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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75408 of 2023

(Arising out of Order-In-Appeal Nos. KOL/CUS(PORT)/KS/221/2023 dated 24.03.2023 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Ather-Perwaize
(M/s A & A Incorporated, 4B/2,
Topsia, 2nd Lane, Kolkata-700039)

Appellant

VERSUS

Commr. of Customs (Port), Kolkata
(15/1, Strand Road, 700001)

Respondent

APPEARANCE :
Shri Rishi Raju, Advocate for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR , MEMBER (JUDICIAL)

FINAL ORDER NO.75984/2025

Date of Hearing : 17th April 2025
Date of Pronouncement : 24.04.2025

[ORDER] PER R. MURALIDHAR

The appellant has exported the goods during the period 2004-2008 under 18 Shipping Bills. They were carrying on their business from 12/A, Anjuman Road, Kolkata-700014 which was a rented premises. Subsequently on 2/8/2009, the appellant surrendered their tenancy and moved to another place. They have also cancelled their Import Export Licence No. 0200013637 which was obtained at their old address.

2. The Department issued notice dated 22/06/2011 under Rule 16A of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 on the ground that the export realisations were not reflected in RBI's records. This notice was addressed to the old office address of the appellant. Hence, the same did not reach the appellant. Subsequently One ex-partie order-in-Original was passed on 30/05/2012 confirming demand of Rs. 8,88,737/-. Even this OIO was sent by the Adjudicating

Authority to the old address. The appellant came to know about the recovery notice only because of their Bank Current Account bearing no. 0084050073794 was frozen and the amount of 8,88,737/- was deducted on 30/11/2019 by the bank. The same was paid to the Commissioner of Customs. After this, they have made several correspondence and finally on 03/02/2021, they have received a copy of Order-In-Original No. KOL/CUS/AC/707(DBK)/2012 dated 29/05/12 along with copy of the Detention Order dated 26/9/2012.

3. Based on this communication dated 03/02/2021, the appellant has filed an appeal before Commissioner (Appeals) challenging the OIO dated 29/05/2012. The Commissioner (Appeals) granted Personal Hearing on 05/12/2022. On 24/03/2023, the impugned OIA No. KOL/CUS(PORT)/KS/221/2023 dated 24/3/2023, was passed by the Commissioner (Appeals) wherein relying on various case laws, he dismissed the appeal on account of the appeal being filed belatedly after many years whereas the appeal should have been filed within 60 days plus condonable period of 30 days from the date of OIO i.e. 29/5/2012. Being aggrieved, the appellant is before the Tribunal.

4. The Learned Counsel appearing on behalf of the appellant takes me through the chronological event as per the following Table:-

Date	**Event**	**Pg. No. of Appeal Paperbook**
2004-2008	Period during which export consignments were made, for which foreign exchange was allegedly not realized. 18 shipping bills are mentioned from 2004 to 2008.	72, 230
02.08.2009	Appellant surrendered his tenancy at old address (12/A, Anjuman Road, Kolkata - 700014)	29
04.08.2009	Appellant informed the Income Tax Officer with regard to change in office address from 12/A, Anjuman Road, Kolkata - 700014 to 72, RAFI AHMED KIDWAI ROAD, KOLKATA - 700 016	30
September 2009	Appellant cancelled his Import Export License bearing no. 0200013637 which had registered address at 12/A, Anjuman Road, Kolkata – 700 014 ("old address")	28
22.06.2011	Demand notice issued to M/s. A & A Incorporated under Rule 16A of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 for realization of Rs. 8,88,737/-. The said notice was sent to the old office address of the Appellant.	Referred in page 72
18.01.2012	Personal hearing letters allegedly sent to the appellant, but appellant failed to attend as it was sent to old office address, and not received by the Appellant.	Referred in page 72
29.05.2012	Order-in-Original No. KOL/CUS/AC/707(DBK)/2012	70-72

