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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.77013 of 2017

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/32/2017-Adjn.(PORT) dated 12.09.2017 passed by Commissioner of Customs (Port), Kolkata.)

M/s. Churiwal Commercial Co. Private Limited
(16A, Brabourne Road, 7th Floor, Kolkata-700001., West Bengal.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

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

<u>APPEARANCE</u>

Ms. Subhangi Lata, Chartered Accountant for the Appellant (s)
Shri A.K.Choudhary, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 77128/2024</u>

DATE OF HEARING : 27.09.2024
DATE OF DECISION : 27.09.2024

Per : RAJEEV TANDON :

The present appeal has been filed by the appellant assailing the Order-in-Original No.KOL / CUS/ COMMISSIONER / PORT/ 32/ 2017-Adjn.(PORT) dated 12.09.2017 passed by Commissioner of Customs (Port), Kolkata.

2. Pursuant to an intelligence received by the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit that the appellant, a merchant exporter, had exported different types of jute products of Bangladeshi origin (third country origin) under claim of export incentive (DEPB/Drawback) during the year 2010-11 to 2013-14, mis-declaring

the same as of Indian origin in the export documents, investigations were initiated by the DRI into the matter.

2.1 The details of the export shipments made by the appellants are as per the table below :

Sl No.	Tax Invoice No. & date	overseas buyer	Shipping Bill No. & date	Amount of Drawback	Amount of DEPB	Exported commodity
1	Sale/2010-11/21 dt. 13.05.10	Hossein Molaei, Tehran, Iran	5624515 dt. 13.05.10	--	145350	Hessian Cloth 45"-9Ozs/45"
2	Sale/2010-11/23 dt. 14.05.10	Hossein Molaei, Tehran, Iran	5624682 dt. 14.05.10		145350	Hessian Cloth 45"-9Ozs/45"
3	Sale/2010-11/35 dt. 08.06.10	Hossein Molaei, Tehran, Iran	5630480 dt. 08.06.10		145350	Hessian Cloth 45"-9Ozs/45"
4	Sale/2010-11/98 dt. 03.08.10	Hossein Molaei, Tehran, Iran	5647153 dt. 14.08.10		63520	Hessian Cloth 40"-7Oz/40
5	Sale/2010-11/89 dt. 06.08.10	Hossein Molaei, Tehran, Iran	5645365 dt. 07.08.10		145350	Hessian Cloth
6	Sale/2010-11/156 dt. 27.09.10	Hossein Molaei, Tehran, Iran	5655763dt. 18.09.10		95280	Hessian Cloth 40"x7
7	Sale/2010-11/162 dt. 29.09.10	Hossein Molaei, Tehran, Iran	5657296 dt. 24.09.10		158800	Hessian Cloth 40"x7
8	Sale/2010-11/163 dt. 29.09.10	Hossein Molaei, Tehran, Iran	5657299 dt. 24.09.10		158800	Hessian Cloth 40"x7
9	Sale/2010-11/85 dt. 29.07.10	Indo-Africa Import & Export LDA	5643181 dt. 29.07.10	338787		B twill Jute bags
10	Sale/2010-11/86 dt. 30.07.10	Indo-Africa Import & Export LDA	5643492 dt. 30.07.10	338787		B twill Jute bags

11	Sale/2010-11/164 dt. 29.09.10	Indo-Africa Import & Export LDA	5657631 dt. 27.09.10	250361		B twill Jute bags
12	Sale/2010-11/220 dt. 26.10.10	Vijay International Ltd	5662116 dt. 13.10.10	67178		Jute bags
13	Sale/2010-11/221 dt. 26.10.10	Vijay International Ltd	5662115 dt. 13.10.10	139703		Jute bags
14	Sale/2010-11/335 dt. 20.12.10	DSN Universal PTE Ltd	1924204 dt. 04.12.10	284081		B twill Jute bags
15	Sale/2010-11/376 dt. 06.01.11	DSN Universal PTE Ltd	2053628 dt. 22.12.10	293312		B twill Jute bags
16	Sale/2010-11/377 dt. 06.01.11	Lion Overseas PTE Ltd	2071057 dt. 24.12.10	229954		B twill Jute bags
17	Sale/2010-11/491 dt. 19.02.11	Lion Overseas PTE Ltd	2515258 dt. 14.02.11	228937		B twill Jute bags
18	Sale/2011-12/172 dt. 12.10.11	Indo-Africa Import & Export LDA	5613794 dt. 27.09.11	121783		B twill Jute bags
19	Sale/2011-12/173 dt. 12.10.11	Indo-Africa Import & Export LDA	5631798 dt. 28.09.11	60892		B twill Jute bags
20	Sale/2011-12/252 dt. 08.12.11	Darame Trading Lda	6430925 dt. 28.11.11	63859		B twill Jute bags
21	Sale/2011-12/253 dt. 08.12.11	Commercial Santy SARL	6516825 dt. 03.12.11	207265		B twill jute bag
22	Sale/2011-12/411 dt. 10.02.12	Lion Overseas PTE Ltd	7396435 dt. 02.02.12	323163		B twill Jute bags
23	Sale/2011-12/472 dt.	Lion Overseas PTE Ltd	7591647 dt.	324254		B twill Jute bags

	27.02.12		15.02.12			
24	Sale/2012-13/627 dt.15.01.13	East West Commodities PTE Ltd	3497428 dt. 15.01.13	334128		B twill Jute bags
25	Sale/2013-14/566 dt. 11.01.14	lion Overseas PTE Ltd	9444678 dt. 11.01.14	128138		B twill Jute bags
26	Sale/2013-14/567 dt. 11.01.14	lion Overseas PTE Ltd	9444674 dt. 11.01.14	320346		B twill Jute bags
27	Sale/2013-14/568 dt. 11.01.14	lion Overseas PTE Ltd	9444947 dt. 11.01.14	192207		B twill Jute bags
28	Sale/2013-14/583 dt. 20.01.14	lion Overseas PTE Ltd	9501645 dt. 15.01.14	128138		B twill Jute bags
29	Sale/2013-14/665 dt. 04.03.14	lion Overseas PTE Ltd	1395688 dt. 04.03.14	158988		B twill Jute bags
				45,34,261	10,57,800	

3. As can be seen from the aforesaid table, a total of 8 consignments of Hessian cloth were exported while the remaining 21 shipments pertained to that of B twill Jute bags. The Hessian cloth consignments were shipped under claim of DEPB while B-twill Jute bags were exported under claim for drawback. The present appeal concerns consignments exported under claim of drawback.

4. Detailed investigations undertaken by the department brought to fore the following factual details as culled out from the records maintained by the appellant :

(i) That the appellant purchased B-twill Jute bags from different units of Bangladesh Jute Mills Corporation Limited, which were recorded in separate ledgers;

(ii) Following consignments exported were out of stocks imported from Bangladesh :

Sl No.	Sale Voucher No. & date	Quantity of goods	Shipping Bill No. & date	Amount of Drawback availed
1	Sale/2011-12/252 dt. 08.12.2011	19800 pcs	6430925 dt. 28.11.11	63859
2	Sale/2011-12/253 dt. 08.12.2011	63000 pcs	6516825 dt. 03.12.11	207265
3	Sale/2011-12/472 dt. 27.02.2012	1,04,400 pcs	7591647 dt. 15.02.12	324254
4	Sale/2012-13/627 dt. 15.01.2013	1,05,000 pcs	3497428 dt. 15.01.13	334128
			Total :	9,29,506

(iii) Following shipments were procured from different jute mills under cover of ARE-1 which were loaded and sealed in containers at the suppliers' premises thereby indicating the same to be of Indian origin :

Sl No.	Sale Voucher No. & date	Quantity of goods	Shipping bill No. & date	Amount of drawback availed	ARE-1 No. & date	Name of the supplier
1	Sale/2013-14/566 dt. 11.01.14	43200 pcs	9444678 dt. 11.01.14	128138	GHU/163/13-14 dt. 09.01.14	Murlidhar Ratanlal Exports
2	Sale/2013-14/567 dt. 11.01.14	108000 pcs	9444674 dt. 11.01.14	320346	79/IJM/13/14 dt. 08.01.14	Murlidhar Ratanlal Exports
3	Sale/2013-14/568 dt. 11.01.14	64800 pcs	9444947 dt. 11.01.14	192207	82&83/IJM/13-14 dt. 10.01.14	Murlidhar Ratanlal Exports
4	Sale/2013-14/583 dt. 20.01.14	43200 pcs	9501645 dt. 15.01.14	128138	85/IJM/13-14 dt. 15.01.14	Murlidhar Ratanlal Exports

(iv) Source of origin of the remaining consignments could not be determined as no ARE-1s linked thereto could be ascertained nor were the same included in the item register maintained by the appellant. However, from the export details it was noted that some quantities of jute bags out of these shipments were procured during the aforesaid period were imports from Bangladesh.

5. Quantity wise detailed analysis of the said goods exported, therefore led to the following outcome :

(I) <u>2010-11</u>

OF BANGLADESHI ORIGIN

Sl. No.	Name of the supplier	Nationality of the supplier	Quantity of goods
1	Ahmed Exports	Bangladesh	132000 pcs
2	Aleem Jute Mills	Bangladesh	66000 pcs
3	Ahhaj Jute Mills Ltd.	Bangladesh	30000 pcs
4	Bangladesh Jute Mills Ltd.	Bangladesh	231000 pcs
5	Eastern Jute Mills Ltd.	Bangladesh	66000 pcs
6	Gem Jute Ltd.	Bangladesh	66000 pcs
7	Janata Jute Mills Ltd.	Bangladesh	64800 pcs
8	Jessore Jute Industries Ltd.	Bangladesh	99000 pcs
9	Karim Jute Mills Ltd.	Bangladesh	66000 pcs
10	Latif Bewany Jute Mills Ltd.	Bangladesh	132000 pcs
11	Monir Trading Corporation	Bangladesh	705000 pcs
12	Nowapara Jute Mills Ltd.	Bangladesh	66000 pcs
13	Platinum Jubilee Jute Mills Ltd.	Bangladesh	339000 pcs
14	Star Jute Mills Ltd.	Bangladesh	135000 pcs
15	Sutapa Jutex	Bangladesh	165000 pcs

16	The Crescent Jute Mills Co.Ltd.	Bangladesh	267000 pcs
17	U.M. C Jute Mills Ltd.	Bangladesh	33000 pcs
18	Uttara Jute Fibres & Industries Ltd.	Bangladesh	105000 pcs
19	Vicar International	Bangladesh	99000 pcs
		Total	2866800 pcs

OF INDIAN ORIGIN

Sl. No.	Name of the supplier	Nationality of the supplier	Quantity of goods
1	AI Champdani Industries Ltd.	India	82500 pcs
2	Cheviot Company Ltd.	India	33000 pcs
3	Coastal Packagers Pvt.Ltd.	India	33000 pcs
4	Industrial Associates	India	132000 pcs
5	J.K.Sons & Co., Kolkata	India	33000 pcs
6	Ludlow Jute & Specialities Ltd.	India	247500 pcs
7	MMB Impex Pvt.Ltd.	India	49500 pcs
8	Naffar Chandra Jute Mills Ltd.	India	412500 pcs
9	Sarvamangla Pratisthan	India	33000 pcs
10	The Ganges Mfg Co Ltd.	India	66000 pcs
11	Vertex International Ltd.	India	471300 pcs
		Total	15,93,300 pcs

From above it can be seen that 64% of B Twill bags procured during the year 2010-11 were imports from Bangladesh

(II) **2011-12**

OF BANGLADESHI ORIGIN

Sl. No.	Name of the supplier	Nationality of the supplier	Quantity of goods
1	Ajax Jute Mills Ltd.	Bangladesh	231000 pcs
2	Aleem Jute Mills Ltd.	Bangladesh	198000 pcs
3	Bangladesh Jute Mills Ltd.	Bangladesh	198000 pcs
4	Eastern Jute Mills Ltd.	Bangladesh	66000 pcs
5	Gem Jute Ltd.	Bangladesh	198000 pcs
6	Global Jute Trading Ltd.	Bangladesh	45000 pcs
7	Janata Jute Mills Ltd.	Bangladesh	108000 pcs

8	Jessore Jute Industries Ltd.	Bangladesh	54900 pcs
9	Karim Jute Mills Ltd.	Bangladesh	66000 pcs
10	Latif Bewany Jute Mills Ltd.	Bangladesh	198000 pcs
11	Peoples Jutes Mills Ltd.	Bangladesh	234000 pcs
12	Platinum Jubilee Jute Mills Ltd.	Bangladesh	330000 pcs
13	Quami Jute Mills Ltd.	Bangladesh	462000 pcs
14	Rajsahi Jute Mills	Bangladesh	66000 pcs
15	The Crescent Jute Mills Co. Ltd.	Bangladesh	264000 pcs
16	U.M.C Jute Mills Ltd.	Bangladesh	165000 pcs
		Total :	28,83,900 pcs

17	J.K. Sons & Co.	India	33000 pcs
18	Vertex International Ltd.	India	237600 pcs
19	Yucon Exports Pvtvt.Ltd.	India	82500 pcs
		Total:	3,53,100 pcs

Apart from above, 31500 pcs of jute bags were shown as stock transfer from the stock of B Twill Binola 44"x26.5 wt 2.00 lbs (907 gms), which were imported by CCRL from Bangladesh. As could be seen over 89% of the jute bags were imports from Bangladesh.

(III) <u>2013-14</u>

OF BANGLADESHI ORIGIN

Sl. No.	Name of the supplier	Nationality of the supplier	Quantity of goods
1	Afrin Jute Spinners Ltd.	Bangladesh	99000 pcs
2	Asaduzzaman-Rashid (A-R) Jute	Bangladesh	33000 pcs
3	B.R. Jutex International	Bangladesh	33000 pcs
4	Gem Jute Ltd.	Bangladesh	66000 pcs
5	Jessore Jute Industries Ltd.	Bangladesh	16500 pcs
6	Kurigram Jute Processing Works	Bangladesh	33000 pcs
7	M.M. Jute Fibres & Industries	Bangladesh	33000 pcs
8	Mohini Nabil Jute Mills Ltd.	Bangladesh	33000 pcs
9	Paiker Jute Mills Ltd.	Bangladesh	66000 pcs

10	Partex Jute Mills Ltd.	Bangladesh	66000 pcs
11	Purabi Trading	Bangladesh	33000 pcs
15	Vicar International	Bangladesh	66000 pcs
		Total :	14,53,500 pcs

OF INDIAN ORIGIN

Sl. No.	Name of the supplier	Nationality of the supplier	Quantity of goods
15	AI Champdani Industries Ltd.	India	82500 pcs
16	Dalhousie Jute Co.	India	231000 pcs
17	Eldorra Fibre (unit of Delta Ltd)	India	412500 pcs
18	J & D Wilkie Bengal Pvt.Ltd.	India	132000 pcs
19	J.K.Sons Jute Co. Pvt Ltd	India	49500 pcs
20	Jankalyan Vinimay Pvt Ltd	India	33000 pcs
21	Janpragati Marketing Pvt Ltd (Celedonian Jute Mill)	India	82500 pcs
22	K.L. Jute Products Pvt Ltd	India	82500 pcs
23	Kolkata Trade Centre	India	33000 pcs
24	Murlidhar Ratanlal Export Ltd.	India	506700 pcs
25	Naffar Chandra Jute Mills Ltd.	India	147900 pcs
26	Sarvamangla Pratisthan	India	16500 pcs
27	Shree Gouri Shankar Jute Mills Ltd.	India	132999 pcs
28	Sunbeam Vanijya Pvt Ltd	India	33000 pcs
29	The Ganges Manufacturing Co.Ltd.	India	108000 pcs
30	West Bengal Agro Textiles Corpn	India	82500 pcs
		Total	21,65,100 pcs

Nearly 60% of the purchases during the year 2013-14 were from Indian suppliers.

6. The Ld.Chartered Accountant, arguing for the appellants submits that the impugned order arbitrarily imposed a demand of Rs.30.00 lakh on the appellant in respect of drawback claim, by segregating the source of procurement of exported B-twill jute bags by way of re-construction of the records. She also submitted that the order of the lower authority was passed without the appellants having been heard in the matter and pointed out that the same was issued when the appellant had pleaded that they were arranging requisite funds for payment of duty along with interest in respect of stock of jute bags imported from Bangladesh on which duty drawback had been availed. In substantiation of their claim she pointed out that in respect of exports made under DEPB scheme the appellant had already paid the requisite amount payable with interest, in respect of the DEPB licences obtained. She further submits that penalty was imposed on them despite the fact that the impugned export consignments formed a very small component of the huge quantum of turnover of the appellant. She however admitted that it was certainly gross negligence on the part of the persons handling export business of the company, in claiming drawback upon export of goods imported from Bangladesh under a wrong notion of law. She submits that the appellant however had no intention to defraud the Revenue and otherwise had a good compliance track record.

