

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Customs Appeal No.79108 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/AP/Admn./21/2018 dated 06.09.2018 passed by Commissioner of Customs (Airport & Admn.), Kolkata)

Shri Himadri Chakraborty

Michael Nagar, Green Park, Kolkata-700133

Appellant

VERSUS

Commissioner of Customs (Airport & Admn.) Kolkata

15/1 Strand Road, Kolkata-700001

Respondent

Appearance:

Shri R.N.Bandyopadhyay & Ms.Debi Parbat, both Advocates for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

WITH

(I) Cus.Appl.No.79259/2018 (AAI Cargo Logistics and Allied Services Company Limited.)

Appearance:

Shri J.M.Sharma, Consultant for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

(II) Cus.Appl.No.79261/2018 (Shri Rahul Ranjan)

Appearance:

Shri A.K.Das, Advocate for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

(III) Cus.Appl.No.79282/2018 (Shri Kislay)

Appearance:

Shri Debaditya Banerjee, Advocate for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

(IV) Cus.Appl.No.79347/2018 (Shri Girish Sharma)

Appearance:

Shri C.M.Sharma, Advocate for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

(V) Cus.Appl.No.79385/2018 (Shri Sujay Kumar Sarkar)

Appearance:

Shri Deboprasad Biswas, Advocate for the Appellant
Shri M.P.Toppo, Authorized Representative for the Respondent

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(VI) Cus.Appl.No.79295/2018 (Shri Vikash Kumar)

Appearance:

Shri H.K.Pandey, Advocate for the Appellant

Shri M.P.Toppo, Authorized Representative for the Respondent

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/AP/Admn./21/2018 dated 06.09.2018 passed by Commissioner of Customs (Airport & Admn.), Kolkata)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75532-75538/2021

DATE OF E-HEARING : 29.07.2021

DATE OF DECISION : 29.07.2021

Per P.K.Choudhary :

All these appeals are arising out of a common Order-in-Original No.KOL/CUS/COMMISSIONER/AP/Admn./21/2018 dated 06.09.2018 and for the sake of convenience, the same are being taken up together for disposal.

2. The facts of the case in brief are that the show-cause notice dated 13.02.2018 was issued to fourteen (14) persons based on intelligence inputs. On this basis, the investigations were initiated by the Special Investigation Branch (SIB), Air Cargo Complex, NSCBI Airport, Kolkata, for alleged smuggling by way of bringing in the restricted and prohibited goods in the name of normal goods and also by way of concealing and removal of such imported cargo without filing Bills of Entry from Import Shed. Five consignments were seized and the goods were examined. The show-cause notice culminated into the impugned Order-in-Original, whereby no penalties were imposed on M/s KEI Industries Ltd. having Office at D/90, Okhla Industrial Area, Phase I, New Delhi-110020 and M/s Arcturus Systems (P) Ltd. having office at No.109, 1st Floor, A-115, Vakil Chamber, Shakurpur, Delhi-110092 and the penalties were imposed on the other twelve (12) noticees. Out of twelve noticees, only seven (7) are in appeal before

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us. One of the noticee, on whom penalty was imposed, i.e. Shri Sampad Narayan Mukherjee, filed a Writ Petition before the Hon'ble High Court of Calcutta challenging the impugned order. The Hon'ble High Court decided the said Writ Petition vide W.P.No.25447 (W) of 2018 on 01.02.2019 and quashed the impugned Order-in-Original. The relevant Paragraphs of the Order passed by the Hon'ble High Court, are reproduced below :

"28. *In the facts of the present case, the order-in-original records that, the petitioner was disallowed cross-examination of any person making any statement against the petitioner under Section 108 of the Act of 1962. The order-in-original relies upon such statements as evidence. The impugned order-in-original does not record a finding that, any of the conditions specified under Sections 138B(1) of the Act of 1962 stands satisfied thereby making such statements relevant without cross-examination of such witness by the petitioner.*

29. *In such circumstances, the adjudication proceedings conducted by the adjudicating authority and resultant the impugned order-in-original stand vitiated by breach of principles of natural justice. The impugned order-in-original is quashed.*

30. *W.P. No. 25447 (W) of 2018 is disposed of by permitting the adjudicating authority to proceed with the show cause notice dated February 13, 2017 and the reply thereto, in accordance with law. The adjudicating authority will afford reasonable opportunity of cross-examination of the witnesses which the petitioner seeks to cross-examine, subject to the provisions of Section 138B of the Act of 1962. It is expected that the adjudication proceedings are disposed of as expeditiously as possible. No order as to costs."*

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3. Heard both sides through video conferencing and perused the appeal records.

4. We find that since the impugned order-in-original dated 06.09.2018, stands quashed by the Hon'ble High Court of Calcutta, it would be appropriate to remand all these appeals to the Adjudicating Authority for denovo adjudication considering the detailed observations and directions made by the Hon'ble High Court.

5. In view of the Hon'ble High Court's Order, all the appeals are disposed off by remanding back to the Ld. Adjudicating Authority for denovo adjudication.

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

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)

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