

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75086 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/157/2020 dated 09.01.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Dayan Enterprises

21, Rabindra Sarani,
Kolkata – 700 073

: Appellant

VERSUS

Commissioner of Customs (Port)

15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri S.C. Ratho, Consultant, for the Appellant

Shri T. Sulaiman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 77724 / 2025

DATE OF HEARING / DECISION: 14.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeal has been filed by M/s. Dayan Enterprises, 21, Rabindra Sarani, Kolkata – 700 073 [hereinafter referred to as the “appellant”] challenging the Order-in-Appeal No. KOL/CUS(PORT)/157/2020 dated 09.01.2020 [hereinafter referred to as the “impugned order”] passed by the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that the appellant had imported consignments of different types of decorative light from China and filed eighteen (18) Bills of Entry vide Nos. 2997740 dated 28.08.2017, 2998098 dated 28.08.2017, 3155576 dated 08.09.2017, 6330299 dated 11.08.2016, 6330360 dated 11.08.2016, 6541256 dated 30.08.2016, 6541439 dated 30.08.2016, 6626218 dated 06.09.2016, 6626220 dated 06.09.2016, 6748359 dated 16.09.2016, 6959059 dated 03.10.2016, 7082365 dated 14.10.2016, 9475540 dated 27.04.2017, 2217833 dated 23.06.2017, 2490594 dated 17.07.2017, 2490580 dated 17.07.2017, 2701109 dated 07.08.2017 and 2924736 dated 21.08.2017. The appellant declared Rs. 0.112 to 0.165/bulb for LED, Rs. 0.092 to 0.106/ bulb for Non-LED Christmas Lights.

3. On the basis of investigation initiated by Directorate of Revenue Intelligence (DRI), it was gathered by the Departmental Officials that imports of Christmas Lights have been grossly undervalued by importers all over the country and a recommendation was made to accept the value of Christmas Light with LED bulb and non-Led bulb as Rs. 0.55 per bulb and Rs. 0.30 per bulb respectively. However, since most of the importers did not agree but disputed such value, the Department resorted to provisional assessment against PD Bond backed by cash security/ bank guarantee of 20% of differential duty. Accordingly, the imported consignments were released provisionally against payment of admitted duty of Rs. 71,90,207/- and security deposit of Rs.32,10,571/-. Subsequently, the Department issued a bond enforcement notice dated 10.11.2017 proposing re-determination of value to Rs.

8,46,61,904/- and differential duty as Rs. 1,55,45,793/-.

3.1. Thereafter, the Order-in-Original No. KOL/CUS/DC/1028/Gr-VI/2018 dated 19.03.2018 came to be passed by the Ld. Deputy Commissioner of Customs, re-determining the value at Rs.8,46,61,904/- considering the value of each unit of LED bulb as Rs. 0.55/-, each unit of Non-LED bulb as Rs. 0.30/-, thereby confirming the differential duty liability as Rs. 1,55,45,793/-

3.2. The appellant approached the Id. lower appellate forum, who, vide the impugned order dated 09.01.2020, has remanded the matter to the original adjudicating authority.

3.3. Being aggrieved, the appellant has filed the instant appeal before this Tribunal.

4. During the course of hearing, the Ld. Consultant appearing on behalf of the appellant herein submitted that the Ld. Commissioner (Appeals), in paragraph 18 of the impugned order, has categorically recorded to the effect that "From the above, it is found that the Assessing officer has rejected the transaction value without any valid basis/reasons and without following the due procedure as per Section 14 and Valuation Rules, especially when there is nothing on record to suggest that the transaction value declared by the appellant was not the price actually paid for the goods when sold for export to India. Also no evidence has been produced by the respondents that any amount, over and above the invoice value was paid by the appellant to the supplier of the goods. There is also nothing on record to suggest that the buyer and seller of the goods was related or price was not for the sole

consideration for sale.” It is pointed out that having recorded so, the Id. lower appellate authority, however, failed to exercise the powers vested upon him as a quasi-judicial authority to set aside the said order. He thus submits that the Id. lower appellate authority has erred in remanding the matter back to the original adjudicating authority and in not deciding the issue before him on merits by allowing the appeal.

4.1. Further, the Ld. Consultant for the appellant draws attention to the fact that the issue in the case on hand is no longer res integra as the same has already been laid to rest in favour of the appellant by various judicial fora. In particular, reliance has been placed by him on the following judicial pronouncements rendered by the Tribunal: -

- i. *Commissioner of Customs (Port), Kolkata v. Bajaj Writing Aid [Final Order No. 77599 of 2023 dated 31.10.2023 in Customs Appeal No. 78945 of 2018 – CESTAT, Kolkata]*
- ii. *Commissioner of Customs (Port), Kolkata v. Profile Overseas [Final Order No. 77598 of 2023 dated 31.10.2023 in Customs Appeal No. 78941 of 2018 – CESTAT, Kolkata]*
- iii. *Commissioner of Customs (Port), Kolkata v. Paras Enterprises [Final Order No. 77467 of 2023 dated 09.11.2023 in Customs Appeal No. 78946 of 2018]*
- iv. *Commissioner of Customs (Port), Kolkata v. Zenith Home Appliances [Final Order No. 77542 of 2024 dated 14.11.2024 in Customs Appeal No. 76797 of 2019 – CESTAT, Kolkata]*
- v. *Commissioner of Customs (Port), Kolkata v. Prabhu Electrical Industries [Final Order No. 75543 of 2025 dated 28.02.2025 in Customs Appeal No. 76788 of 2019 – CESTAT, Kolkata]*

4.2. In view of the above, the Ld. Consultant for the appellant prays for setting aside the impugned order and allowing the appeal, on merits.

5. The Ld. Authorized Representative of the Revenue appearing before us reiterates the findings in the impugned order.

6. Heard both sides and perused the records of the case.

7. We find that in the instant case, the Ld. Commissioner (Appeals) has remanded the matter to the original adjudicating authority. However, the issue being in a narrow compass as also recurring in nature, we find that the same can be decided on merits at this stage. Accordingly, with the consent of both the sides, we take up the appeal for final disposal on the merits of the case.

7.1. On going through the records placed before us, we find that the Assessing Officer has rejected the transaction value without any valid basis/reasons and without following the due procedure as per Section 14 and Valuation Rules. There is nothing on record to suggest that the transaction value declared by the appellant was not the price actually paid for the goods when sold for export to India. Moreover, no evidence has been adduced by the Revenue to indicate that any amount, over and above the invoice value, was paid by the appellant to the supplier of the goods. There is also nothing on record to suggest that the buyer and seller of the goods were related or price was not for the sole consideration for sale. We observe that the Ld. Commissioner (Appeals), though has appreciated the above facts, has remanded the matter to the original adjudicating authority without passing an order on merits.

8. We find that identical issues pertaining to similar goods imported by various importers have already been decided by this Tribunal in a catena of decisions and thus, the issue is no more res integra, as rightly pointed out by the appellant. In the case of *Commissioner of Customs (Port), Kolkata v. Bajaj Writing Aid [Final Order No. 77599 of 2023 dated 31.10.2023 in Customs Appeal No. 78945 of 2018 – CESTAT, Kolkata]*, this Tribunal has observed as under: -

"The Departmental has filed, the Appeal against the order passed by the Commissioner of Appeals. The Respondent has imported "Christmas light" and others electrical items from China. After DRI Investigations it was felt the value is required to be enhanced. The Department adopted the NIDB data to enhance the value and revised the Customs Duty to be paid.

2. Being aggrieved the Appellant had filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) has gone through the facts and statutory provisions and has held as under:

20. I also find that in the case of Commissioner of Customs (Port), Kolkata Vs. M/s. Krishna Wax Pvt. Ltd. wherein Hon'ble CESTAT has passed the final order vide no. FO/75466-75472 dated 21.03.2018 where it is held as follows:

"6. From the record, it also appears that the assessing officer has rejected the transaction value without any valid reasons and without new procedure as per Section 14 and valuation rules especially, there is nothing on record that the appellant has imported the secondary items but the value was considered for the fresh Items. No speaking order was passed for enhancement of value. There is nothing on record to suggest that the buyers and sellers of the goods are related persons. Therefore the enhancement of the value is likely to be struck down and rightly struck down by the Commr, (Appeals)."

7. Hence we do 'not find any reason to interfere with the impugned order and the same, is hereby upheld along with reasons mentioned therein.

21. I also observe that the lower authority stated at Para 5 that as per NIDB data 1341 cases of similar goods were assessed at higher value during the period from July, 2016 to September 2017. However, the data for all those cases were not supplied to the appellant. Instead, data of only 88 cases were supplied to the appellant. Hence it is evident that the lower authority has adopted a pick and choose approach in the present case which is not the right way to adjudication. The Principal Bench of CESTAT, New Delhi In the case of M/s Margra Industries Vs. Commissioner of Central Excise, Nodia reported in 2007 (216) ELT 710 (Tri Del) has held as,

10. It is well recognized that quality and price of marble vary vastly depending upon place of occurrence. The Revenue authorities have made comparison of value without taking these aspects into account. The imports were of 'Monaco Brown', 'Diano', 'Mermer Royal Belze' etc. The prices are also varying vastly. In fact, the price of 'Monaco' imported by the appellant under Bill of Entry No. 277105 was higher than the contemporaneous Import of the same Item at Euro 315. The Revenue has accepted that value and rejected all other values. Clearly, the effort is to assess Imported goods at the higher end of the value spectrum. This is contrary to market reality as well as Valuation Rule. While market prices vary depending upon myriad factors, Rule 4 of Custom Valuation Rules specifically provides that transaction value should be the basis for the valuation of the consignment under assessment, unless the transaction value is not representing the full price for the reasons mentioned in the Rule Itself. Law does not allow a pick and choose approach Revenue's acceptance of higher prices and rejection of lower prices for assessment is clearly illegal".

