CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51130 of 2025

[Arising out of Order-in-Original No. CC(A)CUS/D-II/Prev/517-520/2024-25 dated 30.01.2025 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Om Logistics Ltd. **...Appellant**
130, Ring Road, Transport Center,
Near Punjabi Bagh Flyover,
New Delhi - 110035

VERSUS

Commissioner of Customs Preventive-New Delhi **...Respondent**
New Customs House, Near IGI Airpot,
New Delhi - 110037

WITH

Customs Appeal No. 51489 of 2025

[Arising out of Order-in-Original No. CC(A)CUS/D-II/Prev/517-520/2024-25 dated 30.01.2025 passed by the Commissioner of Customs (Appeals), New Delhi]

Shri Umed Singh **...Appellant**
130, Ring Road, Transport Center,
Near Punjabi Bagh Flyover,
New Delhi - 110035

VERSUS

Commissioner of Customs Preventive-New Delhi **...Respondent**
New Customs House, Near IGI Airpot,
New Delhi - 110037

APPEARANCE:

Shri Ashutosh Shukla, Shri Subhash Sharma and Shri Vinay Kumar, Advocates for the Appellant
Shri Anuj Kumar Neeraj, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 20.02.2026
DATE OF DECISION: **17.04.2026**

FINAL ORDER No. 50745-50746/2026

DR. RACHNA GUPTA

Present order disposes of two appeals arising out the same Order-in-Appeal bearing No. 517-520/2024-25 dated 30.01.2025. The facts which culminated into the impugned order are as follows:

1.1 The officers of the customs Preventive, New Delhi got an intelligence about substantial quantity of foreign origin cigarettes to have been booked for delivery under the guise of 'garments' through M/s. Om Logistics Limited (the appellant in Appeal No. 51130/2025)) vide three LR No. 22007661, 22042441 both dated 28.10.2020 and LR No. 22042348 dated 29.10.2020. On being enquired about consignment bearing no. LR 22007661, Shri Manoj Kumar Mourya, for the appellant, informed that the consignment was shortly to arrive and informed the officers about the person namely Shri Prince who had arrived to take the delivery of the said consignment with the details of the vehicle and the details of the consignment. The said vehicle/three wheeler was followed by customs preventive officers along with two panchas. The consignment from the three wheeler got unloaded at the premises bearing no. 239, Kucha Sanjogi Ram, Naya Bans, Delhi – 110006. There were 5 locked rooms in the said premises. The customs officer called the local police on the spot. The person namely Shri Lavish s/o Shri Sunil Kumar/elder brother of Shri Pince (who was escorting the delivery of the said consignment in the three wheeler) claimed the ownership of the goods inside the said consignment. One another person namely Shri Sunil Kumar s/o Shri Harbans Lal claimed himself, the proprietor of M/s. Prince International. He also accepted the ownership of the goods and acknowledged that the goods are foreign origin cigarettes which got transported through M/s. Om Logistics Ltd. Vide Panchnama dated 30/31.10.2020, 1,37,000 cigarettes were recovered from the green coloured gunny bags, in the said consignment, the delivery whereof was taken by Shri Prince from M/s. Om Logistics Ltd.

1.2 During the further investigation, five locked rooms of the premises were also searched. Some boxes of foreign origin cigarettes were found in 2 of those rooms which were claimed by the tenant thereof namely Shri Bharat Bhushan Batra. None of cigarette packages were found having any pictorial warnings nor the MRP was affixed on the said packages which is the clear violation of Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014. Customs duty was also not paid on those cigarettes. Hence, the same were seized in terms of Section 110 of the Customs Act, 1962.

1.3 Huge quantity of cigarettes of foreign origin were also found pursuant to search authorization dated 04.11.2020 in the premises of M/s. Sohan Lal and Sons with similar violations as observed above. Search was also conducted at the house of Shri Sunil Kumar, Proprietor of M/s. Prince International, resulting into recovery of 1180 sticks of foreign origin cigarettes. All the recovered cigarettes were got seized under Section 110 of the Customs Act, 1962. Another search was conducted in the premises of M/s. Balaji Garments, East Delhi but nothing incriminating was found. However, Panchnama dated 06.11.2020 was shown to Shri Amit Mishra, Proprietor of M/s. Balaji Garments about the recovery of foreign origin cigarettes in the consignment no. 802201006735 which was also transported through M/s. Om Logistics Ltd, he denied ordering those goods.