7. The Ld.AR for the department points out that the appellants had intentionally resorted to availment of DEPB/drawback benefits on the shipments imported from Bangladesh and exported by them.

8. We have perused the case records and heard the pleadings on both sides.

9. We note that the appellant has not been able to convincingly establish that the claim of drawback (or DEPB, though since paid) and availed on goods of Bangladesh origin was not intentional on their part. There is nothing on record to substantiate that the impugned lapse happened out of ignorance in as much as it is on record that the appellant maintained separate ledgers in respect of goods of Indian and Bangladeshi origin. We also note that in all fairness the department has already extended due benefit to the appellant for claim of drawback in respect of shipments where the appellant was able to substantiate its case by way of ARE-1. It is also evident from the very detailed investigations carried out by the Revenue. For instance in respect of export of jute bags exported under cover of Shipping Bills No.7396435 dated 02.02.2012 while it was initially ascertained that the same were procured from two Indian suppliers – J.K.Sons, Kolkata and Yucon Exports, Kolkata. However, further investigations led the officers to the finding that the two merchant suppliers J.K.Sons and Yucon Exports, Kolkata had in effect imported B-twill jute bags supplied to the appellant from Bangladesh and therefore led the department to the conclusion that exports made by the appellant under claim of aforesaid shipping bill were in actuality of Bangladesh origin and therefore not eligible for claim of drawback. Similar investigations were carried out by the department in respect of other shipments as well to arrive at the conclusion that the B-twill jute

bags exported by the appellant were actually of Bangladeshi origin. This being the case it is obvious that the declaration as appended by the appellant at the time of exports on the export documents that the goods were of Indian origin would certainly not hold good and availment of drawback on third country origin goods is not permissible. Therefore the argument that the lapse was unintentional cannot be justified and holds no merit. We also note as brought out during the course of investigations that the appellants were regular importers of jute yarn, Benola bags, Hessian cloth etc. from Bangladesh and would negotiate directly with the suppliers paying nil rate of Basic Customs duty at the time of import (by virtue of the SAFTA agreement) and were required to pay only 4% CVD, which was later on refunded to them. We find that the Ld.Commissioner has recorded a detailed finding and dwelt into the outcome of the investigations consignment wise to arrive at the country of origin and the number of bags in each shipment that were found to be of Bangladeshi origin and not of Indian origin. The following table summarizes the said details and also indicates the amount of drawback availed on the said goods as well as the amount of ineligible drawback contained therein :

Consignment wise position of jute bags of Bangladeshi origin exported

(amount in Rs.)

Sl NO.	Shipping Bill No. & date	Quantity of jute bags exported (pcs)	FOB value of exported goods	Amount of Drawback availed	Quantity of jute bags of Bangladesh origin (pcs)	Amount of in-admissible drawback
1	5643181 dt. 29.07.2010	99000	4182550	338787	99000	338787
2	5643492 dt. 30.07.2010	99000	4182550	338787	99000	338787
3	5657631 dt. 27.09.2010	79200	3681776	250361	79200	250361
4	5662115 dt. 13.10.2010	39600	2054456 (2038892)	139703	39300	138644
5	1924204 dt. 04.12.2010	84000	4177661 (1303032)	284081	26200	88606
6	2053628 dt. 22.12.2010	86400	4313411	293312	86400	293312
7	2071057 dt. 24.12.2010	64800	3381668 (981101)	229954	18800	66715
8	2515258 dt. 14.02.2011	64800	3366721 (1226151)	228937	23600	83378
9	5613794 dt. 27.09.11	39600	1790329	121783	39600	121783
10	5631798 dt. 28.09.11	19800	895465	60892	19800	60892
11	6430925 dt. 28.11.11	19800	997805	63859	19800	63859
12	6516825 dt. 03.12.11	63000	3238515	207265	63000	207265
13	7396435 dt. 02.02.12	104100	5049421	323163	104100	323163
14	7591647 dt. 15.02.12	104400	5066464	324254	104400	324254
15	3497428 dt. 15.01.13	105000	5220758	334128	105000	334128
	TOTAL	10,72,500	5,15,99,550 (4,41,68,220)	35,39,266	927200	30,33,934

(FOB value in the bracket denotes value proportionate to jute bags of Bangladesh origin)

10. As for the argument made, of not having been heard by the lower authority, before the issuance of the impugned order, we find that the Ld.Commissioner had recorded in his order that the appellant did not reply to the notice issued nor did they appear for personal hearing granted to them on several occasions and sought adjournment each time when a fresh date of hearing was granted. On 30.05.2017, the stated last chance for personal hearing, yet another date of personal hearing was solicited and a fresh date granted for 08.08.2017. It is seen from the details recorded in the order that the appellant continued making adjournment requests each time by two weeks. We note that the Ld.Commissioner before issuance of the order gave one last adjournment and fixed the personal hearing for 30.08.2017 clearly indicating once again that the same was the final chance and that there would be no further adjournment to which date also the appellant failed to appear before the authorities.

