IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 2
Customs Appeal No. 76024 of 2023

(Arising out of Order-in-Original No.5/CUS/CC(P)/WB/2021-22 dated 31.03.2022 passed by Commissioner of Customs (Preventive),Kolkata)

Commissioner of Customs(Prev), Kolkata **: Appellant**
15/1, Strand Road, Kolkata-700 001.

VERSUS

Shri Anil Industries,
Plot No. 344, Chikhali Layout, Kalamana, Nagpur, Maharashtra-440008. **: Respondent**

With

Customs Appeal No. 76025 of 2023

Commissioner of Customs(Prev), Kolkata **: Appellant**
15/1, Strand Road, Kolkata-700 001.

VERSUS

Shri Vijay Sajnani,
House No. 9-D, SambhajiKasar Road, Maskasath, Itwari, Nagpur, Maharashtra-440002. **: Respondent**

With

Customs Appeal No. 76026 of 2023

Commissioner of Customs(Prev), Kolkata **: Appellant**
15/1, Strand Road, Kolkata-700 001.

VERSUS

Shri Narendra Lodaya,
Director of M/s. Pt. Gajamukha-13, Mahavirdham, Opp. Municipal Hospital, Dr. R.P.Road, Mumbai(W), Mumbai-400080. **: Respondent**

APPEARANCE:

Shri Tariq Sulaiman,Authorized Representativefor the Appellant

For Sl. No. 17 & 18 Shri B.K.Singh, Advocate & for Sl. No. 19. None, for the Respondent

CORAM:

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

FINAL ORDER NO. 75577-75579/ 2026

DATE OF HEARING:11.05.2026

Order : [Per Shri R.Muralidhar]

The Revenue is agitated by the dropping of the proceedings by the Adjudicating Authority when the

matter was placed before him as per the directions of the Hon'ble High Court.Since the issue is common and arises out of the common OIO, we have taken up all the present appeals together for disposal.

2. The Ld AR representing the appellant Revenue, reiterates the grounds taken by them in their Appeal paper book. He submits that the Adjudicating authority erred in dropping the demand and prays that the present Appeals may be allowed.

3. On going through the detailed Order in Original passed by the Adjudicating Authority we find that he has held that the Revenue could not produce the person for cross-examination as was directed by the Hon'ble High Court. The Adjudicating Authority at Para 79 of the O-I-O has given the following findings:

> "*79.0. I find that certain material facts are within the knowledge of key witnesses Shri Narendra Lodaya and Shri Dhaval Lapasiya and they both are neither attending personal hearing nor offering themselves for getting cross examined by notices, inspite of best efforts of investigating agency as detailed above. It is case similar to case where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. In other words, if key witnesses abstain themselves from entering the witness box, it would give rise in an inference adverse against them. Had these key witnesses been actually*

keen to complete their evidence, they would have offered themselves for cross examination by re-opening and recalling their evidence. Their conduct clearly shows that they are not very keen in doing so. In such an event the evidence of these key witnesses may not remain on record. As per judgement dated 01.3.2022 of Hon'ble High Court (Kol) in WPA No. 1804 of 2022 filed by Shri Deepak Sajnani, I have no option but to decide that evidences/statements of Shri Narendra Lodaya and Shri Dhaval Lapasiya cannot be relied upon. As per Article 14 of Indian Constitution, which states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". i.e. ratio of above mentioned judgements/findings need to be applied equally to all notices/conoticees, who are similarly placed vis-à-vis statements of key witnesses Shri Narendra Lodaya and Shri Dhaval Lapasiya."

4. We also find from the present appeal filed by the Revenue that it is an admitted fact in the Grounds of Appeal that the Certificates of Origin issued by the Overseas country still stand as a valid document and has not been cancelled as on date. The entire case of the Revenue hinges on their allegation that the Certificates of Origin are not proper, which gets negated by the fact that even as on the date of this Hearing, these Certificates of Origin have not been cancelled by the issuing country's officials.

5. We find that an identical issue had come up before this Bench in the case of **CC (Prev), Kolkata Vs Shri Krishan Goswami**. This Bench **vide Final Order No. 77112-77114/2025 dated 29th July, 2025** has held as under:

"5. We find that the Respondents have produced the Certificate of Country of Origin issued by the Bangladesh Authorities and it has not been disputed by the Authorities and it has also not been held that the said Certificate issued by the Bangladesh Authorities for country of origin, is fake or fabricated. In that circumstances, the Ld. Adjudicating Authority has rightly dropped the proceedings against the respondents. In view of this, we do not find any infirmity in the impugned order and the same is upheld.

6. In the result, the appeals filed by the Revenue are dismissed."

6. We find that similar matter has come up before this Bench in the case of **Commissioner of Customs (Preventive), West Bengal, Kolkata vrs. RTC Overseas Pvt. Ltd**. This Bench vide **Final Order No. 76960-76965/2025** has held as under:

"2. The Ld. Counsel appearing on behalf of the Appellants submits that all the Bills of Entry were finally assessed and the same was not challenged by filing any Appeal before the Commissioner (Appeals). Further, the Appellant had filed Writ Petition before the Hon'ble High Court of Calcutta on the ground that the statements of persons, who had recorded the same, they are not allowed to be cross-examined. The Hon'ble High Court of Calcutta on the ground that the statements of persons, who had recorded the same, they are not allowed to be cross-examined. The Hon'ble High Court vide its order dated 16.12.2021 made it clear while allowing the present respondents for cross-examination held as under:

"It is clarified that if the Respondent/Adjudicating Authority concerned does not allow cross-examination of the witness in question, in the demand they will not be entitled to rely on the statements of those witnesses."

3. It is also on record in the discussion and findings of the Adjudicating Authority in the impugned order that the witnesses could not be produced for cross-examination.

4. We find that the Adjudicating Authority has given a detailed finding as to why he is dropping the proceedings. Considering all the factual details, we do not find any reason to interfere with the considered impugned order passed by the Adjudicating Authority. Therefore, we dismiss the Appeals filed by the Revenue. "

7. From the factual details discussed above, it is clear that the persons could not be produced for cross-examination and the Certificate of Origins were not held to be fraudulent by the issuing Country. Therefore, we find that the cited case laws are squarely applicable.

8. Accordingly, we dismiss the appeals filed by the Revenue.

(Dictated and pronounced in the open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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