	passed by Assistant Commissioner of Customs demanding payment of Rs. 8,88,737/- (drawback amount) on the grounds that foreign exchange was not realized against export Shipping bills. Due to change in address, the appellant had not received the copy of the order.	
26.09.2012	Detention Order dated 26.09.2012 issued under Section 142(1)(a)(b) of Customs Act, 1962	69
06.11.2012	Notice of demand sent to the appellant at the old address (12/A, Anjuman Road, Kolkata - 700014)	67, 68
30.09.2015	Notice of order to defaulter dated 30.09.2015 sent to old address (12/A, Anjuman Road, Kolkata - 700014). Notice demanded payment of Rs. 8,88,737/- within 7 days of the service of the notice.	67
29.11.2017	Notice of order to defaulter dated 29.11.2017 sent to old address (12/A, Anjuman Road, Kolkata - 700014). Notice demanded payment of Rs. 8,88,737/- within 7 days of the service of the notice.	66, 67
31.12.2018	Recovery notice sent to old address for Rs. 8,88,737/- referring to the Order-in-Original dated 29.05.2012, requiring payment within 7 days	65
December 2019	Appellant made aware that his current account bearing no. 0084050073794 in the name of A&Z International maintained with UBI, Kolkata Branch was frozen	230
29.10.2019	Order bearing F. No. S-40-60/2012 STRC (Port) dated 29.10.2019 was passed, based on which the bank account of the appellant was frozen	31, 58
30.11.2019	Appellant was made aware that a sum of Rs. 8,88,737 was deducted from the account and paid to the Commissioner of Customs	58
06.12.2019	Appellant vide letter requests Assistant Commissioner to de-freeze the account and provide copy of the recovery order and order in original	31
12.12.2019	Response from Assistant Commissioner of Customs stating that recovery action under Section 142(1)(e)(ii) of Customs Act has already been initiated against the appellant and a letter of demand had been forwarded previously	64
14.07.2020	Letter from Federal Bank, New Market Branch, Kolkata informing that payments were received against the shipping bills in question	230
29.06.2020	Appellant vide letter requests Deputy Commissioner to de-freeze the account and provide copy of the recovery order and order in original, explaining that they have received all payments against export consignments	32, 230
05.10.2020	Appellant wrote to Customs authorities requesting details of order dated 29.10.2019	229
12.11.2020	Appellant files a Right to Information Application seeking information about order F. No. S-40-60/2012 STRC (Port) dated 29.10.2019 and previous orders	58
02.12.2020	Appellant was informed for payment of additional fees under RTI	66
10.12.2020	Appellant submitted additional fees for RTI application via postal orders	60
07.01.2021	Appellant was communicated the following orders pursuant to his RTI application: i. Notice of order to defaulter dated 29.11.2017 sent to old address ii. Notice of order to defaulter dated 30.09.2015 sent to old address iii. Notice of demand dated 06.11.2012 sent to old address	67

03.02.2021	Appellant received the copy of the order-in-original bearing no. KOL/CUS/AC/707(DBK)/2012 dated 29.05.2012 along with the Detention Order dated 26.09.2012	70
22.03.2021	Appeal filed before the Commissioner (Appeals) challenging the Order-in-Original dated 29.05.2012	18
05.12.2022	Personal hearing was attended by Shri S.C. Katho, consultant on behalf of the appellant	-
24.03.2023	Order-in-Appeal bearing no. KOL/CUS(PORT)/KS/221/2023 dated 24.03.2023 passed by Commissioner of Customs (Appeals), Kolkata, rejecting the appeal as time-barred on the following grounds: - The Commissioner observed that there was inordinate delay of more than 9 years in filing the appeal, and found no merit in appellant's contention about not receiving communications due to change of address. - It was held that the Appellant failed to produce evidence that change of address was communicated to the department; - The department had sent numerous letters to appellant's registered address; - The Appellant's action does not seem to be bonafide as they informed the department of their new address only after a cheque was dishonored and their bank account was frozen.	2-4, 13
23.06.2023	Present appeal filed before the Customs, Excise and Service Tax Appellate Tribunal	-

5. He submits that the appellant had exported the goods during the period 2004-2008 and subsequently they also surrendered their Import Export Licence and vacated rented premises. Since there was no litigation with the Department, they did not inform the Revenue about the change of their address. To show their bonafides, he takes me through the communication addressed by them to the Income Tax department about the change of their address.

