugned order upon the statements of Shri Lim Eng Bee and Shri Abhijit Ray Burman. However, the contents of the said statements are not shown to have been corroborated by independent, reliable and admissible evidence directly connecting the present appellant with the alleged undervaluation. Further, the statements themselves disclose inconsistencies which have not been satisfactorily explained by the Revenue.

11. We find that the very same issue in respect of proceedings arising from the very same investigation and substantially the same evidentiary material has already been decided by this Tribunal in the case of Shri Ranaji Ganguly, wherein the Show Cause Notice was issued in the year 2010. Upon consideration of

the self-same facts and circumstances and the evidence relied upon by the Revenue, the Tribunal vide *Final Order No. 75319 of 2025 dated 05.02.2025 in Customs Appeal No. 78278 of 2018 [2025 (2) TMI 1286 – CESTAT, Kolkata]* held that the allegation of undervaluation could not be legally sustained, observing as under: -

> *"5. Heard both sides and perused the appeal documents.*
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> *6. We observe that the appellant imported 4 consignments of spares for heavy earth moving equipment from the overseas supplier viz. EB McSun Pte Ltd., Singapore. The said goods were imported against proper shipping documents, including commercial invoices, and bills of entry drawn in terms of the Act. The subject consignments were imported and cleared following assessment and inspection thereof by the customs authorities, without any objection being raised in respect of the declarations made by the appellant in the respective bills of entry. The said period relates to a time prior to the introduction of the self-assessment regime by the Finance Act, 2011, and the stated declarations against the said goods and shipping documents issued in respect of their importation were found to be in order by the concerned assessing officers. We observe that the department has not filed any appeal against the finally assessed bills of entry.*
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> *6.1. We find that a Show Cause Notice dated 07.10.2010 was issued to the appellant alleging undervaluation of the goods imported during the period December 2005 to September 2006, which is more than four years after the importation of the impugned goods. The Notice proposed rejection of assessable transaction value of Rs. 47,37,209/- declared by the appellant , in terms of the Customs Valuation Rules, 1988 and demanded differential Customs duty of Rs. 77,71,851/-, along with applicable interest. We find that the said Notice was issued on the basis of some documents recovered from the Managing Director of EB McSun, Mr. Lim Eng Bee, in Bangalore on 27.11.2009 and the statements recorded from him and Mr. Abhijit Ray Burman, who was serving as the agent of EB McSun in India during the said period. The appellant has*

questioned the veracity of the documents and admissibility of the said statements as evidence in this case.

6.2. We find that the laptop recovered from Mr. Lim Eng Bee was found to contain 4 soft copies of commercial invoices allegedly raised in the name of the appellant and issued in relation to the subject consignments. The appellant has submitted that these documents are unsigned and unattested photocopies. We observe that it is a settled law that no presumption can be raised under Section 139 of the Act in respect of such unsigned and unauthenticated documents. We agree with the submission of the appellant that based on such unsigned documents, transaction value cannot be enhanced. We observe that this view has been held in the case of Commissioner of Customs, Mumbai Vs. Bussa Overseas Properties Ltd. [2007 (216) E.L.T. 659 (S.C.)]. The relevant part of the said decision is reproduced below: -

"The short question involved in these civil appeals is whether the Department was right in adding £1.56 lakhs to the declared value of £6.26 lakhs approximately. In the present case, the Department has alleged under-valuation by the importer (assessee). The product imported is vatted malted spirit used in manufacture of scotch whisky. The Department alleged that the CIF declared value was not £6.26 lakhs but it was around £7.82 lakhs on the basis that the said sum of £1.56 lakhs constituted the balance amount subsequently paid partly in cash and cheque by the assessee to the foreign buyer M/s. Morrison Bowmore Distilleries, Glasgow, U.K.

2. We have carefully examined each and every document placed on record and we are in agreement with the factual finding of fact recorded by the Tribunal that there is no evidence of under-valuation in the present case particularly when the Department is relying upon unsigned xerox copies of the documents in support of its case. Even the contents of each of these documents do not support the case of the Department.

3. Taking an overall view of the matter, we find no merit in these civil appeals filed by the Department which are, accordingly, dismissed with no order as to costs."

6.3. We further observe that the invoices purportedly extracted from the storage devices of Mr. Lim Eng Bee were not subsequently shown to him nor any statement was obtained from him for the purposes of clarification as to the authenticity of the documents. Instead, the opinion of Mr. Abhijit Ray Burman , who neither prepared the invoices nor owned the devices wherefrom the same were allegedly extracted, was sought for the purposes of clarification . It is seen that the four computer printout invoices relied upon in the impugned order, do not satisfy the requirements of Section 138C(2) of the Act for being treated as a document which is admissible in any proceedings as per Section 138C(1) of the Act. Accordingly, we hold that the said printouts are inadmissible evidence and no demand can be raised or confirmed against the appellant on the basis thereof. In support of this view, we rely on the decision of the Tribunal at Mumbai in the case of Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II [(2024) 16 Centax 503 (Tri. – Bom.)] [as affirmed in 2024 (388) E.L.T. 529 (S.C.)]. The relevant part of the said decision is reproduced below: -

"10. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 658 of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the sub-section (2) of Section 138C Ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present

case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside.

