

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75355 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/962/2023 dated 20.12.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Abhijit Ray Burman

1780, Rajdanga Main Road,
Block ED, Plot 116,
Kolkata – 700 078

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

AND

Customs Appeal No. 75654 of 2024

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/01/2024 dated 13.02.2024 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Abhijit Ray Burman

1780, Rajdanga Main Road,
Block ED, Plot 116,
Kolkata – 700 078

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri Rathindra Nath Banerjee, Advocate, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NOs. 77884-77885 / 2025

DATE OF HEARING: 26.11.2025

DATE OF DECISION: 09.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75355 of 2024 has been filed by Shri Abhijit Ray Burman (hereinafter referred to as the "appellant") against the Order-in-Appeal No. KOL/CUS/PORT/KS/962/2023 dated 20.12.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001 wherein the Id. lower appellate authority has upheld the penalties of Rs.2,00,000/- (Rupees Two Lakh only) under Section 112(a) of the Customs Act, 1962 and Rs.2,00,000/- (Rupees Two Lakh only) under Section 114AA of the Customs Act, 1962 imposed on the appellant herein by way of Order-in-Original No. Kol/Cus/JC/Port/Gr.V/11/2023 dated 31.01.2023.

1.1. Customs Appeal No. 75654 of 2024 has been filed by the appellant against the Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/01/2024 dated 13.02.2024 wherein penalties of Rs.25,00,000/- (Rupees Twenty Five Lakh only) under Section 112(a) of the Customs Act, 1962 and Rs.50,00,000/- (Rupees Fifty Lakh only) under Section 114AA of the Customs Act, 1962 have been imposed on him.

1.2. Aggrieved by the imposition of penalties as above, the appellant has filed the present appeals.

2. Both these appeals are having a common issue and therefore, they are taken up together for issuance of a common order.

3. The issue involved in these appeals is under-valuation of spares of Heavy Earth Moving Machinery imported by Indian importers from M/s E.B.McSun Pte Ltd., Singapore. The importing firm in the present

case is one M/s D.D. Impex, Kolkata, a proprietary concern of one Shri Ranaji Ganguly. During the period December, 2005 to September, 2006, spares of Heavy Earth Moving Equipment were imported by the aforesaid M/s. D.D. Impex allegedly at under-valued price from M/s. E.B. McSun Pte Ltd., Singapore. The said consignments were cleared following usual process of law, duty assessed and inspected at the time of import.

3.1 Subsequently, after about four years, the DRI Officers intercepted the Managing Director, Mr. Lim Eng Bee of M/s. E.B. McSun Pte Ltd., Singapore, at Bangalore on 27.11.2009 on the grounds of causing and facilitating under-valued import in collusion with the buyers in India. As emanates from the records in his testimony before DRI Officers, Mr. Lim Eng Bee admitted to have under-valued the goods exported to India from Singapore in collusion with the Indian importers. Certain documents were retrieved from the Laptop of Mr. Lim Eng Bee, which were sent for forensic examination as well. It is in this process that the name of the appellant surfaces on record. The allegation against the appellant is that he has facilitated the under-valuation of the impugned goods as a consignment agent. The penalties as mentioned in the paragraphs 1 and 1.1 of this Order were imposed and upheld against the appellant for his role in the alleged offence.

4. The appellant's submission is that he only acted as a consignment agent in the imports made by M/s. D.D. Impex. It has been pointed out by the appellant that the appeal filed by Shri Ranaji Ganguly, Proprietor of M/s. D.D. Impex, against the same allegation of under-valuation has already been

decided by this Tribunal vide *Final Order No. 75319 of 2025 dated 05.02.2025 in Customs Appeal No. 78278 of 2018 [CESTAT, Kolkata]*, wherein it has been categorically held that the allegation of under-valuation has not sustained and accordingly, the appeal filed by Shri Ranaji Ganguly, Proprietor of M/s. D.D. Impex, has been allowed. As the charge of undervaluation against the main importer Shri Ranaji Ganguly, Proprietor of M/s. D.D. Impex has not sustained, the appellant pleads that the allegation of facilitating such under-valuation by the consignment agent, i.e., the appellant herein, is also not sustainable. Accordingly, he contends that the penalties imposed on him in the present proceedings are not sustainable.

4.1. The appellant has further submitted that on the same set of facts, the penalty imposed on the appellant herein has been set aside by this Tribunal vide *Final Order No. 76227 of 2025 dated 07.05.2025 in respect of in Customs Appeal No.78635 of 2018*.

4.2. In view of the above submissions, the appellant prays for setting aside the penalties imposed on him and accordingly, allowing the appeals filed by him.

5. The Ld. Authorized Representative of the Revenue appearing before us reiterated the findings in the impugned order. He justified the imposition of penalties on the appellant herein and accordingly, prayed for rejection of the instant appeal.

6. Heard both sides and perused the appeal records as well as the submissions made by both the sides.

7. We observe that the appellant has filed these appeals against the imposition of penalties on him. It is the case of the Revenue that during the impugned period, the firm M/s. D.D. Impex has imported spares of Heavy Earth Moving Equipment at under-valued prices from M/s. E.B. McSun Pte Ltd., Singapore. The allegation against the present appellant is that he has facilitated the under-valuation of the goods as a 'consignment agent'. In this connection, we observe that the appeal filed by the importer, namely, Shri Ranaji Ganguly, Proprietor of M/s. D.D. Impex, has already been decided by this Tribunal vide *Final Order No. 75319 of 2025 dated 05.02.2025 in Customs Appeal No. 78278 of 2018 [CESTAT, Kolkata]*, wherein it has been categorically held that the allegation of undervaluation has not sustained and accordingly, the appeal filed by Shri Ranaji Ganguly, Proprietor of M/s D.D. Impex, has been allowed. The observations made by this Bench, while allowing the appeal filed by the importer, M/s. D.D. Impex, are reproduced below for ready reference: -

"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.

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 Mc Sun 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 65B 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 incurable 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."

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.

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.

8. In the result, we set aside the penalties imposed on the appellant under Sections 112(a) and 114AA of the Customs Act, 1962 of the Customs Act, 1962, and allow the appeals, with consequential relief, if any, as per law.

(Order pronounced in the open court on **09.12.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd