IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1

Customs Appeal No.75688 of 2023
(Arising out of Order-in-Appeal No. KOL/CUS/Port/KS/460/2023 dated 09.06.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Pragati Tools Centre
(83A, Madan Mohan Burman Street, Kolkata-700007.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

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

APPEARANCE
Ms. Anasua Roy Karmakar, Authorized Representative for the Appellant (s)
Shri A.K.Choudhary, Authorized Representative for the Revenue

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

FINAL ORDER NO. 77358/2025

DATE OF HEARING : 20.08.2025
DATE OF DECISION : 20.08.2025

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant filed various Bills of Entry as under for clearance of imported goods with declared description of Carbide Inserts and Carbide Inserts (Recycled) of various types :-

Sl.No.	BE No.	Date
1	8226912	18.01.2017
2	8924512	17.03.2017
3	9864721	29.05.2017
4	2590485	25.07.2017
5	3280005	18.09.2017
6	4417853	15.12.2017
7	4483227	20.12.2017
8	4999558	30.01.2018
9	6229276	03.05.2018
10	6619191	01.06.2018
11	6859783	19.06.2018
12	7003921	29.06.2018
13	7247730	17.07.2018

3. The Bills of Entry No.8226912 dated 18.01.2017 and 8924512 dated 17.03.2017 were assessed provisionally enhancing the unit price to 32$/Kg. based on NIDB Data subject to submission of PD Bond and Bank Guarantee. Subsequently, Bill of Entry No.9864721 dated 29.05.2017 and 2590485 dated 25.07.2017 were also assessed by enhancing the unit price of 32$/Kg. Respective samples were forwarded to IIT, Kharagpur for testing. Thereafter remaining Bills of Entry were also enhanced to 32$/Kg. without forwarding any sample for testing. Despite several reminders to the Chairman, IIT Kharagpur, test reports were not received. Consequently in accordance to S.O. No.01/2022 dated 22.01.2020 all the Bills of Entry were finalized on enhanced value of 32$/Kg. after taking concurrence from IAD (Port). The said order was challenged by the appellant before the Ld.Commissioner(Appeals), who remanded the case back to adjudicating authority for fresh consideration and directed the department to give an opportunity to the appellant of being heard. In remand proceedings, the Adjudicating authority held that as the appellant has accepted the enhancement at the time of clearance of the goods, therefore, relying on the decision of M/s. Hanuman Prasad and Sons Hanuman Prasad and M/s. Niraj Silk Mills Niraj Silk, wherein it has been held that as the importer has given consent for enhancing, the said acceptance cannot be challenged in appeal before the Ld.Commissioner(Appeals). The said order was challenged before the Ld.Commissioner(Appeals) and the Ld.Commissioner(Appeals) affirmed the order holding that as appellant has agreed to enhancement of value @ 32$/Kg. as per the available NIDB data, therefore, relying on this Tribunal in the case of Commissioner of Customs, ICD, Patparganj v. M/s. Hanuman Prasad and Sons and Others vide order dated 20.10.2020, the appeals are not maintainable. Aggrieved from the said order, the appellant is before us.

4. Heard the parties, considered the submissions.

5. We find that the decision of this Tribunal in the case of Commissioner of Customs, ICD, Patparganj v. M/s. Hanuman Prasad

and Sons and Others has been reversed by the Hon'ble High Court and the issue involved in this matter has been settled by this Tribunal in the case of **Commr. Of Customs (Port), Kolkata v. Good Deal Impex Pvt.Ltd. (Final Order No.FO/75816/2018 dated 23.03.2018)**, wherein the enhancement was set aside, therefore, the impugned order is to be set aside.

6. We find that in the said case, the issue was examined by this Tribunal, which is in relation to import of Carbide tips and it has been observed by this Tribunal that the declared value of the goods is based on the unit price per tip mentioned in the invoice and there are different price for different types of tips. Thus the enhancement in value cannot be made which would be on weight basis. Unless the department adduces evidence of a contemporaneous imports price from a manufacturer of carbide tips for goods of the same specifications, the enhancement in value cannot be made in their case. Admittedly, in this case as the imported carbide tips of various types and the tips are having different forms, in that circumstances, the enhancement of value on the basis of contemporaneous import price is not sustainable. Consequently, relying on the decision of this Tribunal in the case of **Commr. Of Customs (Port), Kolkata v. Good Deal Impex Pvt.Ltd.** (supra), we hold that the enhancement of value without adducing evidence on record is not sustainable.

Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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