1.4 Meanwhile the officers came to know that the good covered by LR No. 22042441 dated 28.10.2020 and by LR No. 22042348 dated 29.10.2020 were cleared by M/s. Om Logistics Ltd. from their godowns located in Uttar Pradesh (at Delhi Border). The appellant M/s. Om Logistics Ltd. and their employees were enquired as to why the two consignments were released to Shri Sunil Kumar, Proprietor of M/s. Prince International despite that the customs preventive officers had already informed vide e-mail dated 03.11.2020 at 12.40 p.m. for both the said consignments to be tracked and intimated to customs preventive officers on arrival at concern godowns. Statements of all concern were recorded. From the seizure of cigarettes of foreign origin transported by M/s. Om Logistics Ltd. bearing consignment no. LR22007661, department formed an opinion that M/s. Om Logistics were well aware and were having knowledge that the goods under remaining 2 consignments were illegally imported cigarettes of foreign origin and were also liable for confiscation.

1.5 Accordingly, a Show Cause Notice bearing No. 19/2021-22 dated 22.04.2021 was served upon M/s. Om Logistics Ltd and Shri Umed Singh s/o Shri Tika Ram, the Operation Manager of M/s. Om Logistics Ltd. proposing imposition of penalty upon them under Section 112 (b)(1) of the Customs Act, 1962. The notice was also served upon the co-noticees, Shri Sunil Kumar, M/s. Sohan Lal and Sons and Shri Bharat Bhushan Batra invoking Section 123 of Customs Act, 1962 and proposing confiscation of seized foreign origin cigarettes under Section 112 (b)(1) of the Customs Act,

1962. The said proposal was confirmed vide Order-in-Original No. 502/2021-22 dated 29.03.2022. Appeal against the said order has been rejected vide the impugned Order-in-Appeal. Being aggrieved, the appellants are before this Tribunal.

2. I have heard Shri Ashutosh Shukla, Shri Shubham Sharm and Shri Vinay Kumar, Advocates for the appellant and Shri Anuj Kumar Neeraj, Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that appellant is one of the leading IBA approved multi level logistics solutions provider with a network throughout the country with almost 800 branch offices cum godowns. The company has a standard operating procedure for keeping watch on the movement of the consignment. For the purpose to put any consignment on hold or to stop the delivery of any consignment the computer system puts an alert only at the place of final delivery. In other cases intimation via telephone is usually given. However, the consignment can be delivered by any other branch office/godowns against duly discharged consignees copy and on payments of applicable rate.

3.1 It is submitted that three consignments were picked on 'said to content basis' by the appellant company for transportation from Ghaziabad to Delhi by declaring the goods as 'Garments' along with the supporting tax invoice raised to M/s. Balaji Garments.

3.2 It is submitted that the appellant had no knowledge nor any occasion to now that the consignment was mis-declared, appellant being courier. The appellant had rather cooperated the officers, as is recorded in the impugned show cause notice itself, with respect the one of the 3 consignments i.e. the one bearing No. 22007661, the delivery whereof was taken by a person named Shri Prince. The recovery of foreign cigarettes from the said consignment as well as from another consignment vide Panchnama dated 30/31.10.2020 and 06.11.2020 respectively were possible because of due cooperation of the appellant with the customs officers. The two consignments were never got recovered and nor seized. Hence it is mere presumption on part of the department that those two consignments were also containing foreign cigarettes. No evidence is produced by the department in support of said presumption. From any stretch of imagination, appellant cannt have any knowledge about contents of the parcel booked with the appellants for being transported from one place to another in the country.

