

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75368 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/195/2023 dated 16.03.2023 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Texmaco Rail & Engineering Ltd.
(Belgharia, Kolkata-700056)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(Custom House, 15/1, Strand Road, Kolkata-700001)

Respondent

With

(SI No. (1)-(3) Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/205-207/2023 dated 20.03.2023 passed by Commissioner of Customs (Appeals), Kolkata)

(1) Customs Appeal No.75391 of 2023 (M/s. Texmaco Rail & Engineering Ltd. Vs. Commr. of Customs (Port), Kolkata) (2) Customs Appeal No. 75392 of 2023 (M/s. Texmaco Rail & Engineering Ltd. Vs. Commr. of Customs (Port), Kolkata) (3) Customs Appeal No. 75393 of 2023 (M/s. Texmaco Rail & Engineering Ltd. Vs. Commr. of Customs (Port), Kolkata)

APPEARANCE :

Ms. Sneha Nandi, Advocate & Ms. Aindrila Ghosh, Advocate for the Appellant
Mr. S. Chitkara & Mr. A. K. Chaudhary, Authorized Representative for the Respondent

CORAM:

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

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

FINAL ORDER NO.77747-77750/2025

Date of Hearing : 18th November 2025

Date of Decision : 18th November 2025

PER R. MURALIDHAR

The appellants have imported the goods on account of project imports. After due process, it was viewed that the imports have taken place, before the approval of the project import. Therefore, the OIOs

were passed denying the project imports benefits. Being aggrieved, the appellants filed their appeals before the Commissioner (Appeals). At the time of the filing, the appellant have not deposited any further amount as pre-deposit. They requested that the appropriated amounts may be taken as part of the pre-deposit which would be more than the required pre-deposit of 7.5% to be made before the Commissioner (Appeals). However, the Commissioner (Appeals) has taken the stand that the appellants have filed the appeals without the requisite pre-deposit. Accordingly, he has dismissed the appeals on this ground itself without going into the merits of the case.

2. The Learned Counsel appearing on behalf of the appellants submits that while filing the appeal before the Tribunal, the appellants have paid the full 10% pre-deposit of the litigated amount. Hence, she prays that the matter may be remanded to the Commissioner (Appeals) for hearing on merits.

3. We have gone through the case records. We find that in each of the OIO, the amount already paid by the appellant at the time of imports has been appropriated. In order to arrive at the pre-deposit to be made before the Commissioner (Appeals), the appropriated amount is also required to be considered so long as the appellant is litigating the entire confirmed demand. Unfortunately, the Commissioner (Appeals) has failed to do so. He has improperly interpreted the provisions and CBEC Circular to hold that the amounts appropriated in the OIOs cannot meet the 7.5% pre-deposit requirement. Based on this view, he has dismissed the appeals. We find his view to be erroneous. The appropriated amount is part of the total litigated amount. Therefore, the same is required to be considered as part of the pre-deposit amount. In these cases, we find that the appropriated amounts are more than 7.5% of the litigated amounts.

4. We also find that the appellants have provided the documentary evidence to the effect that they have paid further 10% pre-deposit at the time of filing their appeals before the Tribunal.

5. Accordingly, based on the above factual details, we hold that the appellant has fulfilled the pre-deposit condition. We remand the matter to the Commissioner (Appeals) to decide the matter on merits. Since the appeal has been pending for more than 5 years, the Commissioner (Appeals) is directed to decide the issue within four months from the date of receipt of this order.

(Dictated and pronounced in the open court.)

**Sd/-
(R. Muralidhar)
Member (Judicial)**

**Sd/-
(K. Anpazhakan)
Member (Technical)**

Pooja