11. Rebutting the appellant's contention during the course of investigations that maximum time they would export jute bags procured from local manufacturers the Order-in-Original records as under:-

> *"8.3 Sri Churiwal was then shown item register of B Twill Binola 44"X26.5" – wt 2.00 lbs (907 gms) of the year 2011-12. His attention was drawn to the fact that at the end of 09.11.2011 the stock of bags as per that register was only 1800 pcs. After that all the purchases were imports from Bangladesh. From this stock two consignments were*

exported by CCCPL on 08.12.2011 under cover of invoice No.252 & 253 and another consignment was exported on 27.02.2012 under cover of invoices No.472. It was pointed out to him that these entries clearly showed that those three consignments were exported from the stock of jute bags imported from Bangladesh. Sri Churiwal submitted that during 2011-12 & 2012-13 from 10.10.2011 they had started purchasing B Twill Bgs with slightly different quality from different units of Bangladesh Jute Mills Corporation Ltd. and for that reason they had kept separate ledgers for two similar items namely B Twill Jute Bags 44" X 26.5" – wt 2.00 lbs & B Twill Binola 44"X26.5" – wt 2.00 lbs (907 gms). The three consignments which were referred were debited to 907 gms ledger instead of origin 2.00 lbs ledger."

12. Likewise it would be pertinent to reproduce the following findings from the impugned order, to rebut the appellant's contention :

"8.5 He submitted the calculation sheets showing export sales for the year 2010-11 to 2013-14. Mentioning the data given in the calculation sheet, Sri Churiwal submitted that during 2011-12 they had stock of 1025 bales of B Twill Jute bags of Indian origin and local purchase of 385 bales and direct import from Bangladesh 18694 bales. Out of total 20104 bales they had direct export sales of 1169 bales and domestic sale of 17869 bales. Relying on his own data it was pointed out to him that they had directly imported 18694 bales of B Twill jute bags from Bangladesh. Even if the entire domestic sale of 17689 bales were assumed to be supplied from the stock of imported jute bags, another 825 bales of imported goods remains extra which might have been exported by CCCPL. On being specifically questioned whether they had any evidence to prove that imported goods were sold to domestic buyers and domestically procured goods were exported, Sri Churiwal submitted that they had kept single ledger for all purchases and sale."

13. We find that the impugned order has in detail recorded in para 9, the findings of an extensive enquiry conducted in the matter to establish the source of origin of the export goods to be of Bangladeshi

origin and exported directly without job-work/value addition, at times directly and immediately after imports of the said goods. It is therefore evident that the appellant had designed an elaborate conspiracy to earn undue incentive by willfully mis-declaring the country of origin of exported B-Twill jute bags in the export documents and thereby availing drawback for which the impugned goods were not eligible to being of Bangladeshi origin and not having been worked upon before export thereof. Moreover, we also find that the appellant had devised an elaborate mechanism to camouflage the country of the export goods, resorting to mis-declaration in the matter and violating section 50 of the Customs Act by subscribing to incorrect and false information in the shipping bills.

14. In view of our discussions above, it is quite clear that the appellant is not eligible for drawback availed by them and the same is recoverable from them under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. They have not been able to demonstrate that the lapse was not deliberate. Without any justifiable reason the appellant further failed to avail of at least five opportunities of personal hearing afforded to them by the lower authority and therefore the pleading as regards not having been heard in the matter by the lower authority are of no consequence in law. Investigations carried out have clearly established at least 15 consignments of exports to be of Bangladesh origin (92700 pieces of B Twill jute bags). The drawback claimed with respect to these shipments

is certainly fraudulently availed and the appellant has enriched themselves at the cost of Government exchequer.

15. In view of the aforesaid findings we do not find any infirmity and illegality in the order of the lower authority and the same is therefore maintained.

16. The appeal filed is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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