3.3 Learned counsel further submitted that for imposition of penalty under Section 112(b)(1) of the Customs Act, 1962 mens rea is the foremost element but there is no evidence on record to prove the said mens rea with any of the appellants. The statement of employees of the appellant is wrongly held as proof for establishment of the said mens rea. The customs officer had intimated Shri Umed Singh about remaining two parcels to be put on hold and he has categorically admitted for receiving the said intimation. Shri Umed Singh had conveyed the said intimation to the delivery office as per the alert/intimation/e-mail. The only failure of not intimating the said e-mail to all the branches has wrongly been held as an intentional act on part of the appellant for facilitating the improper/illegal importation. The communication by Shri Umed Singh only to the delivery branch is absolutely as per the Standard Operation Procedure of the appellant's company. The employees have simply denied receiving any information of putting the impugned consignments on hold. The delivery of such a consignment from the delivery office in Uttar Pradesh is wrongly alleged to be an offence on part of the appellant. Learned counsel has relied upon the following decision to plead that the penalty under Section 112(b)(1) of the Customs Act, 1962 can be imposed only on the person who had knowledge about the goods that those are liable to be confiscated:

(i) Commissioner of Customs (Import) Vs. M/s. Trinetra Impex Pvt. Ltd., CUSAA 195/2019, CM APPL. 30592/2019 dated 11.10.2019, Delhi High Court.

(ii) Akbar Badrudin Jiwani Vs. Collector of Customs, Bombay reported 1990 AIR 1579 (SC)

(iii) Hughes Communication India Ltd. Vs. Commissioner of Customs (Import & General), CUSAA 107/2018 dated 24.01.2024

(iv) Shri Dilipgiri PremgiriGoswami Vs. Principal Commissioner of Customs, Ahmedabad in Customs Appeal No. 10669 of 2024 dated 22.11.2024, CESTAT Ahmedabad.

With these submissions, the order under challenge is prayed to be set aside and both the appeals are prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has submitted that the appellant's arguments about no concrete evidence on record is legally untenable. There is sufficient substantial evidence to prove the mala fide intent of the appellant while transporting the goods of improper importation (foreign origin cigarettes). It is submitted that all the three consignments booked for transportation with the appellants, were booked by the same consigner i.e. M/s. Vandana Store for being

delivered to the same consignee i.e. M/s. Prince International wrongly declaring those goods as 'Garments'. One of such consignment on examination was found to contain 1,37,000 sticks of smuggled foreign origin cigarettes. This itself is sufficient to conclude that the remaining two transported consignments under identical circumstances also contained the same contraband. Otherwise also, the unability to physically examine the goods was direct result of appellant's failure of complying with the department's intimation/alert vide e-mail dated 03.11.2020 for putting on hold the remaining two consignments. It becomes clear that the appellant had full knowledge of other consignments also have the same contraband.

4.1 Learned Departmental Representative further mentioned that Customs (Preventive) letter e-mail dated 03.11.2020 specifically labeled three of the consignments as sensitive in nature which need to be put on hold and the Customs Preventive need to be informed prior delivery. Non-communication of the said information of all concerned is a definite act of facilitating the removal of the goods which were otherwise liable for confiscation. Hence, there is no infirmity when the penalty under Section 112(b) has been imposed upon the appellants. While relying upon the decision in the case of **Pine Chemical Suppliers Vs. Collector of Customs (Bombay) reported as AIR 1993 SC 1185,** learned Departmental Representative has prayed for both the appeal to be dismissed.

5. Having heard both the parties, perusing the entire records and the case law cited by both the parties, it is observed and held as follows:

5.1 The Commissioner (Appeals) vide impugned order has confirmed the imposition of penalty of Section 112(b) upon M/s. Om Logistics Ltd. in Appeal No. C/51130/2025 on the basis that since one of the three consignments bearing LR No. 22007661 dated 28.10.2020 issued by M/s. Vandana Store was found to have contained foreign origin cigarettes instead of declared goods i.e. 'Garments', it was assumed by the adjudicating authority that the remaining two consignments also might have contained the foreign origin cigarettes. It has been mentioned in the impugned order that the exact number of goods of both the consignments could not be figured out as the goods were cleared by M/s. Om Logistics despite the instructions issued by the department vide e-mail dated 03.11.2020. The similar penalty has been imposed upon Shri Umed Singh, the appellant in Appeal No. C/51489/2025, the Operational Manager of M/s. Om Logistics Ltd. on the ground that he admitted receiving the said mail from Customs (Preventive) department and was supposed to alert all the branch offices but he choose to not to do so, resulting into the delivery of both the objected consignments from the branch offices of M/s. Om Logistics Ltd. located at Uttar Pradesh border.

