CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86482 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

M/s. Sohel F. Kazani **... Appellant**
Partner of Assar Lines,
T-2, 6th floor Sunbeam Chambers,
7, Vithaldas Tackersey Marg,
New Marine Lines, Mumbai 400 020.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86483 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

M/s. Assar Lines **... Appellant**
T-2, 6th floor Sunbeam Chambers,
7, Vithaldas Tackersey Marg,
New Marine Lines, Mumbai 400 020.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 86484 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

M/s. Interport Impex Pvt. Ltd. **... Appellant**
T-2, 6th floor Sunbeam Chambers,
7, Vithaldas Tackersey Marg,
New Marine Lines, Mumbai 400 020.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 87091 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

M/s. Marine Solutions **... Appellant**
L-102, Dara Enclave, Sector-9,
Nerul, Navi Mumbai 400 706.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 87092 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

Shri Gautama Dutta **... Appellant**
Director of Marine Solutions,
L-102, Dara Enclave, Sector-9,
Nerul, Navi Mumbai 400 706.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

WITH

Customs Appeal No. 87971 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

M/s. M/s. Link Shipping & Management System Pvt. Ltd. **... Appellant**
406, BNG House, 197/199, D.N. Road,
Fort, Mumbai 400 001.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

AND

Customs Appeal No. 87972 of 2013

(Arising out of Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai)

Shri Kiran Kamat **... Appellant**
406, BNG House, 197/199, D.N. Road,
Fort, Mumbai 400 001.

Vs

Commissioner of Customs (I), Mumbai **... Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

Appearance:

Shri Anil Balani, Advocate, with Shri Uttam, Shri Saurabh, Chartered Accountant, for the Appellants
Shri Ramesh Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: 28.02.2022
Date of Decision: 28.02.2022

FINAL ORDER NO. A/85264-85270/2022

PER: SANJIV SRIVASTAVA

These appeals are directed against Order-in-Original No. 20/2013/CAC/CC(I)/AB/VB dated 19.02.2013 passed by the Commissioner of Customs (Import), Mumbai. By the impugned order, the Commissioner has held as follows:

(a) I impose a penalty of 5,00,000/- (Rupees Five Lakhs Only) on Shri Sudhir More, of M/s Reliance Transport and Travels Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

(b) I impose a penalty of 25,00,000/- (Rupees Twenty Five Lakhs Only) on M/s Reliance ADAG under Section 112(a) of the Customs Act, 1962.

(c) I impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on M/s Marine Solutions under Section 112(a) and of 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

(d) | impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on Shri Gautama Dutta, Director, *M/*s Marine Solutions, under Section 112(a) and of Rs 5,00,000/- (Rupees Five Lakh Only)under Section 114AA of the Customs Act, 1962.

(e) I impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on M/s Assar Lines under Section 112(a) and of Rs 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

(f) I impose a penalty of 5,00,000/- (Rupees Five Lakhs Only) on Shri Sohel Kazani, Partner, M/s Assar Lines and Director, M/s Interport Impex Pvt Ltd. under Section 112(a) and of 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

(g) I impose a penalty of 5,00,000/- (Rupees Five Lakhs Only) on M/s Interport Impex Pvt Ltd. CHA No. 1*1/*589 under Section 112(a) and of 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

(h) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on M*/s.* Link Shipping & Management Systems Pvt. Ltd under Section 112(a) of the Customs Act, 1962.

(i) I impose a penalty of Rs 1,00,000/- (Rupees One Lakh Only) on Shri Kiran Kamat, Managing Director, M/s. Link Shipping & Management Systems Pvt. Ltd under Sections 112(a) of the Customs Act, 1962

2.1 Reliance ADAG had purchased a brand new "Yacht TIAN" in the name of M/s. Ammolite Holdings Ltd. (AHL in short) from the manufacturer M/s. Ferreti SPA, in August 2008, which was registered at Jersey British Registry in September 2008. Money for purchase of the said yacht was transferred from Reliance Capital Ltd. and Worldtel Holding Ltd. to Ammolite Holdings Ltd., in addition to the payment as well by M/s. Gateway Net Trading Pvt. Ltd., Singapore.

2.2 The said yacht was dispatched to India vide bill of lading no.2 dated 30.09.2008 and shipped on board MV Antaradus (MVA for short) by declaring the said as "one used Motor Yacht CFN 142/18 named TIAN JERSEY Flag, official no. 741256.

2.3 The manifest of vessel MVA was filed by M/s. Link Shipping, Mumbai by declaring as a "Transhipment Cargo" by also declaring the final destination as Mumbai. Consignor and consignee were mentioned as AHL and notified party was shown as M/s. Assar Lines (agent of AHL), of which Shri Sohel Kazani is the partner and is also the director of CHA namely Interport Impex.

2.4 M/s. Assar Lines, canvassing the yacht to be a foreign flag independent yacht, filed Transit Permit Form, showing the same as "Used motor Yacht" based on which, the TP was granted on 04.11.2008 for onward movement to Colombo. No objection certificate dated 26.12.2008 was also obtained from immigration officer for the yacht to sail to Colombo but no port clearance was obtained from the customs.

2.5 The yacht then sailed on 27.12.2008 for Colombo but it was brought back and fresh IGM was filed on 27.12.2008 and an Arrival Report was submitted on 29.12.2008.

2.6 Acting on intelligence developed on the basis of news paper report Investigation was conducted by the customs suspecting foul play basically since the yacht was brought into India without paying any customs duty;

2.7 As the yacht was declared as TP Cargo and simultaneously filing another IGM for the same yacht being filed raised the suspicion of foul play resulting in the evasion of customs duty, 2.8 Yacht was detained vide Detention Memo dated 12.02.2009. A panchnama was also drawn which revealed that the said yacht was in fact a brand-new yacht and not a used one, as declared in the IGM. Subsequently it was seized vide Seizure Memo dated 26.02.2009 under the reasonable belief that the same was liable for confiscation under the provisions of the Customs Act, 1962.

2.9 The matter was agitated before the Hon'ble Bombay High Court for release of the yacht in question but, however, the writ petition was withdrawn and upon execution of an undertaking and an additional payment of ₹3 crores towards duty, the yacht was ordered to be released provisionally.

2.10 Investigations were further undertaken and the statements of the concerned persons were recorded.

2.11 A show cause notice dated 24.03.2011 was issued to the all concerned with the import of yacht, discussing the role of each, proposing confiscation of yacht, demanding the duty evaded and for imposition of penalties on the concerned, for the violations committed.

2.12 However, the main person involved namely the Reliance Group i.e. (i) M/s.Reliance Transport & Travels Pvt. Ltd., Mumbai (ii) Shri Tushar Motiwala, Director, M/s.Reliance Transport & Travels Pvt. Ltd. (iii) Shri V.R. Mohan, Director of AHL (iv) Shri Hari Nair, Sr. Vice President, Reliance ADAG, (v) Shri Anil Dhirubhai Ambani, Chairman, Reliance ADAG (vi) Mrs. Tina Anil Ambani, (vii) M/s. AHL, Mumbai, approached the settlement commission. Settlement Commission vide its order dated 21.02.2011 settled the matter as stated below:

*"**Customs Duty:** Customs duty in this case is settled at 26,49,31, 101/-.*

Interest: *The applicant shall calculate his interest liability by taking the date of filing of B/E as 30.10.2008 and deposit the same with a period of 30 days from the date of receipt of this order. The Jurisdictional Commissioner, however, is at liberty to verify the amount of interest and in case there is any further amount to be paid by the applicant, to inform the same to the applicant, for payment by the applicant within the next 15 days under intimation to the Commissioner Respondent.*

Fine: *The Bench imposes a fine of rupees four crores on the pleasure yacht "TIAN" in terms of the bond. The amount should be paid by the applicant within a period of one month from the date of receipt of this order failing which the same shall be appropriated from the Bank Guarantee submitted by the applicant to the Jurisdictional Commissioner for the purpose of provisional release of the pleasure yacht "TIAN".*

Penalty: *Considering that Shri V.R. Mohan and Shri Hari Nair and Shri Tushar Motiwala, Co-applicants are individuals and do not gain personally from the evasion of duty by the main applicant and taking into account the roles played by them, as mentioned in the Show Cause Notice and enumerated in this order, the Bench imposes the following amount as penalty under the provision invoked in the SCN on the each one of them which should be paid within 30 days from the date of receipt of this order.*

1	*M/s. Reliance Transport & Travels Pvt. Ltd. (Applicant)*	*Rs 25,00,000/-*
2	*Shri Tushar Motiwala (Co-applicant)*	*Rs 1,00,000/-*
3	*Shri V.R. Mohan (Co-applicant)*	*Rs 25,000/-*
4	*Shri Hari Nair (Co-applicant)*	*Rs. 2,00,000/-*
5	*M/s. Ammolite Holdings Ltd.*	*Rs. 25,00.000/-*

The Bench grants immunity from payment of penalty to the applicant as well as the co-applicants in excess of the aforesaid amounts.

The Bench grants immunity to Shri Anil Dhirubhai Ambani (Co-applicant) and Mrs. Tina Anil Ambani from penalty as there is no evidence on record to show their complicit in the evasion of customs duty in this case.

The applicant had already paid an amount of 28 crores. The settled amount of the additional Customs duty liability as well as interest shall be appropriated from the said amount and from the Bank Guarantee (if required) and the balance amount, if any, shall be refunded to the applicant

Prosecution: *Subject to the payment of the aforementioned amounts within the stipulated period, the Bench grants immunity from prosecution to the applicant as well as the co applicants under the Customs Act, 1962 in so far as this case is concerned.*

19. The above immunities are granted under sub-section (1) of Section 127 H of the Act. Attention of the applicant is also invited to the provisions of sub section (2) and (3) of Section 127 H ibid.

20. This order of settlement shall be void in terms of sub-section (9) of Section 127C of the Act, if the Settlement Commission subsequently finds that it has been obtained by fraud or misrepresentation of facts.

21. This order settles the case of the applicant as well as the co-applicants herein. It does not apply to the other co-noticees namely, (1) Shri Sudhir More, (2)M/s. Reliance ADAG,(3) M/s. Marine solutions, (4) Shri Gautama Dutta, (5) M/s. Assar Lines, (6) M/s. Import Impex Put Ltd., (7) Shri Sohel Kazani; (8) M/s. Link Shipping & Management Systems Pvt Ltd. and (9) Shri Kiran Kamat who have not filed any application for settlement of their *cases. The Jurisdictional Commissioner is at liberty to take action against them in accordance with the Show Cause Notice."*

2.13 Proceedings were taken up the Commissioner against the other co-noticees who did not approach the settlement commission as per the impugned order. On the basis of the findings recorded by the Commissioner in the impugned orders penalties have been imposed as indicated in para 1, on the appellants.

2.14 Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Anil Balani, Advocate, Shri Uttam and Shri Saurabh, C.A. for the appellants and Shri Ramesh Kumar, Assistant Commissioner, Authorised Representative, for the Revenue.

4.1 We have considered the rival contentions and we have gone through the documents as well as various decisions relied upon during the course of arguments.

4.2 The final order of Settlement Commission leads us to an irrefutable conclusion that there was indeed an attempt to improperly import certain goods (Yacht here) which ultimately was confiscated within the meaning of Customs Act. It is a single transaction and all the notices are a part of the same transaction, may be of different sides of the same coin. In its order, the Settlement Commission had also imposed fine as well as penalty on the applicants/co-applicants before it, which have been paid by them. Hence, clearly, the improper importation stands established, we only have to look into the magnitude of active/passive contribution by each of the appellants before us, in assisting the main culprit in the activity of improper importation.

4.3 Section 112 prescribes penalty for improper importation of goods etc. and its applicability is not restricted to importer alone. For the sake of convenience Section 112(a) and 114AA are reproduced:-

"SECTION 112. Penalty for improper importation of goods, etc. *—*

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or"

"SECTION [114AA. Penalty for use of false and incorrect material. *- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]"*

4.4 Ld. Counsel for the appellants urged various grounds and also took common stand that in the light of the settlement by the Settlement Commission, the allegations made against the appellants would not survive and in this regard, they relied on the following judgements:

- Modest Shipping (Agency) Pvt. Ltd. v. Chief Commissioner of Customs, Bombay [2004 (167) ELT 25 (Bom)
- S.K. Colombowala vs. CC (Import), Mumbai [2007 (220) ELT 492 (Tri-Mumbai)]

4.5 We find from the final order of the Settlement Commission which has been accepted even by the department, that the scope of the final order supra is restricted to Applicants/co-applicants before the said Commission, which has also been spelt in very clear terms by the Settlement Commission. They have also been ordered to pay fine and penalty. Had it been a case where their liability insofar as penalty was concerned was set aside, then the above contentions of the appellants before us could have mattered. In view of this subtle facts, the decisions relied upon, with due respects, are not applicable to the facts of these cases on hand.

Analysis of the role of appellants:

4.6 It has been brought on record that Shri Gautama Dutta was instrument in instructing the other appellants Shri Sohel Kazani of M/s. Assar Lines and M/s. Interport Impex Pvt. Ltd. based on which an email was sent by Shri Sohel Kazani to Link Shipping & Management System. Shri Kiran Kamat, MD of Link Shipping & Management System has also admitted that they had acted as agents of the vessel MVA during its call at the port of Mumbai and carried out all acts and things for discharge of cargo (i.e. Yacht Tian) at Bombay Port, which action was based on the instructions of their principal. Shri Kiran Kamat, MD has also specifically admitted that it was based on the request of M/s. Assar Lines that the cargo in question was declared as transhipment cargo.

4.7 Shri Gautama Dutta has also specifically implicated that the entire mechanism of the purported transportation of the yacht was done as per the direction of Sohel. Thus we see that the appellants have specifically admitted their respective role, in the importation of the yacht in question.

4.8 The above makes the chain complete, resulting with the confiscation of the goods in question namely Yacht TIAN. The initial burden to prove proper importation, under Section 123 ibid. was on the notices, some of whom have accepted the liability and thereby resulting in the non-discharge of the burden. The natural consequence which flows from the above is that the burden cast on the notices remained un-discharged and hence, they have to suffer consequence, namely the penalties in this case. This is because, they have all been identified to be part of different sides but of the same transaction.

4.9 In view of the above, we are of the clear opinion that revenue has made out a case for the levy of penalty on the appellants.

4.10 However in our view revenue has not given any reason determining the quantum of penalty imposed on each of the appellant. In the cases settled by the settlement commission has clearly in cases where they didn't found the co-applicants not benefitting from their acts of omission and commission gaining anything personally has imposed penalties ranging from Rs 25,000/- to Rs 2,00,000/-

4.11 The appellants before us admittedly are "any other persons" like the agent CHA, shipping line etc., who, admittedly do not get any benefit in terms of either duty exemption or whatever. We are therefore of the view that the penalty imposed on these appellants are very high.

4.12 Consequently, we modify the impugned order to the limited extent by sustaining penalty to the extent of 15% of penalty imposed on them by the adjudicating authority.

4.13 The appeals are thus partially allowed as stated in para 4.12, above.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(P. Dinesha)
Member (Judicial)

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