6. The Learned Counsel submits that the demand notice dated 22/6/2011 was addressed to the old office's address of the appellant. Even, the Personal Hearing letters were sent to that address. Hence, they were not aware of the proceedings being initiated by the Department. Similarly, OIO dated 29/5/2012 was also sent to the old address. Because of change of address, the appellant was not aware of the confirmed demand. The appellant submits that after coming to know about the freezing of their current account of their bank on 06/12/2019, they have written a letter to the Adjudicating Authority

stating that they were not aware of the details of confirmed demand and sought a copy of the Detention Order dated 29/10/2019. The Department sent their reply on 12.12.2019. These documents are extracted below:-

31

A & A Incorporated

Office 48/2 Topsia 2nd Lane
(Near Topsia Post Office). Ph
Regd Off 12/A Anjuman Road
Ph 284 4486

Date

MANUFACTURERS & EXPORTERS OF LEATHER GOODS

018251

To
The Assistant Commissioner of Customs,
Special Tax Recovery Cell (Port),
Custom House,
15/1, Strand Road,
Kolkata – 700 001.

06/12/19

Sir,

In the matter of:
A & A Incorporated,
48/2, Topsia 2nd Lane, Kolkata – 700039
(Previously 12A, Anjuman Road, Kolkata – 700014)

A N D

In the matter of:
Freezing of Bank A/c No. 0084050073794 lying
with United Bank of India, Kolkata Main Branch

Please be noted that during dealing with the concerned Bank, I came to know that my above-mentioned Bank Account has been already frozen by your order under F. No. S-40-60/2012 STRC (Port) dated 29.10.2019, though unfortunately I have been not yet communicated about the matter, rather I have never been show caused in the matter.

Under the circumstances, you are earnestly requested to please serve me the copy of your said order to my present address i.e. 48/2, Topsia 2nd Lane, Kolkata – 700 039 at your earliest, so that I could proceed in the matter.

Thanking you in anticipation,

Yours faithfully

A & A INCORPORATED

Proprietor

6 4

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भारत सरकार
GOVERNMENT OF INDIA
सीमा शुल्क प्रधान आयुक्त का कार्यालय (पत्तन)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (PORT)
सीमा शुल्क सदन, 15/1 स्ट्रैण्ड रोड, कोलकाता– 700001
CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA- 700001
Email id *portstrc@gmail.com*

F.No S 40-60/2012 STRC (Port) **Dated: 12.12.2019**

To
Ather Perwaize
M/s A&A Incorporated
4B/2, Topsia 2nd Lane,
Kolkata-700039

Gentleman,

Sub : Recovery of govt dues amounting to Rs.8,88,737/- along with applicable interest recoverable from M/s A&A Incorporated (IEC-0200013637) -reg.

Please refer to your letter dated 06.12.2019 (**Sevottam Receipt Sl. No. 018251**) on the above mentioned subject.

Since, recovery action under section **142(1)(c) (ii)** of the **Customs Act, 1962** *read with* **Customs (Attachment of Property of Defaulters for Recovery of Customs Dues) Rule, 1995** has already been initiated against you and a letter of demand (in **Appendix-II**) has been forwarded to you time to time. *(Copies of the same are being enclosed).* Thus, non- communication of demand, as pointed out in your letter, does not arise.

You are, again, request to pay the aforesaid outstanding within **07 days** by way of Demand Draft / Pay Order payable to **RBI A/c COMMISSIONER OF CUSTOMS, KOLKATA**.

12/12/19

(Ashoke Kumar Aich)
Assistant Commissioner of Customs
Special Tax Recovery Cell (Port)

O/c

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS (PORT)
CUSTOM HOUSE,15/1, STRAND ROAD, KOLKATA - 700 001.

F.No S 40-60/2012 STRC (Port)   Dated : 31 .12.2018

To,
M/s A & A Incorporated,
12/A, Anjuman Road,
Kolkata- 700 014.

Gentleman,

Sub: Recovery of amount on Government dues of Rs. 8,88,737/- from M/s A & A Incorporated -reg.

Please refer to **Order-In-Order No. Kol/Cus/AC/70(DBK)/2012 dated 29.05.2012**, whereby you are ordered to pay of Rs. **Rs. 8,88,737/-** (Rupees Eight Lakh Eighty Eight Thousand Seven Hundred and Thirty Seven only).

Now, you are hereby required to pay the aforesaid amount within **7(Seven)** days from the date of service of this notice.

You are also informed that in case of default, steps would be taken to realize the amount in accordance with the provisions of the Customs (Attachment of Property of Defaulters for Recovery of Customs Dues) Rule, 1995.

In addition to the amount aforesaid, you will also be liable for:-

a) Such **interest** as is payable in accordance with the Notification No. 31/95-CUS(NT) dated 26.05.1995 and subsequent notification in supersession of the said notification for the period commencing immediately after the said date.

b) All cost charges and expenses incurred in respect of the service of this notice and of warrants and other processes and of all other proceedings taken for realizing the arrears.

31/12/18
(Debasis Majumdar)
Asst. Commissioner of Customs
Special Tax Recovery Cell (Port)
Custom House: Kolkata.

7. In response to the same, the Assistant Commissioner has replied vide letter dated 12/12/2019 and enclosed the copy of their earlier recovery letter dated 31/12/2018 [extracted above]. Subsequently, the appellant has filed one RTI application on 17/11/2020, seeking the full details of the demand under which the amount was frozen. Finally, on 03/02/2021, the reply to RTI was received along with a copy of the OIO dated 29/5/2012, copies of the same are extracted below:-

70 Annexure-12

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE, 15/1, STRAND ROAD, KOLKATA-1
Email- dcdbk-port-cuskol@gov.in

F.No S 34 M -29/2011 DBK Date- 03.02.2021
RTI/Kol/Cus/Port-9 dt. 04/2/2021

To,
Sri Ather Perwaize
A & Z International 4B/2
Topsia 2nd Lane,
Kolkata 700039.

Sub:- Request for Information under RTI Act-reg.

Gentleman,

Please refer to your application dated January 2021 regarding the above mentioned subject.

As sought by you, the photocopies of the Order in original no KOL/CUS/AC/707 (DBK)/2012 dated 29.05.2012 and Detention order dated 26.9.2012 under section 142 (1)(a)(b) of the Customs Act 1962 is attached herewith.

If you are aggrieved by the decision of the above information, you may prefer an appeal under section 19 (1) of the Right to Information Act 2005 within 30 (thirty) days of receipt of the above information to Sri Basant Kumar, Joint Commissioner of Customs (First appellate authority), Custom House, 15/1 strand Road, Kolkata-1.

3/2/2021

(Kaushal Kumar Mishra)
Deputy Commissioner of Customs (Port).
Drawback Section, Custom House, Kolkata

Encl: As above
Copy: - DC, RTI Cell (Port), Custom House, Kolkata for allotment of running no.

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GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE : KOLKATA.

Order No.

File No. S3MM- 29 |11 DBK
KOL/CUS/AC/707 (DBK)2012
dt - 29.5.12

Date of Order.

From:

Asstt. Commissioner of Customs,
For Drawback Department,
Custom House : Kolkata.

Date of issue.
30/5/12

ORDER – IN – ORIGINAL

1. THIS COPY IS GRANTED FREE OF CHARGE FOR THE PRIVATE USE OF THE PERSON TO WHOM IT IS ISSUED.

2. ANY APPEAL AGAINST THIS ORDER LIES TO THE COMMISSIONER OF CUSTOMS (APPEAL) KOLKATA, 15/1, STRAND ROAD, KOLKATA – 700 001 UNDER SECTION 126 (I) OF THE CUSTOMS ACT 1962 WITHIN SIXTY DAYS FROM THE DATE OF COMMUNICATION OF THIS ORDER. THE APPEAL SHOULD BE IN DUPLICATE AND SHOULD BE FILLED IN FORM C.A.(I) APPENDED TO THE CUSTOMS (APPEAL) RULES 1982. THE APPEAL SHOULD BEAR A COURT FEE STAMP OF 200 PAISE ONLY AND SHOULD ACCOMPANIED BY THIS DECISION OF A COPY THEREOF. IF A COPY OF THIS DECISION IS ENCLOSED, IT SHOULD ALSO BEAR A COURT FEE STAMP OF 200 PAISE ONLY PRESCRIBED UNDER SCHEDULE (I)-ITEM, 6 OF THE COURT FEE ACT OF 1970.

3. ANY PERSON DESIROUS OF APPEALING AGAINST THIS DECISION OR ORDER SHALL PENDING THE APPEAL DEPOSIT THE DUTY IN TERMS OF THIS ORDER AS LAID DOWN UNDER SECTION 129 OF THE C.A. 1962.

No. S34M- 29/2011 DBK

Subject: Non-realization of Export Proceeds against Shipping Bill No.
1. 5182429 dt. 14.9.04 2. 5192571 dt. 02.11.04 3. 5527632
4.5209108 dt. 20.1.05 5. 5298156 dt. 06.04.06 6.5304327
7. 5334228 dt. 18.9.06 8. 5315223 dt. 28.6.06 9. 5347730
10.5390793 dt. 15.6.07 11. 5364861 dt. 15.2.07 12.5370042
13. 5373447 dt. 28.3.07 14. 5379838 dt. 26.4.07 15. 5466259
16. 5491903 dt. 1108.08 17. 516452 dt. 21.6.04 18. 5155657 dt.
Of M/s. A & A Incorporated.

On the basis of XOS statement (Statement given by the Reserve Bank of India regarding non-realization of foreign exchange of exports), a demand notice under Rule 16A of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 was issued on 22.06.2011 to M/s. A & A Incorporated, for realization of Rs.888737/-(Rupees eight lack eighty eight thousand seven hundred thirty seven only) and the said exporter was asked to pay the amount along with interest accrued thereupon.

It was also mentioned in the demand notice that if they wanted to be heard in persona they could appear before the competent authority on any working day within a period of 30 days.

However, personal hearing letters sent to them on 18.01.2012

But the said exporter failed to attend personal hearing

As per Rules 16A(2) of the Customs And Central Excise Duties Drawback Rule 1995, where the exporter does not produce such evidence of realization of export within 30 days from the date of the receipt of the notice. Assistant Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and exporter shall repay the amount so demanded within sixty days of the receipt of the said order.

ORDER

In view of the fact, that the foreign exchange has not been realized, I order confirmation of the demand of Rs. 888737/-(Rupees eight lack eighty eight thousand seven hundred thirty seven only). The demand amount along with interest accrued there upon will be recoverable from M/s A & A Incorporated.

I order accordingly.

(B. L. Meena)
Assistant Commissioner of Customs
Drawback Department
Custom House, Kolkata

To : M/s. A & A Incorporated.
12/A Anjoman Road,
Kolkata – 700046.

Copy to :) 1. Asstt. Commissioner of Customs.,
Review Cell, Custom House, Kolkata
2. Asstt. Commissioner of Customs
Adjudication Cell, Custom House, Kolkata

8. Therefore, the learned counsel submits that the date of communication of OIO should be treated 03/2/2021. Immediately on receipt of copy of OIO vide this letter dated 03/02/2021, the appellant filed their appeal on 22/3/2021 before the Commissioner (Appeals). He submits that if the date of communication of OIO is taken as 03/02/2021, the appeal would be taken as filed within the time limit of 60 days. The Commissioner (Appeals) is in error not considering 03/2/2021 as the date of communication of OIO.

9. The appellant has relied on the following case law:-

(i) Order-In-Appeal No. KOL/CUS(PORT)/KS/512/2024 dated 30/08/2024 passed in the case of M/s. Steel Authority of India Ltd. Vs. Commr. of Customs, Kolkata.