5.2 To adjudicate the correctness of these findings, foremost Section 112(b) of the Customs Act is perused. The Section reads as follows:

> *Section 112 Penaly of improper importation of goods etc.*
>
> *(a) *****
>
> *(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-*

The bare perusal makes it clear that the penalty is imposable on any person dealing with the goods which he knows or has reasons to believe that the goods are liable for confiscation. Thus, the sole criteria of invoking Section 112(b) is the presence of mens rea/intent with the alleged person to know that the goods with which he dealt in any manner were such as were liable for confiscation.

5.3 To adjudicate further, I observe following to be the admitted facts:

(i) The goods were transported by the appellant company for transportation from Guwahati to Dehi i.e. within the territory of India vide three consignments bearing LR No. 22007661, 22042441 both dated 28.10.2020 and LR No. 22042348 dated 29.10.2020

(ii) One of the consignment bearing LR No. 22007661 dated 28.10.2020 was searched and seized at Gali Kucha Sanjogi Ram, Naya Bans, Delhi i.e. from the premises in possession of Shri Bharat Bhushan Batra, Proprietor of M/s. Kalu Ram Ganga Ram.

(iii) Remaining two consignments could not be recovered by the department as those got cleared from the another branch of the appellant at Uttar Pradesh border.

(iv) Remaining recoveries of foreign origin cigarettes were effected from two other premises i.e. Shop No. 233, Near Gali Kucha Sanjogi Ram, Naya Bans, Delhi belonging to M/s. Sohan Lal and Sons and residential premises of Shri Sunil Kumar, Proprietor of M/s. Prince International, at G-49-SF, Pushkar Enclave, Block-G-, Paschim Vihar, Delhi; these premises have no connection with the appellants.

(v) At the time the consignments were booked, the goods were declared as 'Garments'.

(vi) Shri Umed Singh, the another appellant, admittedly received the e-mail dated 03.11.2020 from the customs (Preventive) department about the aforesaid remaining two consignments to be sensitive in nature, hence to be informed to the Customs (Preventive) on arrival.

(vii) Appellant M/s. Om logistics Ltd. duly cooperated while intercepting the consignment of LR No. 22007661 and the another consignment bearing No. 802201006735 seized on 06.11.2020.

(viii) Shri Umed Singh conveyed the intimation to delivery branch at transport center, Punjabi Bagh, New Delhi which as per the LR, was the destination of the said consignment.

(ix) Both the other consignments (LR No. 22042441 dated 28.10.2020 and 22042348 dated 29.10.2020) got delivered from the godowns at Delhi-UP Border and Dadri Hub to the persons who had come for taking delivery by producing duly stamped consignment note/LR/Bill in accordance with Standard Operating Procedure of the company.

5.4 The above observed admitted facts are highly insufficient to reflect any mens rea on part of the either of the appellants. The appellants being purely a logistic company had just to a receive a sealed parcel for it to be transported at a required destination. Nothing requires them to examine the said consignment. They booked the consignment based upon the invoice which was for the 'Garments'. There was no reason for them to believe that the booked consignment were wrongly declared as 'Garments'. The delivery was otherwise within the country. Thus, there was no reason to suspect any illegal transfer/smuggling.

5.5 Prior receiving the e-mail on 03.11.2020 at the appellant's head office, the appellant had already facilitated the customs preventive officers on 31.10.2020 for intercepting one of the three impugned consignments. The intimation was given vide e-mail dated 03.11.2020 at 14:48 PM. The appellant continued cooperating the officers by getting intercepted another consignment of foreign origin cigarettes on 06.11.2020 i.e. even after receiving the aforesaid intimation. This conduct of appellant also falsifies allegation that appellant knew about the consignments to contain foreign origin improperly imported cigarettes and that the consignment was wrongly declared to have 'Garments'.

