IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75609 of 2022

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/208-209/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

Shri Sandeep Kumar Dikshit
(S/o Shri Shambhu Sharan Dikshit, 437A, Patrapara Road, Purasree Patrapara, Chandannagar, Dist.-Hooghly, West Bengal, Pin-712136.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

(i) Customs Appeal No.75649 of 2022 (Shri Kislay Vs. Commissioner of Customs (Preventive), Kolkata); (ii) Customs AppealNo.75650 of 2022 (Shri Kislay Vs. Commissioner of Commissioner (Preventive), Kolkata); (iii) Customs Appeal No.75679 of 2023 (Shri Sandeep Kumar Dikshit Vs. Commissioner of Custosm (Preventive), Kolkata); (iv) Customs Appeal No.75680 of 2023 (Shri Sandeep Kumar Dikshit Vs. Commissioner of Custosm (Preventive), Kolkata); (v) Customs Appeal No.75681 of 2023 (Shri Sandeep Kumar Dikshit Vs. Commissioner of Custosm (Preventive), Kolkata); (vi) Customs Appeal No.75708 of 2023 (Shri Kislay Vs. Commissioner of Custosm (Preventive), Kolkata); (vii) Customs Appeal No.75709 of 2023 (Shri Kislay Vs. Commissioner of Custosm (Preventive), Kolkata);

(i) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/208-209/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(ii) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/210-211/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(iii) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/204-205/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(iv) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/206-207/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(v) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/210-211/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(vi) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/206-207/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

(vii) (Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/204-205/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

APPEARANCE

Shri H.K.Pandey & Shri Debaditya Banerjee, both Advocates for the Appellant (s)
Shri Manish Mohan &   for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75239-75246/2024

DATE OF HEARING : 8 February 2024
DATE OF DECISION : 8 February 2024

Per : R. MURALIDHAR :

The present Appeals have been filed by the Appellants being aggrieved by the impugned orders. It is submitted that subsequent to issue of Show Cause Notices to various exporters, who claimed drawback, investigation was taken up by DRI and it was subsequently alleged that exports were fraudulent and Show Cause Notices were issued to such exporters. In the present case after issue of the Show Cause Notices to other concerned parties, after about two years supplementary Show Cause Notices were issued to the present Appellants who are the officers of the Department. After due process, penalties were imposed on the present Appellants. Being aggrieved, the appellants are before the Tribunal.

2. The Advocates, appearing on behalf of the appellants submit that the 8 Appeals can be bifurcated into two categories.

3. Under first category, in respect of 4 Appeals, initially Show Cause Notices were issued to the exporters and other related persons under Rule 16A of Drawback Rules, 1995 and Adjudication Order was also passed. In the Show Cause Notices the present Appellants

(Departmental Officers) were not co-noticees. Subsequently, one more Show Cause Notice was issued to the same exporters and other parties along with the present Appellants, seeking to recover the drawback as well as seeking to impose penalties on all the noticees thereon.

4. In second category, the Show Cause Notice issued under Rule 16A of the Duty Drawback Rules, 1995 to various Noticees (wherein the present appellants were not co-noticees) was not adjudicated at all, but one more Show Cause Notice was issued in terms of Section 124 of Customs Act. In the second Show Cause Notice, the Appellants were also made as co-noticees. Therefore, they submit that while their defense is common in respect of all the 8 appeals, so far as errors committed in the Show Cause Notice is concerned, in respect of the first category of Show Cause Notice, the appellants are in much better footing, since the Show Cause Notice was issued subsequent to passing of Order-in-Original.

5. The Ld.Counsel submit that the details of the eight Appeals are as per the following table :-

Sl no.	**Cestat Appeal Nos.**	**Order in Appeal with date**	**Order-in-Original with date**	**Corresponding Show Cause Notice No. issued under Section 124 of the Customs Act, 1962**	**Corresponding Show Cause Notice No. issued under Rule 16A of the Duty Drawback rules, 1995**	**Corresponding O-I-O No of respective SCNs issued under Rule 16A**
CATEGORY-1						
1.	C/75609/2022 (S. K. Dikshit) & C/75650/2022	KOL-CUS-CCP-AKR-208-209-2022; Dt. 31/03/2022 & Corrigendum thereto dated: 03.06.202	100/ADC/(P)/CUS/WB/19-20; Dated: 05.06.2020 with corrigendum dated: 06.08.2020	VIII(10)146/D B Exp / ADC/ ADJ / CUS /WB/17-18 dated: 10.01.2018	VIII(48)41/DBK/WB/2013/15623, dated: 17.07.2015 [Rule 16A SCN without the appellants being co-noticees.]	01/AC(DBK)/2015-16 dated 09.01.2015 [Rule 16A OIO without the appellants being co-noticees.]