The Hon'ble Supreme Court has also supported the same view in Its order reported in 2012 (275) ELT A83 (SC).

22. From the above it is found that the assessing officer has rejected transaction values without any valid basis/reasons and without following the due procedure as per section 14 and Valuation Rules, especially when there is nothing on record to suggest that the transaction value declared by the appellant was not the price actually paid for the good when sold for export to India. Also no evidence has been produced by the respondent that any amount, over and above the invoice values was paid by the appellant to the supplier of the goods. There is also nothing on record to suggest that the buyer and seller of the goods were related or price was not for the sole consideration for sale. Therefore, in these circumstances, the enhancement of assessable value is liable to be struck down and set aside and the bills of entry in the impugned appeal are to be assessed at value declared by the appellant.

23. Therefore, I have no hesitation to hold that the enhancement of values done in this case is without having any sanction of law and is thus liable to be set aside outrightly.

24. In view of above, the enhancement of values in the present case is not sustainable in the eye of law and accordingly assessment of the impugned bills of entry is ordered at the values declared at invoice value. The appeal is accordingly liable to be allowed with consequential relief."

3. After going through at the submissions of the Ld. Respondent, we find that the Department has not made any attempt to follow the procedure given under the Valuation (Determination of Value of Importers Goods) Rules 2007 and has simply adopted the NIDB data and selectively enhanced value. As discussed above, the Commissioner (Appeals), has given a detailed finding along with reasons while setting aside the Order-in-Original. We do not find any reason to interfere with the same. Accordingly, we dismiss the Appeal filed by the Revenue."

8.1. Further, in the case *Commissioner of Customs (Port), Kolkata v. Paras Enterprises* [Final Order No. 77467 of 2023 dated 09.11.2023 in Customs Appeal No. 78946 of 2018], it has been held as under: -

"2. The facts of the case are that the respondent filed Bill of Entry declaring the goods as different types of decorative lights from China on the eve of Christmas. Revenue is of the view that the value declared by the respondent is not correct, therefore, provisional assessment under section 18 of the Customs Act, 1962 was done. Later on, while finalizing the assessment of provisionally assessed Bill of Entry, the value has been enhanced on the basis of NIDB data available in respect of 1341 imports of the similar or identical goods. The said order was challenged by the respondent before the Ld. Commissioner (Appeals). The ground for challenging the order of assessment was that out of 1341 imports of identical or similar goods, only data with regard to 88 Bill of Entry were provided and remaining data was suppressed by the revenue, therefore, enhancement of value is not correct. The Ld. Commissioner (Appeals) accepted the request of the respondent and set aside the enhancement of the value of imported goods. Against the said order, revenue is before us.

3. Heard the Ld.AR for the department.

4. We find that it is a fact on record that value has been enhanced on the basis of 1341 imports of similar goods by the importers, but only data with regard to 88 imports were provided to the appellant. It is very strange why the revenue has suppressed the remaining data to justify their enhancement of the value. In that circumstances, benefit of doubt goes in favour of the respondent. Therefore, enhancement of the value of imports is not sustainable."

8.2. In *Commissioner of Customs (Port), Kolkata v. Prabhu Electrical Industries* [Final Order No. 75543 of 2025 dated 28.02.2025 in Customs Appeal No. 76788 of 2019 – CESTAT, Kolkata], this Tribunal, while referring to the case-law of *Bajaj Writing Aid (supra)*, has held that: -

"4. Heard both the parties and considered the submissions. 5. We find that the similar issue has been dealt by this Tribunal in the case of Commissioner of Customs (Port), Kolkata Vs. M/s Bajaj Writing Aid vide Final Order No.77599/2023 dated 31.10.2023 wherein this Tribunal has held as under:

.....

6. Respectfully following the ratio of the above decision of this Tribunal, we find that the enhancement of values in the present case is not sustainable in the eyes of law. Accordingly, we do not find any infirmity in the order passed by the Ld. Commissioner (Appeals). Therefore, we do not find any reason to interfere with the same. Accordingly, the impugned order is upheld."

7. In the result, the appeal filed by the Revenue is dismissed."

9. Therefore, respectfully following the ratio laid down in the above cited case-law, we hold that the enhancement of value of the impugned goods in the present case is not sustainable in the eyes of law. Consequently, we set aside the impugned order to the extent it has remanded the matter to the original adjudicating authority. Accordingly, the Order-in-Original dated 19.03.2018 also stands set aside.

10. In the result, the appeal is allowed, with consequential relief, if any, as per law.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)