5.6 The remaining two impugned consignments though were specifically intimated to be sensitive vide e-mail of 03.11.2020 but it is apparent on record that both those consignments got cleared the very next day for forenoon/afternoon (04.11.2020) that too from the branch office of the company at Delhi-UP borders and Dadri Hub. Proximity of time in delivery and receipt of e-mail is again the circumstance to falsify the allegations. Moreso for the reason that e-mail has no clear warnings to pass on the message to all branches of M/s. Om Logistics. The recipient of the e-mail including Shri Umed Singh had no reason to assume that goods shall be asked for delivery at Uttar Pradesh border branch. The consignments were otherwise meant to be delivered at main branch in Punjabi Bagh, Delhi and this branch had the intimation about the alert. Also delivery from any other branch was permissible under Standard Operating Procedure. There is no dispute about the fact that some other branch can be a delivery branch depending upon where the person want to take the delivery after producing the duly consignment note. Hence it is held that the delay in intimation from the customs preventive, the approximate of date and time to the date and time of the intimation e-mail and the standard operation procedure of the company to allow delivery from any other delivery branch of the company are sufficient to falsify the element of mens rea with the appellants i.e. knowledge that the goods in the consignments to be transported by them are such which are liable for confiscation.

5.7 Further, I observe that the sine qua non for penalty of Section 112(b) or any person is that either the person has acquired possession of the goods with the knowledge or belief that the said goods are liable to confiscation under Customs Act/Rules or that such person, in any way, is concern in transporting, removing, depositing, keeping, concealing, selling or purchasing or dealing with those goods in any other manner with such knowledge or plea. The acquisition of possession of goods is, undisputably a physical act i.e. act which could not have been pssible without handling or movement of excisable goods as mentioned in the rule. The mere fact that physical possession of goods is mandate for doing the activity of transportation, is highly insufficient to allege such person of knowledge and belief about the goods in the parcel, to be transported, such goods as are liable for confiscation.

5.8 To notify the penalty in question, the person much have dealt with the goods with the knowledge that they are liable for confiscation. In absence thereof penalty is not sustainable as it was held in the case of **Jayantilal Thakkar and Company reported as 2006 (195) ELT 9 (Bom.).** This Tribunal in the case of **D. Ankneedu Chowdhry Vs. Commissioner of Customs reported as 2004 (178) ELT 578** has held as follows:

> *"in any other manner dealing with used in Section 112(b) of the Customs Act has to be read ejusem generis with the preceding expression in the clause viz. carrying, removal or depositing etc. It is held that accordingly to the above doctrine, meaning of expression "in any other manner of dealing with" should be understood in sense similar or comparable to how preceding words vis. Carrying, removing, depositing etc. are understood. In other words, "in any other manner dealing with" of the goods is also to some physical manner of dealing with the goods. In absence of the finding in the impugned order that the assessee has dealt with the goods physically or any allegation to this effect raised in the proceeding, penalty under Section 112(b) cannot be imposed."*

Hon'ble Supreme Court in the case of **Akbar Badrudin Jiwani** (supra) has held that the penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation. It should not be imposed in the cases where there is a technical or venial breach of the provisions of the act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. In the present case, the only basis of imposing penalty on both the appellants is that they failed to intimate the respective branch about intimation received from customs (preventive) for putting remaining both the impugned consignments on hold. Shri Umed

Singh, the Operational manager/one of the appellant has stated it to be a bona fide mistake that too for the reason that the delivery place as per the LR was Punjabi Bagh which is why the intimation was sent to the said branch and not to all the 800 branches. This is not the admission relevant for invoking penalty but the acknowledgment about a procedural lapse. The delivery from other branch (Delhi-UP Border and Dadri Hub) is also not malicious, as admittedly the same is in accordance of the Standard Operating Procedure of M/s. Om Logistics Ltd.

6. With these observations, it is held that there is no evidence provided alleged knowledge with the appellants for the consignment received by them to be containing the confiscable goods. Since mens rea is the sin qua non for the imposition of penalty in question and there is no proof of any mens rea on part of the appellant, it is held that penalty upon both the appellants has wrongly been imposed. With these observations, the order under challenge is hereby set aside. Consequent thereto, both the appeals stands allowed.

[Order pronounced in the open Court on **17.04.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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