CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21035 of 2019

(Arising out of Order-in-Original No. 4/2019-Commr dated 24/07/2019 passed by Commissioner of Customs, Mangalore)

Mukka Sea Food Industries Pvt Ltd
Trinity Complex, N G Road Attavar
MANGALORE - 575001
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Customs Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

AND

Customs Appeal No. 20251 of 2020

(Arising out of Order-in-Original No. 4/2019-Commr dated 24/07/2019 passed by Commissioner of Customs, Mangalore)

Riyaz Ahmed
Export Executive
M/s Mukka Sea Food Industries Pvt Ltd.
Trinity Complex N G Road Attavar
MANGALORE - 575001
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Customs Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

AND

Customs Appeal No. 20252 of 2020

(Arising out of Order-in-Original No. 4/2019-Commr dated 24/07/2019 passed by Commissioner of Customs, Mangalore)

K Mohammed Althaf
Director
M/s Mukka Sea Food Industries Pvt Ltd
Trinity Complex N G Road Attavar
MANGALORE - 575001
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Customs
Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

AND

Customs Appeal No. 20253 of 2020

(Arising out of Order-in-Original No. 4/2019-Commr dated 24/07/2019 passed by Commissioner of Customs, Mangalore)

K Mohammed Haris
Managing Director
M/s Mukka Sea Food Industries Pvt Ltd
Trinity Complex N G Road Attavar
MANGALORE - 575001
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Customs
Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

APPEARANCE:

Shri Anirudha R.J. Nayak, Advocate for the appellants.

Shri P. Gopakumar, Addl. Commissioner(AR) and Shri Rama Holla, Superintendent(AR) for the respondent.

CORAM:
HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order No. 20084-20087 / 2022

Date of Hearing: 03/03/2022
Date of Decision: 03/03/2022

Per : ASHOK JINDAL

The appellants are in appeal against the impugned order wherein demand has been confirmed on account of undervaluation and various penalties have been imposed on all the appellants.

2. Before start of the arguments, the learned counsel for the appellants fairly agreed that the appellants shall not take shelter of the decision of the Hon'ble Supreme Court in Civil Appeal No.1827/2018 in the case of Canon India Pvt. Ltd. Vs. Commissioner of Customs dt. 09/03/2021. Taking that statement on record, we proceed to entertain the appeals.

3. Learned counsel for the appellants further submitted that in this case, during the course of adjudication, the appellant sought cross examination of the persons whose statements have been relied upon to affirm the charge of undervaluation; but the same has been denied by the adjudicating authority; in that circumstance, in terms of Section 138(B) of the Customs Act, 1962, it is a violation of principles of natural justice; therefore the impugned order is to be set aside on this ground only. He also drew our attention to the show-cause notice as well as the adjudication order which are verbatim; therefore, there is no

application of mind while adjudication; in that circumstance also, the impugned order needs to be set aside.

4. On the other hand, the learned AR opposed the contention of the learned counsel and submits that the case is based on the evidences available on record supported by the statements; in that circumstances, cross examination is not required for adjudication of the case. He further submitted that the adjudicating authority after going through the show-cause notice and evidences available on record, gave its independent finding while adjudicating the matter.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both sides and examining the show-cause notice as well as the adjudication order, we find that the finding portion of the adjudication order is verbatim to the allegation made in the show-cause notice and there is no clearcut finding given by the adjudicating authority with regard to the defence taken by the appellant during the course of adjudication. Moreover, cross examination of the persons whose statements were relied upon by the adjudicating authority in adjudication order as well as while issuing the show-cause notice have not been granted. In that circumstance, we hold that there is violation of principles of natural justice and the impugned order needs to be set aside.

7. In view of the above, we set aside the impugned order and remand the matter back to the adjudicating authority for de-novo adjudication after granting cross-examination of the persons whose statements have been relied upon for issuance of the show-cause notice and to consider the reply or submissions made by the appellant during

the course of adjudication and give detailed finding on their defence and pass appropriate order in accordance with law.

8. In view of this, the appeals are allowed by way of remand by setting aside the impugned order.

(Pronounced in open court on **03/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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