



## ***ALO Law Office- IDT Tax / Arbitration / Litigation***

**Date: 06.05.2025**

### **CESTAT Kolkata ruled that confiscation and penalty were unjustified when ownership was already relinquished and misdeclaration wasn't proven**

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata Bench delivered a significant ruling in favour of multiple importers, including Appellants, Kritika Impex, Kushagra Shipping Agency, Ganpati Roadways, and Bhawani Cargo Movers, who were accused of misdeclaration of goods and liable for penalties and duty demand.

#### **Case Background**

- Date of Bill of Entry: 11 September 2021 (No. 5405619) and earlier on 31 August 2021 (No. 5257900)
- The importers had filed Bills of Entry based on shipping documents received from the foreign seller.
- Upon learning on 18 September 2021 that the container had been wrongly loaded, the importers promptly notified Customs and declared relinquishment of goods under Section 23 of the Customs Act, 1962.
- A 100% examination revealed the presence of white pepper and white wood powder.
- Despite relinquishing rights and disclosing the issue, the authorities issued Show Cause Notices alleging misdeclaration, invoking penalties and seeking confiscation.

#### **Tribunal's Observations & Findings**

1. **No Prior Knowledge or Intent to Misdeclare:**

- The Tribunal held that the importers had no knowledge of the wrong shipment and acted immediately and transparently upon receiving communication from the foreign exporter.

## 2. Procedural Compliance:

- The relinquishment was duly communicated before the physical examination of goods, fulfilling conditions under Section 23.

## 3. No Evidence in Past Imports:

- Revenue's reliance on a past import (Bill of Entry dated 31 August 2021) for misdeclaration was deemed unfounded, being based solely on assumption and presumption.

## 4. Customs Error in Confiscation & Duty Demand:

- The Tribunal noted that confiscation and penalty were unjustified when ownership was already relinquished and misdeclaration wasn't proven.

## 5. Benefit of Doubt and Fair Disclosure:

- Given the importers' proactive disclosure and the absence of contrary evidence, the benefit of doubt rightly went in their favour.

## Final Verdict

- The appeals were allowed with consequential relief.
- The demand of duty, confiscation of goods, and penalties imposed in respect of both Bills of Entry (dated 11.09.2021 and 31.08.2021) were set aside in full.

## Legal Significance

This judgment affirms that:

- Good faith disclosures and timely relinquishment of rights protect importers from unwarranted penalties.
- Customs authorities must exercise discretion and avoid penalizing importers without clear evidence of wrongdoing.
- Presumptive assumptions cannot form the basis for confiscation or duty recovery.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Kolkata**

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
EASTERN ZONAL BENCH : KOLKATA  
REGIONAL BENCH – COURT NO. 1  
Customs Appeal No. 76047 of 2023**

(Arising out of Order-in-Original No.KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs(Port),Kolkata)

**Shri Amar Agarwal** : **Appellant**  
Diamond heritage, 12<sup>th</sup> Floor, Suit No. 1208B, 16 Strand Road, Kolkata-700 001.

**VERSUS**

**The Commissioner of Customs(Port), Kolkata,** : **Respondent**  
15/1 Strand Road, Kolkata

With

**Customs Appeal No. 76083 of 2023**

(Arising out of Order-in-Original No.KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs(Port),Kolkata)

**Shri Ram Gopal Bhoot,** :  
4/4F, Space Town Housing Complex, VIP Road, Kolkata-700052 **Appellant**

**VERSUS**

**The Commissioner of Customs(Port), Kolkata,** :  
15/1 Strand Road, Kolkata **Respondent**

With

**Customs Appeal No. 76082 of 2023**

(Arising out of Order-in-Original No. KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs,Kolkata)

**M/s. Kritika Impex,** : **Appellant**  
4/4F, Space Town Housing Complex, VIP Road, Kolkata-700052

**VERSUS**

**The Commissioner of Customs (Port), Kolkata,** : **Respondent**  
15/1 Strand Road, Kolkata

With

**Customs Appeal No. 76048 of 2023**

(Arising out of Order-in-Original No. KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs, Kolkata)

**Kushagra Shipping Agency,** : **Appellant**  
4/4F, Space Town Housing Complex, VIP Road, Kolkata-700052

**VERSUS**

**The Commissioner of Customs, Kolkata,**  
15/1 Strand Road, Kolkata

**: Respondent**

With

**Customs Appeal No. 76095 of 2023**

(Arising out of Order-in-Original No. KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs, Kolkata)