6.4. In the impugned order, it is alleged that in his statements, Mr. Lim Eng Bee admitted that the company has exported the said goods to the appellant against parallel commercial invoices upon undervaluing the same and collecting the differential undeclared transaction value through a combination of banking and non-banking channels. However, we observe that there is no corroborative evidence disclosed in the impugned order in respect of any extra/additional payment made by the appellant to the foreign supplier with respect to the subject imported goods. There are no details, including bank details or the exact amount sent by the appellant or as to how and in what manner such payments were made, disclosed either in the Show Cause Notice or in the impugned order. We also observe that no relied upon documents which evidence such payments by the appellant in any manner are contained in the relied upon documents forming part of the Show Cause Notice. Thus, there is no direct evidence available on record to establish any additional payment made by the appellant for the subject imported goods to the foreign seller or to anybody else on its behalf. Thus, we hold that the alleged undervaluation of the said goods imported by the appellant is not substantiated and accordingly, we hold that the demand of differential duty on the basis of the alleged undervaluation is not sustainable.

6.5. In the present case, we observe that initially when the goods were imported in the year 2005 and 2006, the Customs authorities had accepted the value declared by the appellant in the said bills of entry and assesses the bills of entry without raising any objection regarding the valuation of the goods imported. These assessments have become final and no appeal has been filed against the assessment orders passed by the proper officers. Subsequently, if the Department wants to reject the transaction value declared by the appellant, there must be

> *strong evidence of suppression of facts with intention to evade Customs duties. In this case, we observe that the evidence of invoices recovered from the laptop of Mr. Lim Eng Bee are unvalidated documents. After extraction of the invoices from the storage devices of Mr. Lim Eng Bee, no statement has been obtained from him for the purposes of clarification as to the authenticity of the said documents. Instead, the opinion of Mr. Abhijit Ray Burman, who neither prepared the invoices nor owned the devices wherefrom the same were allegedly extracted, was sought. As the documents were not authenticated, they became inadmissible evidences and no demand can be raised or confirmed on the basis of the said documents. Thus, we find that the statements relied upon to substantiate the undervaluation have not been corroborated by any other evidence. The evidence of transfer of extra money through banking and other channels also have not been substantiated. There is no evidence of contemporaneous import has been brought in to support the allegation of undervaluation by the appellant.*
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> *7. In view of the above findings, we hold that the demand of differential Customs duty is not sustainable in the present case.*
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> *7.1. Since the demand of Customs duty is held to be unsustainable, the question of demanding interest and imposing penalties does not arise.*
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> *8. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law."*

12. We further take note of the subsequent decision of this Tribunal in the case of Shri Abhijit Ray Burman wherein two appeals filed by the said person, one of which arose from the very same Order-in-Original as involved in the present proceedings, were allowed by this Tribunal vide *Final Order Nos. 77884-77885 of 2025 dated 09.12.2025 in Customs Appeal Nos. 75355 of 2024 & anr. [2025 (12) TMI 833 – CESTAT, Kolkata],*. In the said proceedings also, following the

ratio laid down in the case of *Shri Ranaji Ganguly (supra),* the Tribunal found the allegations against Shri Abhijit Ray Burman (also the noticee no. 3 herein) to be unsustainable and allowed the appeals. The relevant portion of the said decision is reproduced below: -

> *"7.1. We find that the charge against the present appellant is based on his own testimony as well as that of his co-accused. We are of the view that the statement of the appellant does not lend any credence to the fact that he has entered in a nexus enabling undervalued imports into the country. While it is also on record that the appellant was associated with M/s E.B. McSun Pte Ltd., Singapore for marketing and sales promotion work in India, for which he was paid a commission amount by the overseas exporters, in the absence of any corroborative evidence, we find nothing on record to substantiate the charge of the appellant's complicity in under-valuation of the goods imported.*
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> *7.2. From the extract of the order reproduced above, it can be seen that the charge of under-valuation against the main importer Shri Ranaji Ganguly, Proprietor of M/s D.D. Impex has not sustained. Thus, we find that the allegation of facilitating the under-valuation by the consignment agent, i.e., the appellant herein also does not sustain. In view of this, we hold that the penalties imposed on the appellant under Sections 112(a) and 114AA of the Customs Act, 1962, are not sustainable and hence we set aside the same."*

13. As the proceedings presently before us arise essentially from the very same investigation and the very same set of facts and evidences which had already fallen for consideration before this Tribunal in the aforesaid proceedings, we are of the view that the ratio laid down in the above cases is squarely applicable to the facts of the present case. In the absence of any evidence to the contrary being adduced by the Revenue warranting a different

conclusion, we do not find any reason to deviate from the view already taken by this Tribunal in the aforesaid cases.

14. Accordingly, having regard to the observations hereinabove and following the ratio of the decisions cited supra, we hold that the allegation of undervaluation against the present appellant cannot be legally sustained. Consequently, the rejection of the declared assessable value and the consequent redetermination thereof, demand of differential Customs duty of Rs.20,68,060/-, along with applicable interest, cannot be sustained and the same are accordingly set aside. The consequential order of confiscation of the imported goods and the redemption fine imposed thereon, also stand set aside. Accordingly, no penalty is imposable on the appellant.

15. In the result, the impugned orders qua the appellant before us stand set aside.

16. The appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd