Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10704 of 2024- DB

(Arising out of OIO No. KND-CUSTM-000-COM-13-2024-25 dated 08.11.2024 passed by Commissioner of Customs - Kandla)

Cuthbert Oceans LLP ....**Appellant**
Unit No. 111, ACY Aggarwal City Square
Plot No. 10, District Centre Mangalam Place
Sector 3, Rohini, New Delhi-110085

VERSUS

C.C. – Kandla ......**Respondent**
Custom House,Near Balaji Temple,
Kandla, Gujarat

WITH

Customs Appeal No. 10705 of 2024- DB

(Arising out of OIO No. KND-CUSTM-000-COM-13-2024-25 dated 08.11.2024 passed by Commissioner of Customs - Kandla)

Cuthbert Winner LLP ....**Appellant**
IInd, 44, Regal Building, Outer Circle,
Connaught Place, New Delhi-110001

VERSUS

C.C. – Kandla ......**Respondent**
Custom House,Near Balaji Temple,
Kandla, Gujarat

AND

Customs Appeal No. 10706 of 2024- DB

(Arising out of OIO No. KND-CUSTM-000-COM-13-2024-25 dated 08.11.2024 passed by Commissioner of Customs - Kandla)

Aditya Exports ....**Appellant**
Shed No. 85-88, Sector-I, Kandla,
Special Economic Zone, Gandhidham

VERSUS

C.C. – Kandla ......**Respondent**
Custom House,Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Manish Pushkarna with Shri Tarun Chawla and Shri Jitin Singhal, Advocates for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.___12898-12900 /2024

DATE OF HEARING: 22.11.2024
DATE OF DECISION: 29.11.2024

RAMESH NAIR

The present appeals are filed by M/s. Cuthbert Oceans LLP , M/s. Cuthbert Winner LLP and M/s. Aditya Exports against Order-in-Original No. KND-CUSTM-000-COM-13-2024-25 dated 08.11.2024 passed by Commissioner of Customs - Kandla

1.1 The details of impugned demands and imposition of redemption fines and penalties are tabulated below:

Sl No	Name of Firm	Duty confirmed u/s 28(4) of the Customs Act,1962	Penalty imposed u/s 114A of the Customs Act,1962	Redemption Fine u/s 125 of the Customs Act, 1962
1	Cuthbert Oceans LLP (Appeal No C/10704/24)	Rs 3,41,28,164	Rs 3,41,28,164/-	Rs 44,25,488
2	Cuthbert Winner LLP (Appeal No C/10705/24)	Rs 6,05,61,971	Rs 6,05,61,971	Rs 65,68,537/

1.2 The appellants namely M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP had imported Black Pepper and Inshell Walnuts [the subject goods] from Afghanistan and USA.The subject goods were un-loaded and cleared at Port of Discharge, Mundra, thereafter, trans-shipped to Kandla SEZ, Gandhidham–at the premises of M/s Aditya Exports and M/s Zest Marine, both being the Warehouse Owners.

1.3 The case of the department is that, the appellants had imported Black PepperbelowCIFvalueofRs.500/-per Kg in violation of LoA Condition as well as Country of Origin shown in the documents submitted during the importwere notgenuine inasmuch as the ships/vessels on which the goods had shown to be transported from Afghanistan to Bandar Abbas, Iran, to Jebel Ali, Dubai, were never docked/ visited Bandar Abbas Port during the transit period shown on the documents. The imported goods were examined and verified by the proper officer land, thereafter, being satisfied with the genuineness and correctness of the description, quantity, value and compliance of the provisions of the Act, had ordered release of the goods for home consumption on payment of appropriate customs duty. The appellants had paid the appropriate customs duty. Thereafter, the goods were trans-shipped to be warehoused in different Cold Storages in the State of Haryana. That, the FTA Cell of International Customs Division got verified the Country-of-Origin certificates from Afghanistan Embassy in India through Ministry of External Affairs (MEA) as correct and genuine. That, even after the verification had been made by the Specialized

Agency, it has been alleged that the consignments which actually arrived in India had sailed from Dubai and never from Afghanistan and that these certainly cannot be equated or identified with the consignments which might or might not have been checked by Nangarhar Chamber of Commerce in Afghanistan. The subject goods were, thus, seized under Section 110 of the Customs Act, 1962 vide Seizure Memos dated 24.04.2023 and 04.05.2023 on a reasonable belief that they were liable for confiscation under Section 111(d), 111(m) and 111(o) read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016.