	(Kislay)	2.				
2.	C/75680/2023 (S. K. Dikshit) & C/75708/2023 (Kislay)	KOL-CUS-CCP-AKR-206-207-2022; Dt: 31/03/2022	101/ADC/(P)/CUS/WB/19-20, dated: 05.06.2020	VIII(10)147/VEXIM/ADC/ADJ/CUS/WB/17-18 dated: 10.01.2018	VIII(48)32/DBK/WB/2013/15624B-15625B, dated: 17.07.2015 [Rule 16A SCN without the appellants being co-noticees.]	02/AC(DBK)/2015-16 dated: 09.10.2015 [Rule 16A OIO without the appellants being co-noticees.]
CATAGORY-2						
3.	C/75679/2023 (S. K. Dikshit) & C/75649/2022 (Kislay)	KOL-CUS-CCP-AKR-204-205-2022; Dt: 31/03/2022 [Appellants are co-Noticees]	103/ADC/(P)/CUS/WB/19-20; Dated: 05.06.2020 [Appellants are co-Noticees]	VIII(10)149/DBEnt/ADC/ADJ/CUS/WB/17-18/343-351P; Dated: 10.01.2018 [Appellants are co-Noticees]	VIII(48)41/DBK/BRC/CCP/WB/2016/1303 dated 08.09.2016; Noticee- Shri Raju Ghosh, Prop. M/s Royal Trading.	Not Adjuiduated [Appellants are not co-Noticees]
4.	C/75681/2023 (S. K. Dikshit) & C/75709/2023 (Kislay)	KOL-CUS-CCP-AKR-210-211-2022; Dt: 31/03/2022 & Corrigendum thereto dated: 03.06.2022 [Appellants are co-Noticees]	102/ADC/(P)/CUS/WB/19-20; Dated: 06.08.2020 [Appellants are co-Noticees]	VIII(10148/RT/ADC/ADJ/CUS/WB/17-18 dated: 10.01.2018 [Appellants are co-Noticees]	VIII(48)40/DBK/BRC/CCP/WB/2016/1304 dated 08.09.2016; Noticee- Shri Bapi Das, Prop. M/s Dada Bhai Enterprise	Not Adjudicated [Appellants are not co-Noticees]

6. On going through the Show Cause Notice No.C.No.VIII(10)146/DB EXP/ADC/ADJ/CUS/WB/17-18 dated 10.01.2018 [the Show Cause Notice under which the appellants were made co-Noticees for the first time] it is seen that the same has been

issued as a fresh Show Cause Notice referring to the earlier Show Cause Notices on 07.07.2015 issued at Para 4. The Para 4 clarifies that the earlier Show Cause Notices were issued under Rule 16A of the Drawback Rules, 1995, wherein there were 4 Noticees. After due process, Adjudication Order No.01/AC/DBK/2015-16 dated 09.10.2015 was passed confirming recovery of the duty drawback from all these 4 noticees. Under the present Show Cause Notice dated 10.01.2018, once again Show Cause Notice has been issued to these four noticees (against whom Adjudication Order was passed) and the Notices have been issued to the present Appellants also.

7. The Ld.Counsel submits that since the initial Show Cause Notice issued on 12.07.2015, has already been adjudicated on 09.01.2015, there is no provision for the Revenue to issue one more Show Cause Notice on the same issue by adding the present appellants along with the earlier Noticees. Therefore, he submits that the entire proceedings are vitiated in the present case. Accordingly, he prays that the impugned orders may be set aside in respect of all these 4 Appellants (Category 1).

8. In respect of category 2 Appeals, he takes us through the Show Cause Notice No. C.No.VIII(10)/149/DBEnt/ADC/ADJ/CUS/WB/17-18/ dated 10.01.2018. He takes us to Para 7 & 8 of the Show Cause Notice which brings out the basis of the allegations against the present Appellants. He also takes us through DRI's Letter No.F.No.DRI/KZU/ENQ-58(INT-45)/2016/6927 dated 15.03.2017 which is relied upon by the Revenue to issue the present Show Cause Notice to the Appellants (Departmental Officers), submitting that this letter has made no reference whatsoever to the present Appellants. He also takes us through the Final Report of DRI dated 21.04.2017, even where the names of the present Appellants are missing. He submits that the present Show Cause Notice has been issued only on the basis of another Show Cause Notice issued by the Revenue to some other exporters on account of alleged fraudulent drawback claim. The statements covered under that Show Cause Notice cannot be the basis

for issue of Show Cause Notice in the present proceedings. Accordingly, he prays that the category 2 Appeals also may be allowed.

9. The Ld.AR for the Department submits that the DRI has taken up elaborate investigation in respect of fraudulent Drawback claims of various exporters. They have painstakingly investigated and caught hold of the mastermind Mr. Jyoti Biswas from whom the information of connivance of others had come to light. He submits that since the investigation was a long drawn process, it was but natural for the Department to issue a Show Cause Notice initially to certain Noticees and then after gathering further documentary evidence about the role of other persons, the Show Cause Notices had to be issued to them by way of Supplementary Show Cause Notices. He submits that it has come to the knowledge of DRI that the present Appellants who are officers of the Department were actively involved in the fraudulent activities carried out by the exporters. He submits that the issue of supplementary Show Cause Notices cannot be taken as erroneous Show Cause Notice so long as it brings out proper allegations against the Appellants. He justifies the penalties imposed on the Appellants and prays that the Appeals may be dismissed.

