CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH, COURT NO. 2

Customs Appeal No. 1825 of 2012

(Arising out of Order-in-Appeal No. 74-76/2012 dated 29.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

Shri Ashok Kharey, CEO,
M/s. Maxx Access Ltd.,
Flat No. 918, Block – 2,
Manasarovara Heights,
Stage – II, Hasamatpet,
Secunderabad. ....**Appellant(s)**

VERSUS

The Commissioner of Customs
C.R. Building,
Queens Road,
Bangalore. ....**Respondent(s)**

WITH

Customs Appeal No. 1826 of 2012

(Arising out of Order-in-Appeal No. 74-76/2012 dated 29.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

Shri Chetan Kharey, Director,
M/s. Maxx Access Ltd.,
Flat No. 918, Block – 2,
Manasarovara Heights,
Stage – II, Hasamatpet,
Secunderabad. ....**Appellant(s)**

VERSUS

The Commissioner of Customs
C.R. Building,
Queens Road,
Bangalore. ....**Respondent(s)**

AND

Customs Appeal No. 1827 of 2012

(Arising out of Order-in-Appeal No. 74-76/2012 dated 29.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

Smt. Seema Kharey, Director,
M/s. Maxx Access Ltd.,
Flat No. 918, Block – 2,
Manasarovara Heights,
Stage – II, Hasamatpet,
Secunderabad. ....**Appellant(s)**

VERSUS

The Commissioner of Customs
C.R. Building,
Queens Road,
Bangalore. ....**Respondent(s)**

APPEARANCE:
Mr. B. Venugopal, Advocate for the Appellant.
Mr. Maneesh Akhoury, Asst. Commr. (AR) for the Respondent.

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

Final Order Nos. 20788-20790 /2025

DATE OF HEARING: 11.03.2025
DATE OF DECISION: 02.06. 2025

Per: P.A. Augustian

In the present appeals, the Appellants are challenging the penalty imposed on them under Section 112(a) of the Customs Act, 1962. Appellant are the Chief Executive officer/Director of M/s Max Access Ltd having registered office at Hongkong and having its business activities in Republic of China. Adjudication authority as per the impugned order, imposed penalty on appellant. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals). However Commissioner (Appeals) directed the Appellant to pre-deposit Rs.2,50,000/- each under Section 129E of the Customs Act, 1962 and after complying with above said direction, Commissioner (Appeals) rejected the appeal filed by the Appellants. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the Ld Counsel for the Appellants submits that the Appellants are engaged in the business of facilitating/assisting the buyer customers who visiting China for identifying suitable furniture, furnishing article etc., and negotiating on their behalf with Chinese manufacturer and dealers. Alleging undervaluation while importing goods, proceedings were initiated against M/s. Vinayaka Hotel, Hubli and on completion of the investigation, show cause notice were issued. Since the Appellants are settled abroad, no show cause notice was served and could not file

reply to show cause notice. Further there is no intimation received regarding personal hearing and exparte order was issued without hearing the Appellants. Ld Counsel for the Appellants further submits that as per the law laid down by the Apex Court in the matter of **M/s National Thermal Power Corporation Ltd Vs. CIT (1998 (99) E.L.T 200 (SC),** appellant can raise the legal grounds at the appeal stage itself on question of law. The Ld Counsel further submits that there is no evidence either positive or corroborative against the Appellant. Entire proceedings were initiated against the Appellant only based on the statement recorded from the Partner and Accountant of M/s Vinayaka Hotels, importer and the statement were retracted vide their letter dated 16.07.2009.

3. Ld Counsel further submits that the statement which is relied upon by the Adjudication authority in the impugned order are the statements recorded from the Appellants on their short visit to India in relation to another import in January, 2008 and February, 2008 and not connected with the statement or import made by M/s Vinayaka Hotels. Ld Counsel further submits that exporter in the instant case, M/s Max Access Ltd, Hongkong/China, were not even issued with show cause notice in the instant case. Instead of that, show cause notice issued to Appellant who are the CEO or Director of the Company. Once the allegation is that the exporter Company had colluded with the importer of the goods resulting in undervaluation, the Principal offender to be arrayed as an accused in terms of "person" in Section 112 of the Act in context of the instant case would be the exporter company alone and therefore cannot be extended to the officers in charge of the Management of the export company in absence of any explicit provision thereto.