1.4 The appellants had filed Civil Writ Petition No. 11758 of 2023 in the Hon'ble Punjab and Haryana High Court seeking release of the part seized goods on which the Hon'ble High Court by its order dated 12.10.2023 had ordered the release of the seized goods on furnishing PD Bond/ Surety.

1.5 Based upon the investigation, the Show Cause Notice dated 23.04.2024 was issued alleging that the appellant had undervalued the seized goods and on the basis of allegedly forged Country-of-Origin Certificate, declaring the subject to be of Afghanistan and USA Origin, wrongly claiming benefit under SAFTA. Thereby, resulting in short payment of duty actually, duty at the rate of 77% for Black Pepper should have been paid. Thereafter, a Corrigendum dated 09.09.2024 whereby with reference to the seizure of the goods under the provisions of the Act, it was sought to be inserted read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016; and, a new paragraph was inserted proposing penalty on M/s Aditya Exports under section 112 of the Act. That, the learned Adjudicating Authority has issued Notices for Personal Hearing to the petitioners and same tabulated below:

Sl No	Hearing Date	Reply from the appellant
1	24.09.2024	The appellant had already sent a letter dated20.09.2024requestingtimetofile reply and to engaged a Counsel to defend
2	15.10.2024	The appellant vide e-mail dated 15.10.24 informed the Adjudicating Authority about filing of Writ Petition in the Hon'ble Punjab and Haryana High Court against the subject show cause notice dated 23.04.2024
3	04.11.2024	Appellant had once again informed about filing of writ petition against the show cause notice

		registered vide Diary No. APB20240003092C202400039 dated 15.10.2024,which could not be listed due to certain objections which could not be rectified since there were Deepawali Holidays and the Hon'ble Court did not function, as informed to the appellant by its Counsel vide e-mail dated 03.11.2024. The said writ petition was likely to be listed for hearing in the next week &**also requested for the certain documents** as mentioned in relation to verification of Country of Origin by FTA Cell.

Thereafter the impugned order was passed. Aggrieved by the said impugned order the appellants filed the present appeals.

2. Shri Manish Pushkarna, Learned Counsel along with Shri Tarun Chawla and Shri Jitin Singhal, Advocates appearing on behalf of the appellants submits that the impugned order has been passed in violation of principles of natural justice, without supplying the documents pertaining to the verification conducted by the FTA Cell and External Affairs Ministry, Government of India, which were vital documents having material bearing on the case and without granting effective opportunity to the appellants to file replies and defend themselves.The impugned order is liable to be quashed and set aside in view of the judgement of the Hon'ble Supreme Court rendered in the case of Kothari Filaments vs. Commissioner of Customs(Port), Kolkatta-[2008–TMI -31872 -SUPREME COURT.

2.1 He submits that the impugned order has been passed, whereby, while accepting the genuineness of the COO by the FTA Cell along with Ministry of External Affairs, Government of India, i.e., the COOs were issued by the Nangarhar Chamber of Commerce in Afghanistan, the learned Adjudicating Authority has incorrectly held that **"**subsequently no response was received from them in this regard. Further the noticees have not rebutted the claim of the department that the COO certificates were not fake.**".** While disbelieving the FTA Approval and without relying thereon, the learned Adjudicating Authority has erred in not disclosing as to when and who had sought for further response on subsequent occasion; even when the genuineness and correctness of the subject COOs have been verified as true and genuine. He further submits that The impugned order has been passed with pre-determined bias and prejudice against the appellants and in haste. Reference may be had to Section 28(9) of the Customs Act; which prescribes two time limits for determining the duty amount, viz., 06 months or 01 year, as the case may be. In the present case, 01 year was at the disposal of the learned Adjudicating Authority to complete the adjudication which would have expired on 22.04.2025 (show cause notice was issued on 23.04.2024) but the impugned order has been passed in haste on 08.11.2024 in violation of principles of natural justice. A Corrigendum has also been issued on 09.09.2024 in the present case inserting certain provisions and notifications and proposal to impose penalty on M/s Aditya Exports. Therefore, if the date of Corrigendum is considered as the baseline, then, the limitation of 01 year would expire on 08.09.2025.

