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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75618 of 2020
WITH
Customs Appeal No. 75619 of 2020
WITH
Customs Appeal No. 75620 of 2020
WITH
Customs Appeal No. 75621 of 2020
WITH
Customs Appeal No. 75622 of 2020
WITH
Customs Appeal No. 75623 of 2020
WITH
Customs Appeal No. 75624 of 2020
WITH
Customs Appeal No. 75625 of 2020
WITH
Customs Appeal No. 75626 of 2020
WITH
Customs Appeal No. 75627 of 2020
WITH
Customs Appeal No. 75628 of 2020
AND
Customs Appeal No. 75629 of 2020

(Arising out of Order-in-Appeal No. Kol/Cus (Port)/AKR/495-506/2020 dated 14.08.2020 passed by the Commissioner of Customs (Appeals) Kolkata 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Seafox Impex,
1300A/19, Sant Nagar,
Huda Complex,Rohtak,
Haryana-124001.

:Appellants

VERSUS

Commissioner of Customs (Appeals), Kolkata
3rd Floor, Customs House,
15/1, Strand Road,
Kolkata-700 001

:Respondents

WITH

Customs Appeal No. 75657 of 2020
WITH
Customs Appeal No. 75658 of 2020
WITH
Customs Appeal No. 75659 of 2020
WITH
Customs Appeal No. 75660 of 2020
AND
Customs Appeal No. 75661 of 2020

(Arising out of Order-in-Appeal No. Kol/Cus (Port)/AKR/523-527/2020 dated 14.08.2020 passed by the Commissioner of Customs (Appeals) Kolkata 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Seafox Impex,
1900A/19, Sant Nagar,
Huda Complex,Rohtak,
Haryana-124001.

:Appellants

VERSUS

The Principal Commissioner of Customs, Kolkata
3rd Floor, Customs House,
15/1, Strand Road,
Kolkata-700 001

:Respondents

AND

Customs Appeal No. 76357 of 2024
WITH
Customs Appeal No. 76358 of 2024
WITH
Customs Appeal No. 76359 of 2024
AND
Customs Appeal No. 76360 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus (Port)/AKR/523-527/2020 dated 14.08.2020 passed by the Commissioner of Customs (Appeals) Kolkata 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Seafox Impex,
1300A/19,Ground & 1st Floor,
Sant Nagar, Huda Complex,
Rohtak,Haryana-124001.

:Appellants

VERSUS

Commissioner of Customs (Appeals), Kolkata
3rd Floor, Customs House,
15/1, Strand Road,
Kolkata-700 001

:Respondents

APPEARANCE:

Shri Sagar Rohatgi, Advocate for the Appellant

Shri S. Chakravorty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs.76500-76520/2025

DATE OF HEARING / DECISION: 04.06.2025

Order: [PER SHRI ASHOK JINDAL]

As all the appeals are having a common issue, therefore, all are disposed of by a common order.

2. The appellant is an importer of mixed lot of Polyester knitted fabrics through various Bills of Entry and declared the values between 1.07 to 1.12 USD per kg. While assessing the said Bills of Entry, the ld. adjudicating authority sought enhancement of the value at the rate of 1.83 USD per kg. on the basis of previous assessment / declared value by the appellant for the same kind of fabric. As the goods were having a bearing of detention/demurrage charges, the appellant waived the Show Cause Notice and requested the adjudication authority to proceed with the assessment. The assessment was thereafter done under Section 17(4) of the Customs Act, 1962 and the declared value was enhanced to 1.83 USD per kg.

3. Later on, the said assessments were challenged by the appellant before the Ld. Commissioner (Appeals), who passed the impugned orders holding that as the appellant had given up the issuance of Show Cause Notice, the appellant had admitted the enhancement done by the adjudicating authority and thus, the adjudication order cannot be challenged.

4. Against those orders, the appellants are before us.

5. The Ld. Counsel appearing on behalf of the appellant submits that although the appellant had waived the issuance of the Show Cause Notice, it was the duty of the adjudicating authority to pass the order on merits and that the appellant is having every right to challenge the assessment, as held by the Hon'ble High Court of Delhi in the case of *Hanuman Prasad & Sons and ors. v. Commissioner of Customs, ICD, Patparganj in Customs Appeal No. 26/2022 and 27/2022 vide Order dated 27.11.2024.*

6. It is his submission that although the enhancement has been done under Section 17(4) of the Act, no order under Section 17(5) of the said Act has been passed and therefore, assessment at the enhanced value is illegal. Accordingly, he prays that the impugned orders are to be set aside.

7. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned orders and relied on the decision of this Tribunal in the case of *Sukhdev Export Overseas v. Commissioner of Customs (Preventive), New Delhi [2023 (384) E.L.T. 573 (Tri. - Del.)].*

8. Heard the parties and considered their submissions.

9. We find that in the impugned orders, the appeals filed by the appellant were dismissed only on the ground that as appellant had given consent for enhancement of the declared value to 1.83 USD per kg., therefore, the appellant had lost their right to appeal. The said issue has been decided by the Hon'ble Delhi High Court in the case of Hanuman Prasad & Sons (supra) wherein it has been held that even if the appellant gives consent for enhancement

of the value, the adjudicating authority is required to assess the Bill of Entry on merits, on the basis of available NIDB data and declared value of similar goods of similar type and quality during the relevant time.

10. Therefore, we do not find any merit in the impugned orders and accordingly, the same are set aside.

11. As the Ld. Commissioner (Appeals) has not examined the issue on merits, as to whether NIDB data is available for enhancement of value or the transaction value declared by the appellant, therefore, it would be in the interests of justice to remand the matter back to the Commissioner (Appeals), to decide the issue of enhancement of value on merits.

12. In the result, the appeals are disposed of, by way of remand.

(Dictated and pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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