**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No.169 of 2011**
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.Kol/Cus./CKP/20/2011 dated 31.01.2011 passed by Commissioner of Customs (Appeals), Kolkata)

**Commissioner of Customs (Port), Kolkata**
15/1, Strand Road, Kolkata-700001

**Appellant**

*VERSUS*

**M/s Kamala Meta Chem**
Village-Kulai, P.O.-Bikihakola, Dist.-Howrah-711322

**Respondent**

**APPERANCE :**

Shri S.Debnath, Authorised Representative for the Appellant
Shri Biswajit Mukherjee & Shri Soumyajit Misra, both Advocates for the Respondent

**CORAM:**
**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO……76162/2023**

DATE OF HEARING : 13 .07.2023
DATE OF DECISION : 13 .07.2023

**Per Ashok Jindal :**

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent has imported Zinc Skimming/Ash through Kolkata Port during the year 2003-2004. An investigation was conducted by DRI on 12.07.2007. Certain documents were seized and it was found that during the period from July, 2003 to December, 2003, the respondent has imported 11 consignments of Zinc Skimming declaring the value of US$ 370-375. Statements were recorded. Scrutiny of Invoice Nos.407 & 407A both dated 12.06.2003 of M/s Hemsu International, USA, which was received from Consulate

General of India, New York, revealed that both the invoices were relating to the same consignment of Zinc Skimming imported from USA under the Bill of Entry dated 08.08.2003. It appears that US$ 4227.43 charged in Invoice No.407A declaring as "reimbursement expenses" referred in Invoice No.407, was over and above the price of US$ 75.48.97 as declared in the Invoice No.407 dated 12.06.2003 and submitted to the Customs along with the Bill of Entry for assessment. Considering the above said invoices, for Bill of Entry dated 08.08.2003, the price of Zinc Skimming of the said import consignment works out at the rate of US$ 585 per MT. Therefore, the case of the under-valuation was booked against the respondent and it was adjudicated by the Adjudicating Authority and the Adjudicating Authority in the absence of authenticity of Invoice Nos.407 & 407A dated 12.06.2003 received from Consulate General of India, New York, dropped the case against the respondent.

2.1 On appeal, the ld.Commissioner (Appeals), also dropped the proceedings against the respondent.

2.2 Against the said order, the Revenue is before us.

3. Heard the ld.A.R. for the Revenue.

4. We have gone through the records and found that the allegation made against the respondent on the basis of Invoice Nos.407 & 407A claimed to be recovered from Consulate General of India, New York. The said invoices have not been certified by Consulate General of India. In that circumstances, both the authorities held that the said invoices

cannot be the basis to allege undervaluation by the respondent. The Tribunal in the case of M/s Truwoods Private Limited Vs. Commissioner of Customs, Visakhapatnam reported in 2006 (204) ELT 288 (Tri.-Bangalore), held that the document which do not bear the seal or the signature of the competent person, is not admissible as evidence under Section 138 of the Customs Act, 1962. Admittedly, the Invoice No.407 found from Consulate General of India, New York is bearing no seal or signature of Consulate General of India. In that circumstances, the said invoices cannot be the basis to allege the under-valuation against the respondent.

5. In that circumstances, we do not find any infirmity in the impugned order. Therefore, the same is upheld.

6. In the result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

**(Ashok Jindal)**
**Member (Judicial)**

**(K.Anpazhakan)**
**Member (Technical)**

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