(ii) R. Ravichandran Vs. Commr. of Customs, Chennai [2021 (377) ELT 895 (Tri. Chennai)

10. Based on the above submissions, the Learned Counsel prays that the present appeal may be allowed.

11. The Learned AR reiterates the findings of the Commissioner (Appeals) and submits that non-intimation of change of address by the appellant is a negligent act on their part. It is not the case that demand notice, Orders and subsequent communication were sent to the appellant on some other address other than the address available on the records of the Department. Therefore, the appellant cannot take the stand that the OIO was not served on them. He justifies the dismissal of the appeal by the Commissioner (Appeals). He prays that the present appeal also may be dismissed.

12. Heard both sides and I have gone through all the documentary evidence placed before me.

13. Admittedly, the appellant has surrendered their tenancy of the old address 12/A, Anjuman Road, Kolkata-700014 and they have also surrendered their Import Export License No. 0200013637 in September 2009. The appellant may be correct to hold the view that they are not required to intimate the change of address to the Department since no litigations were pending at that particular point of time. In general practice any person, who vacates the tenancy premises would intimate the concerned Post Office to re-direct the communication to the new address. This is required more so in the case of any business entity who is carrying on the business from the tenancy premises. While the appellant has tried to show their bonafides by enclosing of their copy written to the Income Tax Department, they have not come out with any evidence to show that they have intimated the concerned post

office to re-direct their letters to the new office address. This is the basic requirement which the appellant has failed to fulfill. This is a gross negligence on their part which has resulted in all the communications being sent by the department to the old address.

14. Further on going through the chronological Table and the documents placed before me, I find that the appellant has sent a letter on 06/12/2019 to the Assistant Commissioner from the present address i.e. 4B/2, Topsia 2nd Lane, Kolkata-700039. In Reply Notice letter, the Assistant Commissioner vide letter dated 12/12/2019 has replied to this new address stating that recovery action has been taken and has also enclosed copy of the Recovery Letter dated 31/12/2018 wherein the details of the OIO No. KOL/CUS/AC/70(DBK)/2012 dated 29.05.2012 has been clearly given. This shows that on 12/12/2019 itself, the appellant was very well aware that OIO dated 29/5/2012 was passed against them confirming demand of Rs.8,88,737/-. However, I find that the appellant has taken nearly one year to file their RTI Application on 17/11/2020 seeking further details and copy of the OIO. Since some defects were found like non-deposit of the additional fee, wrong address in the postal order, etc., finally the RTI application was considered and copy of OIO was sent on 07/01/2021 to the appellant.

15. Therefore on factual basis, the appellant has not brought in any concrete evidence towards intimation of change of address to the relevant post office. They have also not brought in proper evidence as to why after coming to know on 12/12/2019 about the Order dated 29/5/2012, they waited for almost one year to file their RTI Application on 17/11/2020. They should have approached the Adjudicating Authority after receiving the letter dated 12/12/2019 requesting him to issue a certified copy of OIO which could have been done across a table. Therefore, the factual details discussed above do not come to the rescue the appellant.

16. Coming to the case law of Steel Authority of India cited by the appellant, it is seen that in that case, the provisionally assessed Bills of Entry were finally assessed on 09/09/2022 but they were not

communicated to the Appellant. When they were finally communicated on 20/5/2023, the Commissioner (Appeals) has held that this should be taken as a date of receipt of the finally assessed Bills of Entry. In the present case, the facts are totally different as discussed above.

17. In the cited case of R. Ravichandran Vs. Commissioner of Customs, Chennai, it is seen from Para 3.2 that the appellant had intimated the change of address to the Department. It was noted that inspite of such communication given to the department, still the OIO was posted to the old address. In the present case, as has been noted above, no communication of this kind has been made by the appellant to the Department, nor have they taken care to intimate the post office to redirect their letters to the new address.

18. In view of the above detailed discussions, I do not find any merits in the present appeal. Accordingly, I dismiss the same.

(Pronounced in the open court on 24.04.2025.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja