

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 87663 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1971 to 1973/2021-22 dated 28.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone III)

Bombino Express Pvt. Ltd.

.....Appellant

Corporate Center, B Wing
Ground floor, Marol Pipeline
Andheri Kurla Rd., Mumbai

VERSUS

**Commissioner of Customs, Air Special
Cargo, Mumbai**

.....Respondent

6th Floor, Awas Corporate Point,
Makwana Lane, Andheri Kurla Road
Andheri East, Air Cargo Complex, Sahar
Mumbai

with

Customs Appeal No. 87664 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1971 to 1973/2021-22 dated 28.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone III)

Mohamed Yasin Latiwala

.....Appellant

Corporate Center, B Wing
Ground floor, Marol Pipeline
Andheri Kurla Rd., Mumbai

VERSUS

**Commissioner of Customs, Air Special
Cargo, Mumbai**

.....Respondent

6th Floor, Awas Corporate Point,
Makwana Lane, Andheri Kurla Road
Andheri East, Air Cargo Complex, Sahar
Mumbai

APPEARANCE:

Shri Yash Prakash, Advocate for the appellant
Shri Ram Kumar, DC(AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86405-86406/2025

DATE OF HEARING : 10.06.2025

DATE OF DECISION : 07.10.2025

Per: AJAY SHARMA

These appeals have been filed assailing the impugned Order-in-Appeal dated 28.3.2022 whereby the Commissioner of Customs (Appeals), Mumbai-Zone III rejected the appeals filed by the appellants herein while upholding the Adjudicating Order passed by the Addl. Commissioner of Customs, Mumbai imposing penalty of Rs.1,50,000/- on M/s. Bombino Express Pvt. Ltd. u/Ss. 112(a) & 112(b) of Customs Act, 1962 and penalties of Rs.1,50,000/- u/s. 112 ibid and Rs.3,00,000/- u/s. 114AA ibid respectively on Mr.Mohd. Yasin Latiwala.

2. The brief facts, shorn of unnecessary details, are that the appellants i.e. *M/s. Bombino Express Pvt. Ltd.* is a courier company and *Mohd. Yasin Latiwala* is one of its four Directors. The said Mohd. Yasin Latiwala is also a Director of *Bombino Worldwide Inc. USA*. The appellants are clearing import/export courier consignments on behalf of its customers.

3. Acting on intelligence that *M/s.Smashing Traders Pvt. Ltd.* are indulging in mis-declaration and undervaluation of their

imports through courier mode, their live import consignments covered under Courier Bill of Entry dated 13.9.2014 containing 22 Air Way Bills(AWB) were detained by the Courier Cell of Customs for detailed examination. The said Bill of Entry was filed by the appellant herein i.e. M/s. Bombino Express Pvt. Ltd. The invoices therein were issued by *M/s. NY Magnum Distributor Inc*, New York, USA to *M/s. Smashing Traders Pvt. Ltd.* The goods/consignments under those 22 AWBs were examined and it was discovered that the actual goods inside these packages were different from what was declared in AWBs and some packages also contained invoices showing actual value of the goods establishing that the goods were undervalued. The actual value of the goods were assessed at Rs.11.07 lakhs as against the declared value of Rs.1.07 lakh.

4. Detailed search and comprehensive investigation about past imports revealed that between March, 2014 to September, 2014 goods worth USD 1,09,86,610 under 413 AWBs were imported and cleared in the name of M/s. Smashing Traders Pvt. Ltd. through the appellant courier company i.e. M/s. Bombino Express Pvt. Ltd., total assessable value of which was determined at Rs.83,13,015/- with duty liability of Rs.21,93,892/- for past clearances whereas the importer-M/s. Smashing Traders had declared the total assessable value of Rs.22,53,823/- and discharged customs duty of Rs.6,49,101/-.

5. During investigation the department also came to know about one Mr. Kuo Leong, who was the mastermind behind an e-

commerce portal to which the goods were destined. Statements of persons connected with M/s. Smashing Traders Pvt. Ltd. were recorded u/s. 108 of the Customs Act, 1962 including that of Mr. Kuo Leong. It emerged that M/s. Smashing Traders Pvt. Ltd. was a dummy company created by the Kuo Leong, using the name and identity of one Shri Shyam Prasad Mishra and his wife Ms. Rita Mishra who had no actual connection with the company's activities. As per department it was the intention of Kuo Leong to use the name and Importer Exporter Code (IEC) of the said company in order to smuggle various consumer goods into India.

6. As per department scrutiny of documents, during the search, revealed Appellant Mohd. Yasin Latiwala's involvement in the procurement and dispatch of goods in the name of M/s. Smashing Traders. In an e-mail dated 02.07.2014 addressed to the employees, he advised '*please try save maximum duty and most efficient and economy service for end delivery*' while sending details of consolidation of shipments. The department alleged that after import, Kuo Leong took those shipments to his warehouse for sorting, after which the end delivery would be handled by M/s. Bombino Express only. Another fact, as per department, noticed during investigation was that in the USA these goods were purchased by the exporter- NY Magnum Distributors, USA using the credit card of Mohd. Yasin Latiwala. According to department, it was Latiwala's directions to consolidate the cargo and after importation, the goods were

separated & repacked by M/s. Bombino Express Pvt. Ltd. before being delivered by them to the buyers at the address given in the actual invoices. Therefore, Mohd. Yasin Latiwala and his courier company were aware of the actual description and value of the goods which they allegedly mis-declared to the customs authorities during clearance.

7. After investigation, a show cause notice dated 3.5.2016 was issued to M/s. Smashing Traders Pvt.Ltd. and Mr.Kuo Leong, proposing rejecting the assessable value of the goods imported vide courier bill of entry dated 13.9.2014 as well the past 413 AWBs, proposing demand of differential customs duty of Rs.21,93,892/- from M/s. Smashing Traders and Kuo Leong alongwith interest and penalty under various provisions of Customs Act, 1962. And proposing penalties on M/s. Bombino Express Pvt. Ltd. u/Ss. 112(a), 112(b) and 158(2)(ii) of Customs Act, 1962, u/s. 112(a) & 114AA ibid on Mr.Mohd. Yasin Latiwala, Mr.Mohtashim Bookwala and NY Magnum Distributors Inc. USA respectively and u/s. 114AA ibid on Mr. Naresh Dhondiyal and Mr. Uday Hate respectively.

8. During the pendency of adjudication proceedings, M/s. Smashing Traders Pvt. Ltd., Mr. Kuo Leong i.e. the importers, Mr. Naresh Dhondiyal and Mr. Uday Hate approached the Settlement Commission. The Settlement Commission vide Order dated 5.4.2016 in the matters of M/s. Smashing Traders Pvt. Ltd & Mr. Kuo Leong settled the duty liability at *Rs.25,05,925/-* [*Rs.3,12,033/-* + *Rs.21,93,892/-*] alongwith redemption fine and

penalty which were duly paid by them. The Settlement Commission in its subsequent order dated 15.7.2017 did not impose any penalty on Mr. Uday Hate, while through order dated 30.5.2017 the Settlement Commission imposed penalty on Mr.Naresh Dhoundiyal and granted immunity from payment of penalty in excess of the said amount.

9. Accordingly, the adjudicating authority proceeded to adjudicate against the appellants herein alongwith, NY Magnum Distributors Inc. USA and Mr.Mohtashim Bookwala, culminating in Order-in-Original dated 26.3.2021 imposing penalty of Rs.1,50,000/- on M/s. Bombino Express Pvt. Ltd. u/Ss. 112(a) & 112(b) of Customs Act, 1962; penalties of Rs.1,50,000/- u/s.112 ibid and Rs.3,00,000/- u/s. 114AA ibid respectively were imposed on Mr.Mohd. Yasin Latiwala and penalties of Rs.1,50,000/- u/s. 112 (a) ibid and Rs.3,00,000/- u/s. 114AA ibid on Mohatshim Bookwala and penalty of Rs.1,50,000/- on M/s. NY Magnum Distributors, USA u/s. 112(a) ibid.

10. Appeals preferred by Appellants and one Mohatshim Bookwala were rejected by learned Commissioner (Appeals) vide impugned order dated 28.3.2022, upholding the Adjudication Order passed by the Addl. Commissioner of Customs, Mumbai.

11. Learned counsel for the appellants contended that the appellants, as a courier agent, had complied with the prescribed procedures, including verification of importer's credentials through physical verification of the office premises and the

documents i.e. PAN cards, IEC etc. The IEC certificate was issued by the DGFT only after verifying the importer's registered address. Learned Counsel emphasised that Mr. Kuo Leong in his statements u/s. 108, Customs Act has admitted committing mis-declaration and under-valuation and exonerates the appellants completely of any involvement. He also submits that declaration by appellant in the Bill of Entry is entirely based on the documents furnished by the importer Kuo Leong and they had no reason to believe the declaration as false or manipulated. Regarding the email relied upon by the department, learned Counsel submits that he merely advised efficiency and economy without any direction or suggestion to commit any illegality. On the allegation of using the credit card of Mr. Latiwala by NY Magnum, USA to purchase the goods, learned counsel clarified that it was a purely commercial arrangement for which Mr. Latiwala was getting interest @2.5%, entirely unrelated to import declarations. Regarding the receipt of Rs.35 lakhs from the importer during the month of August, 2024, learned counsel explained that Rs.22 lakhs were received as reimbursement of expenses due from the importer while the balance Rs.13 lakhs were towards advance payment. In support of his submission learned counsel placed on record a copy of ledger account showing break up of Rs.22 lakhs. So far as the allegation regarding invoices found inside the cartons are concerned, it is the contention of learned counsel that those were not within appellant's knowledge, as the invoices were directly sent by the exporter/supplier to Kuo Leong of M/s. Smashing Traders-

importer, who then provided it to the appellants for filing the courier Bills of Entry.

12. After giving the entire background, learned counsel submits that no case has been made out by revenue to impose penalties against the appellants either u/s. 112 (a) or (b) or 114AA ibid and prayed for setting aside the impugned order to allow the appeals. Additionally, it was asserted that penalty u/s 114AA ibid can be imposed only in case of export of goods and since no export was involved, the imposition of penalty under Section 114AA of the Customs Act, 1962 was unwarranted and without jurisdiction.

13. Per contra learned Authorised Representative appearing for Revenue reiterated the findings recorded in the orders of authorities below and sought dismissal of the appeals. He submits that the Appellants were aware of under-valuation and availability of actual invoices inside the packages, yet they facilitated those consignments without informing the customs authorities and therefore the penalty has rightly been imposed on them. Regarding penalty on Mr. Yasin Latiwala, learned Authorised Representative submits that he was in conspiracy with the importers in undervaluation of the goods and his e-mail establishes the intention to evade duty, thus justifying the penalty on him.

14. I have carefully considered the rival submissions and perused the case records including the written submissions and

case laws placed on record. In order to appreciate the issue involved herein, examination of relevant provisions i.e. Sections 112 and 114AA of Customs Act, 1962, is essential, which are extracted hereunder:-

"Penalty for improper importation of goods, etc.

112. 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*
- (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,—

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:*

Provided *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;*

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;*
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

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114AA. Penalty for use of false and incorrect material

If a person knowingly or intentionally makes, signs 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 purpose of this Act, shall be liable to a penalty not exceeding five times the value of goods."

15. The learned Commissioner has arrived at the conclusion regarding the appellants' partnership in the smuggling, apart from cargo consolidation etc., mainly due to;(i) charging commission @ 2.5% on the credit card transactions, (ii) e-mail by Mr.Latiwala to his employees and (iii) actual invoices found inside the packets. Based on these it has been concluded by both the authorities below that the appellants were part of the smuggling racket operated by Kuo Leong/M/s. Smashing Traders Pvt. Ltd.

16. Cargo consolidation by M/s. Bombino Express Worldwide USA itself is not illegal and no evidence is there to establish that the appellants removed or concealed actual invoices. Had they been part of smuggling activity they would not have left original invoices inside the packages. Charging of 2.5% over and above the actual payment by Mr. Latiwala from NY Magnum, USA on credit card transactions alone does not establish abatement in absence of any primary or secondary evidence. It appears to be merely a commercial transaction without any evidence of abetment.

17. The impugned order failed to consider Kuo Leong's statements u/s. 108 ibid which, in my view, are very relevant to decide the issue herein. Kuo Leong in his statement u/s. 108 ibid admitted under-invoicing and replying a question he specifically stated that *the invoices are prepared by NY Magnum and given to M/s. Bombino USA, who thereafter checks the consignment for any prohibited items and packs it into convenient cartoons and then send it to their counterpart M/s. Bombino Express in India who then files the Form V with the couriers and after customs formalities send the goods to the consignees in India.* When questioned about invoices source for Bombino Express, Kuo Leong replied that he provided the invoices after downloading from Amazon India until July and thereafter w.e.f. August onwards the entire operation was transferred to a different entity namely Rabale office. Significantly in his statements u/s.108, Kuo Leong never mentioned appellant's involvement in under-invoicing, instead he completely exonerated the appellants, which is very relevant for deciding these appeals.