4. Ld Counsel further submits that as per Section 1(2) of the Customs Act, 1962 prevailing at the relevant period, territorial jurisdiction under Customs Act was extended all over India which includes territorial water of India as per Section 2(27) of the Act. Thus any offence of contravention under Customs Act within the jurisdiction of India including territorial water of India alone will be attracted the provisions of said Act against any person in India. It is only after

amendment of Section 1(2) of the Customs Act, 1962 vide Finance Act, 2018, the territorial jurisdiction of the Customs Act was made applicable to the offence of contravention thereunder committed outside India by any person with effect from 29.03.2018. The Ld Counsel relied the following decisions:-

(i) British India Steam Navigation Co. Ltd., Vs. Shanmughavilas Cashwe Indus 1990 (48) E.L.T (S.C.) [13.03.1990]

(ii) C.K. Kunhammed Vs. Collector of Central Excise & Customs – 1992 (62) E.L.T 146 (Tribunal)

(iii) Guru Electronics Singapore Pte Ltd., Vs. Commissioner of Customs, Bangalore – 2009 (240) E.L.T 56 (Tri. – Bang.)

(iv) Shafeek P.K. Vs. Commissioner of Customs, Cochin – 2015 (325) ELT 199 (Tri. – Bang.)

(v) M/s. Seville Products Limited Vs. CC, New Delhi – 2021 (3) TMI 775 CESTAT – New Delhi – I.

(vi) M/s. Seville Products Limited Vs. CC, New Delhi – 2021 (378) ELT 291 (Tri. – Chan)

5. The Ld AR reiterated the finding in the impugned order and submits that the Adjudication Authority has considered the evidence relied against the appellant and only after considering the statements recorded during investigation, held that appellants had willfully committed the fraud by deliberately suppressing the value of the imported goods with an intention to evade Customs Duty. Thus, the Adjudication Authority rightly imposed penalty on appellants.

6. Heard both sides and perused the records. As per the documents available on record, the Appellant were named in the show cause notice and proceedings were culminated into the impugned order where Adjudication authority imposed penalty. As per the impugned order, it is evident that based on the intelligence report, proceedings were initiated by conducting search in the premises of M/s. Vinayaka Hotel on 08.07.2009. However as per the impugned order, statement recorded from Sri. Pavan Kumar Hemkha on 19.01.2008, statement recorded from Sri. Ketan Kharey, Director of M/s Max Access Ltd., on 19.01.2008 and the statement recorded on 06.06.2008 from Seema Kharey were

considered by the Adjudication authority as admissible evidence to impose penalty against the Appellant herein. Further we find strong force in the submission made by Ld Counsel that the provision of Customs Act was not available for the act of omission of a person beyond the Indian territory and only after extending the territorial jurisdiction with effect from 29.03.2018, the Customs Act empowered Respondent to proceed against offences beyond the jurisdiction of the India territory. The issue was considered by Hon'ble Supreme Court in the matter of M/s. British India Steam Navigation Co. Ltd., (supra) and held that:-

> *"18. The question of jurisdiction in this case ought not to be determined by the High Court on the basis of the provisions of S. 28 of the Indian Contract Act in the absence of a specific provision making it applicable to transactions in international trade. The effective operation of statutes of a country in relation to foreigners and foreign property, Including ships, is subject to limitations. In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to that effect is shown. A statute extends to all persons within the country if that intention is shown. The Indian Parliament therefore has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus a foreign ship on the high seas, or her foreign owners or their agents in a foreign country, are not deprived of rights by our statutory enactment expressed in general terms unless it provides that the foreign ship entering an Indian port or territorial waters and thus coming within the territorial jurisdiction is to be covered.*
>
> *If the Parliament legislates in terms which extend to foreign ships or foreigners beyond the territorial limits of us jurisdiction, the Indian court is of course bound to give effect to such enactment. However, no such provision has been referred to in the impugned judgments. Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction".*

7. Further this Tribunal in the matter of **M/s. Guru Electronics Singapore Pvt. Ltd., (supra)** held that the proceedings against the

Company which is incorporated abroad cannot be sustained in view of the lack of jurisdiction.

8. Considering the above provision of law and in the absence of any admissible evidence, the penalties imposed on the Appellants are unsustainable. Accordingly, appeals are allowed with consequential relief if any in accordance with law.

(Order pronounced in Open Court on 02.06.2025)

(C J MATHEW) **Member (Technical)**	**(P.A. AUGUSTIAN)** **Member (Judicial)**