2.2 The learned Adjudicating Authority has grossly erred in straight away relying upon the statements recorded under Section 108 of the Custom Act without following the mandate of Section 138B of the said Act which requires examination in chief to be conducted and thereafter placing the witness for cross examination and re-examination.

3. Shri Prashant Tripathi, Learned Superintendent (AR) appearing on behalf of the Respondent reiterates the finding of the impugned order. However, he expressed no objection if the matter is remanded for fresh consideration.

4. We have carefully considered the submission made by both sides and perused the records. We find that the way impugned orders have been passed in haste and in gross violation of principles of natural justice, it should have been avoided by the learned Adjudicating Authority being a quasi judicial authority as it amounts to generation of unnecessary repeated litigation which is prejudicial to both the parties. We find that the appellants vehemently argued that there is a gross violation of principles of natural justice in passing of adjudication order with pre determined bias and prejudice against the appellants in as much as documents as requested for by the appellants were not supplied to them. It was also submitted on behalf of the appellant that the adjudicating authority has ignored the vital facts that the genuineness of the certificate of country of origins has been verified by the FTA Cell, which had verified the Country of Origin certificate as genuine. We find force in the submission of the appellant in this regard that the documents related to verification of certificate of country of

origin and related documents needs to be supplied to the appellants and failing which the adjudicating authority has grossly violated the principles of natural justice.

4.1 We find that the charge of minimum import price below Rs. 500 is also relevant to the issue of country of origin, therefore, unless until issue of country of origin is established, the charge of minimum import price is also premature . We also observed that as per the Notification No. 21/2015-20 New Delhi dated 25.07.2018 issued by Government of India Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade, it prima facie appears that condition of minimum import price will not be applicable for imports by Units in SEZ, therefore, this notification also prima facie supports the case of the appellants that since admittedly the goods were meant for appellants' warehousing in SEZ, the condition of minimum import price will not be applicable. This vital aspect has not been examined by the adjudicating authority. It is also observed from the submission of the appellant that the statements recorded under Section 108 were straight away relied upon by the Adjudicating Authority without following the mandate of Section 138 B of the Customs Act, 1962. According to which it requires examination in chief to be conducted and thereafter placing the witness for cross-examination and re-examination. In this context, we refer to Section 138B which is reproduced below:-

> **Relevancy of statements under certain SECTION 138B. circumstances.** — (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -
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> (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
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> (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
>
> The provisions of sub-section (1) shall, so far as may be, (2) apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

4.2 From the above Section 138B , it is mandatory that the requirement of examination in chief and thereafter cross- examination and re-examination of the witnesses is required to be conducted to make the statements as admissible evidence. However, the learned commissioner has not complied with the provision of Section 138B which makes the impugned order unsustainable.

4.3 As regard the appeal of M/s. Aditya Exports, since the issue of confiscation is connected to the appeals of Cuthbert, the matter of Aditya Exports also needs to be re-considered.

4.4 As per our above observation , we find that there is a serious lapse on the part of the adjudicating authority in non – compliance of the principles of natural justice as discussed above. Therefore, the entire matter needs to be re-considered. Needless, to say that the appellant shall be supplied all the required documents and they shall be given sufficient opportunity of making their defence and appearance for the personal hearing and thereafter, the adjudicating authority shall pass the reasoned and speaking de- novo order.

5. Accordingly, we set aside the impugned order and allow the appeals by way of remand to the adjudicating authority.

(Order pronounced in the open court on 29.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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