10. Heard both the sides and perused the documents placed before us.

11. After going through the documentary evidence placed before us, we find that under the Category 1 Appeals, the Department has issued the Show Cause Notices under Rule 16A of Drawback Rules, 1995 and has also adjudicated the confirmed demand of drawbacks initially granted to the noticees therein by passing the Order-in-Original on 09.01.2015. In such a case it is surprising that once again a Show Cause Notice was issued after more than one year to the present Noticees as well as the earlier four noticees. After the Order-in-Original was passed confirming the demand of drawback, we do not see any statutory provision available to the Department to issue one more Show Cause Notice to recover the Drawback, when Order-in-Original passed has already confirmed the demand. Therefore, the entire premise for

issue of the second Show Cause Notice is erroneous and legally not sustainable in the absence of any statutory provision available to the Revenue to do so. Therefore, we hold that the category 1 Appeals are to be allowed on this count alone. Accordingly, we set aside the relevant impugned Orders in respect of the Category 1 Appeals and allow the Appeals filed by the Appellants.

12. Coming to the Category 2 Appeals, it would be material to go through the relevant Paragraphs of the Show Cause Notice, which forms the foundation of the entire proceedings. The relevant extracts are given below for ready reference :

> *"7. In response there to the Directorate of Revenue Intelligence, Kolkata Zonal Unit under <u>DRI F.No.DRI/KZU/CF/ENQ-58(INT-45)/2016/6927 dated 15.03.2017 intimated that a greater conspiracy was hatched by a person named Shri Jyoti Biswas who was the mastermind behind the above mentioned four exporters namely (1)</u> Shri Debnath Barik, Proprietor of M/s. D.B. Export, (2) Shri Rudra Prasad Mondal, Proprietor of M/s. Victory Exim, (3) Shri Raju Ghosh, Proprietor of M/s. Royal Trading and (4) Shri Bapi Das, Proprietor of M/s. Dada Bhai Enterprise in availing the fraudulent drawback amounting to Rs.6,22,48,102/- (Rupees six crore twenty two lakh forty eight thousand one hundred two only). From the letter of the Directorate of Revenue Intelligence, Kolkata Zonal Unit communicated under <u>DRI F.No.DRI/KZU/CF/ENQ-58(INT-45)/2016/6927 dated 15.03.2017 it was revealed that Shri Jyoti Biswas was in active connivance with some Departmental Officers to perpetuate the said fraudulent exports</u>.*
>
> *8. Subsequently, it came to the notice of the Department from the <u>Show Cause Notice issued by the Directorate of Revenue Intelligence, Kolkata Zonal Unit under DRI F.No.DRI/KZU/AS/ENQ-13/2016/773-784, dated 18.05.2017 to the Supplementary Notice to Show Cause Nissued under F.No.: DRI/KZU/AS/ENQ-13/2016/2981 to 2986, dated 26.08.2016 that Shri Jyoti Biswas, Shri Vikash Kumar, Shri Sandeep Kumar Dikshit, Shri Kislay are actively involved in the fraudulent export involving the above mentioned exporters."</u>*

13. From the above Paragraphs, it is observed that the Appellants have been made co-noticees only on the basis of DRI's letter dated 15.03.2017 read with the Show Cause Notice dated 26.08.2016 and supplementary Show Cause Notice dated 18.05.2017. The Revenue is not able to point out any other specific allegations against the Appellants.

14. On going through the Show Cause Notice dated 26.08.2016 and the relevant supplementary Notice dated 18.05.2017, it is seen that this Show Cause Notice is in respect of some other exporters, in respect of some other Shipping Bills, and in respect of some other Drawbacks which in no way are connected to the present Exporters, Shipping Bills or the Drawbacks. Therefore, the Department could not have used any materials found to be in their favour in that particular case, to implicate the present Appellants (Departmental Officers) in the present proceedings.

15. Moreover, we have gone through the DRI's letter dated 15.03.2017 which has been relied upon by the Revenue to issue the Show Cause Notice to the present appellants. From this letter, it is seen that only the name of Shri Jyoti Biswas is coming up along with the name of one Departmental official Vikash Kumar. There is no mention of the present two Appellants by name in this letter. Therefore, we do not see as to how the Department can on its own assume that these two persons are also part of this letter dated 15.03.2017 so as to make them the co-noticees. The Ld.Counsel has also produced a copy of DRI's final Report dated 21.03.2017. Even in this final report, only the name of Shri Jyoti Biswas and Shri Vikash Kumar are being found. There is no mention of the names of the present two Appellants in this letter also. The Revenue cannot generalize the issue and based on the specifics of one case, the notice cannot be issued in other cases without any proper ground work.

16. As a matter of fact, the observations towards the category 2 is equally applicable to category 1 also, wherein even in that case, the Show Cause Notice has been issued based on the DRI 's letter as well

as the Show Cause Notice and supplementary Notice issued to some other exporters on 26.08.2016 and 18.05.2017.

17. Therefore, we hold that the impugned orders are not legal and proper. Accordingly, we allow the Category 2 Appeals also.

18. As a result, all the eight Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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