

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75474 of 2018

(Arising out of Order-in-Original No.23/COMMR/C.Ex.Kol-V/KOL/2017-18 dated 14.11.2017 passed by Commissioner, CGST & CX, Kolkata-South.)

M/s. Promising Exports Ltd.

(Crecent Towers (2nd Floor), Suit No.2A, 229, A.J.C. Bose Road, Kolkata-700020.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

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

WITH

(i) Customs Appeal No.75475 of 2018 (Shri Sushil Kumar Halwai vs. Commissioner of Customs (Port), Kolkata); (ii) Customs Appeal No.75476 of 2018 (M/s. Precision Polyplast Pvt.Ltd. vs. Commissioner of Customs (Port), Kolkata); (iii) Customs Appeal No.75477 of 2018 (Shri Shrawan Kumar Agarwal vs. Commissioner of Customs (Port), Kolkata);

(Arising out of Order-in-Original No.23/COMMR/C.Ex.Kol-V/KOL/2017-18 dated 14.11.2017 passed by Commissioner, CGST & CX, Kolkata-South.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri S. Chakraborty, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75482-75485/2025

DATE OF HEARING : 25.02.2025

DATE OF DECISION : 25.02.2025

Per : ASHOK JINDAL :

The appellants are in appeal against the impugned order on the ground that there is a violation of the principles of natural justice by not

allowing cross-examination of the persons whose opinion/statements have been relied by the adjudicating authority.

2. The facts of the case are that it is the case of over-valuation of export goods by the appellants, therefore, on the basis of DRI investigation, a case has been booked against the appellants for over-valuation of the export goods to claim more duty drawback. During the course of investigation, various statements have been recorded and expert opinion was also obtained. On the basis of statement of the job-worker as well as the expert opinion given by the industry people, it was alleged that appellants have overvalued their goods. Consequently, the proceedings were initiated and the matter was adjudicated by not allowing cross-examination of the persons for whom the appellants made request in reply to the show cause notice. Against the said order, the appellants are before us.

3. The Ld.Counsel for the appellant submits that as show cause notice has been issued to them in the year 2009 and adjudication took place in 2017, therefore, adjudication order is bad in law. He further submitted that in reply to the show cause notice the appellant sought cross-examination of the job-worker as well as the persons who have given expert opinion for valuation of the goods in question, but the same was denied. Therefore, there is a violation of principles of natural justice and the opinion was given only on eye estimation basis which is not acceptable and the higher percentage of wastage could not be considered on the basis of eye estimation, therefore, it is prayed that the impugned order is to be set aside.

4. On the other hand, the Ld.AR for the department reiterated the findings of the impugned order.

5. Heard the parties.

6. Considering the fact that appellant has not raised the grounds that adjudication is bad in law and as show cause notice has been issued in the year 2009 and adjudication took place in 2017, therefore, we are not impressed with the grounds raised by the Ld.Counsel during the course of the argument.

7. Further, we find that in this case the appellant sought cross-examination of the job-worker as well as the persons whose opinion has been relied by the adjudicating authority which is very much required for proper adjudication of the case and the same has been denied to the appellant. Therefore, it is a case of violation of principles of natural justice.

8. Accordingly, we set aside the impugned order with the direction to the adjudicating authority to allow cross-examination of job-worker as well as the expert opinion relied by the adjudicating authority and to pass an appropriate order in accordance with law after giving an opportunity of hearing to the appellant to present their case keeping all issues open.

Appeals are disposed of by way of remand.

(Dictated and pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)