18. Penalty u/s. 112 ibid can be imposed only when evidence available on record indicate that the appellants did or omitted to do an act rendering the goods liable for confiscation or abetted such act or knowingly dealt with such goods. Merely filing courier bills of entry based on importer's documents cannot constitute abatement by itself. Penalty u/s. 112 (a) ibid, as the act itself stipulates, cannot be imposed if the parties establish that the

contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention. Section 114AA *ibid* provides for imposition of penalty on a person who knowingly or intentionally make, sign, uses or causes to be made any declaration, statement or documents, which is false or incorrect in any material particular in the transaction of any business under the Act. Evidently, if any person knowingly made or used any false material in any document, this provision would attract. This provision aims to deter the use of false or incorrect information related to customs transactions, ensuring compliance with the Act and preventing revenue evasion. It presumes the existence of a culpable mental state including intention, motive, knowledge or belief, unless prove otherwise.

19. From Kuo Leong's statement u/s. 108 *ibid* it has been established that the manipulation in the documents was done either by him or the importer-M/s. Smashing Traders or at the most by NY Magnum USA at the behest of importer. There is no evidence to link the appellants with such manipulation. Kuo Leong never mentioned the involvement of the appellants herein in any of the under-valuations or mis-declaration. The Hon'ble Supreme Court in the matter of *Naresh J. Sukhawani v. Union of India; 1996 (83) E.L.T. 258 (S.C.)* has laid down that the statement made before the Customs officials u/s.108 is a material piece of evidence collected by Customs officials which cannot be discarded. Therefore the statements of Kuo Leong are

very relevant for the purpose of determining appellant's penalty liability. Knowledge and intentions are *sine qua non* for attracting the penal provisions. Penalty cannot be levied without establishing that violations were within appellant's knowledge. Operating from same premises or common address is not sufficient to establish adverse conclusion unless coupled with some cogent evidence to that effect. It is cardinal principle of law that every person is presumed to be innocent unless proven guilty.

20. The courier shipping bill had been filed on the basis of documents furnished by the importers who have already settled the matter before the Settlement Commission. The appellant M/s. Bombino Express is a courier company. The USA courier company M/s.Bombino Worldwide, USA of which also Mr. Latiwala is a Director, accepts packages not only from NY Magnum of USA but from various customers. It has been held by this Tribunal in appellant's own case i.e. *Bombino Express Pvt. Ltd. vs. Commr. Of Customs Airport, Mumbai; 2017 (358) ELT 890 (Tri.-Mumbai)* that there is no requirement for the courier companies to examine cargo or items shipped through them and it's a normal practice for such entities to rely upon the documents furnished by the booking customers. Appellants are under statutory obligation to check for prohibited items inside the packets, which they discharged. It is not the case of the department that any prohibited item had been sent or cleared in the packets under consideration. Significantly, if the appellants

were complicit in smuggling, they would not have left original invoices inside the consignments, which were later recovered by the customs department. No evidence has been produced for establishing under-valuation by the appellants. Revenue has failed to produce sufficient evidence establishing that M/s. Bombino Express-appellant was aware about the mis-declaration or undervaluation by the importers and hence the ingredients for the imposition of any penalty on M/s. Bombino Express does not stand scrutiny.

21. So far as the penalties imposed on Appellant Yasin Latiwala u/Ss.112 & 114AA are concerned, the evidence available on record does not indicate that the appellant had abated or had prior knowledge about the undervaluation or mis-declaration in any way. The e-mail sent by Latiwala to his employees, relied upon by authorities below, merely suggested:

"Please try save maximum duty and most efficient and economy service for end delivery."

It nowhere suggested mis-declaration or undervaluation. It merely reflects a desire for cost efficiency. There is no statement or any evidence to demonstrate that in compliance with the aforesaid e-mail, any employee committed undervaluation or mis-declaration. The allegation about the billing address of Yasin Latiwala on the documents received from M/s. Amazon was due to his credit card being used for making the payments, for which no adverse inference can be drawn. The department has failed to establish knowledge, intention or abetment by the appellants.

The appellants had knowledge or reason to believe that the goods are liable for confiscation u/s.111 ibid had also not been established by the department. The knowledge of a wrongful act of omission or commission, rendering the goods liable for confiscation u/s. 111 ibid is a necessary element for establishing the offence of abetment. Therefore neither the ingredients of section 112 or 114AA ibid are satisfied.

22. Both authorities appear to have arrived at the conclusion of imposing penalties, based on presumptions without any cogent evidence to that effect. The burden lies on the department to prove knowledge and involvement, which it has failed to discharge.

23. In view of the discussions made hereinabove, the penalties imposed on both the appellants are not sustainable. Hence the impugned order is set aside by allowing these appeals with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 07.10.2025)

(Ajay Sharma)
Member (Judicial)

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