Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench At Bangalore

REGIONAL BENCH COURT NO.1

Customs Appeal No. 20032 of 2020

(Arising out of OIO-BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.19 passed by Commissioner of Customs-Bangalore)

Jyothi C Jain **.....Appellant**
Properitor M/s Samaavesh No 168 Old No.
9 Arasoji Rao Building Near Minerva Circle R
V Road Vv Puram, Bengaluru- 560004
Karnataka

VERSUS

Commissioner of Customs, Bangalore **.......Respondent**
C.R. Building, Queens Road, P.B.No. 5400,
Bangalore -560001
Karnataka

WITH

i. **Customs Appeal No.20033 of 2020 (Samskruti Interiors)**
ii. **Customs Appeal No. 20034 of 2020 (Samaavesh Huf)**
iii. **Customs Appeal No.20570 of 2018 (Rakesh)**
iv. **Customs Appeal No.20571 of 2018 (Jyothi Jain)**
v. **Customs Appeal No. 20572 of 2018 (Jv Impex)**

(Arising out of OIO-BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.19 passed by Commissioner of Customs-Bangalore)

(Arising out of OIO-BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.19 passed by Commissioner of Customs-Bangalore)

(Arising out of OIA-BLR-CUSTM-000-APP-45-47-2018 dated 17.01.18 passed by Commissioner of Customs-Bangalore)

(Arising out of OIA-BLR-CUSTM-000-APP-45-47-2018 dated 17.01.18 passed by Commissioner of Customs-Bangalore)

(Arising out of OIA-BLR-CUSTM-000- APP-45-47-2018 dated 17.01.18 passed by Commissioner of Customs-Bangalore)

APPEARANCE:
Shri Krishna Pratap Singh, CA for the Appellants
Shri P.Gopakumar Smt. D.S. Sangeetha, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. P. ANJANI KUMAR

Final Order No._A/   20261-20266 /2022

DATE OF HEARING: 01.04.2022
DATE OF DECISION: 01.08 .2022

RAMESH NAIR

These appeals are directed against order-in-Original(Arising out of OIO-BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.19 passed by Commissioner of Customs-Bangalore) and Order-In –Appeal (Arising out of OIA-BLR-CUSTM-000-APP-45-47-2018 dated 17.01.18 passed by Commissioner of Customs-Bangalore passed by Commissioner of Customs, Bengaluru whereby they enhanced the value of the imported goods and consequently confirmed the differential duty demand amounting to Rs. 3,54,64,587/- and also imposed penalty, redemption fine and demanded interest. For confirmation of demand the learned Commissioner has relied upon various evidences and statements of various persons. Being aggrieved by the Order-In-Original / Order-In –Appeal the appellants filed the appeals before this Tribunal.

2. Shri Krishna Pratap Singh, Learned Chartered Accountant appearing on behalf of the appellant made detailed submission and also filed written submission which was taken on record. In addition to the detailed submission on merit and facts of the case, the appellant have made strong ground on Principle of Natural Justice in as much as the request of cross-examination of the appellant was not considered by the Adjudicating Authority in terms of Section 138 B of Customs Act, 1962.

3. Shri P. Gopakumar and Smt. D.S Sangeetha, Learned Additional Commissioner (AR) reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both side and perused the records. We find that the appellant have requested foe the cross-examination. The request of the appellant was recorded by the Learned Commissioner at Para 18.6 which is as under:

> *18.6 The Noticee sought cross examination of the Panchas and the Officers of the DRI who recorded the Panchanamma dated 12.09.2017 at the Noticee Residential premises. Reliance is placed in the case of Andaman Timber Industries vs. CCE, Kolkata -II 2015 (324) E.L.T. 641 (S.C.) wherein the Hon'ble Supreme Court reiterated the importance of Cross Examination and in the case of Basudev Garg vs, CC 2013-TIOL-464-HC-DEL. Reliance is also placed on the following case laws:*

> *(a) Laxman Exports Ltd. v. Collector of Central Excise (2005) 10 SCC 634; (b) Swadeshi Politex Ltd. v. Commnr. Of Central Excise 2000 (122) E.L.T 641 (S.C);*
> *(c) Arya Abhushan Bhandar v. Union of India 2002 (143) E.LT 25 (S.C.)*
> *(d) Gyanchand Sant Lal Jain v. Union of India 2001 (136) ELT 9 (Bombay High Court)*
> *(e) Kellogg India Pvt. Ltd. & Madhukar Patil v. UOI 2006 (193) ELT 385 (Bombay High Court)*
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> *(f) Ripen Kumar v. Deptt. of Customs 2003 (160) ELT 60 (Delhi High Court)*
>
> *(g) New Decent Footwear Industries v. UOI 2002 (150) E.LT 71 (Delhi High Court)*

However, the lower authorities have not considered the request of the appellant for cross-examination. We find that though the lower authorities have relied upon ample evidences for deciding the case but the request of cross-examination of also ought to have been considered as mandated under section 138 B which is reproduced below:-

> *"138B. Relevancy of statements under certain 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,—*
> *(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*
> *(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.*
> *(2) The provisions of sub-section (1) shall so far as may be 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.]"*

From the above statutory provision of section 138 B, it is not the option for the Adjudicating Authority to allow or not to allow the cross- examination, if the appellant has requested for cross- examination, it is in the interest of principle of natural justice the Adjudicating Authority is duty bound to conduct the cross-examination of the witnesses we are therefore of the view that since the lower authorities have relied upon the Panchnama dated 12.09.2017 and under which the various documents were recovered and those documents were used as evidence against the appellant, it is necessary that the cross-examination of Panch witnesses should be allowed.

05. Accordingly, the entire matter needs to be re-considered after allowing the cross- examination of the witnesses as requested by the appellant. Therefore, the impugned orders are set aside. Appeals are allowed by way of remand to the Adjudicating Authority for passing a denovo order after observance of principle of natural justice.

(Pronounced in the open court on 01.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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