**M/s. Bhawani Cargo Movers,**  
4, Sonarpur Road, Jain Kunj, Kolkata-700088

**: Appellant**

Versus

**Commissioner of Customs, Kolkata**  
15/1 Strand Road, Kolkata

With

**Customs Appeal No. 76096 of 2023**

(Arising out of Order-in-Original No. KOL/CUS/COMMR/PORT/GR-I/09/2023 dated 19.09.2023 passed by Commissioner of Customs, Kolkata)

**M/s. Ganpati Roadways**

(3<sup>rd</sup> Floor, Room No. 62, 161/1, Mahatma Gandhi Road,  
Kolkata-700 007.)

Versus

**Commissioner of Customs, Kolkata**

15/1, Strand Road, Kolkata

**APPEARANCE:**

Shri Sudhir Mehta, Sr. Advocate for the Appellants

Shri T.Sulaiman, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**

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

**FINAL ORDER NO. 76132-76137/ 2025**

DATE OF HEARING :23.04.2025

DATE OF DECISION: 02.05.2025

**Order : [Per Shri Ashok Jindal]**

As all the appeals are having a common issue so all are disposed by a common order.

2. The facts of the case are that the appellants on the basis of documents received a communication from the foreign seller & filed bill of Entry before arrival of the vessel being Bill of Entry No. 540 5619 dated 11<sup>th</sup> September, 2021.

3. On or about 18<sup>th</sup> September, 2021 the appellant received a communication from foreign seller that container carrying the goods were wrongly loaded by mistake and the goods are required to be recalled. The appellant sent a communication to the Deputy Commissioner of Customs on 18.09.2021 and that the foreign seller has recall the cargo and that the appellant has not taken the documents from bank and in the circumstances, the appellant would be relinquishing its right on the goods under Section 23 of the Customs Act, 1962 to recall the cargo by filing a suitable Bill of Entry.

4. The appellant sent the communication to the Custom Authorities. Bill of entry was taken out and sent to the appraising group of the Custom House and at the CFS station, the custom broker conducted 100% examination of the goods.

5. The Custom Broker was discharged from the job in view of the recall of the cargo by the foreign seller, nonetheless the Custom Broker arranged for 100% examination of goods. The goods were found to be having 50 bags of white wood powder and 650 bags of white pepper.

6. The Custom Authorities started the investigation and took several statements of the appellants. In the course of such interrogation, the

appellant explained that he was not aware of any miss-declaration or wrong shipment of the goods when it received the intimation from the foreign seller about error in shipment of the goods. The appellant also stated that the foreign seller also has recalled the cargo and sought to transship the goods back to Singapore before the cargo reached at the Ports of Discharge but it failed since the vessel had left the Port of Loading with the manifest declaration filed at Singapore after which the mistake came to the notice and there was no scope of any transshipment/stoppage and /or withholding of the container before landing of the goods at the Port of Discharge.

7. It was mandatory on the part of the shipment company to file the manifest as it could not keep or withhold the cargo in the ship from the port of discharge.

8. Though the petitioner had no knowledge about the mis declaration of the goods, nonetheless, the appellants were issued a show cause notice demanding duty and for imposing penalties by the in respect of the consignment recalled by the shipper as well as relinquished by the appellant as well.

9. It was also found that the appellant has also imported one consignment under Bill of Entry no. 5257900 dated 31.08.2021. On the basis of such investigation, a Show Cause Notice was issued on 21.10.2022 for alleging mis declaration of the goods by the appellant and consequently to demand duty and of confiscation of the goods in question and to impose penalty on the appellant.

10. The matter was adjudicated and it was held that goods found against the Bill of Entry No.

5405619 dated 11<sup>th</sup> September, 2021 are mis-declared. Consequently, duty was demanded alongwith interest and penalties on the appellants were imposed.

11. Further the past import made by the appellant was also held mis-declared. Consequently, the duty was demanded and penalties were imposed on the appellant namely, the importer, the custom broker and the transporters.

12. Aggrieved from the said order, the appellants were before us.

13. The Ld. Counsel for the appellants submit that as initially the appellant filed bill of Entry on 11<sup>th</sup> September, 2021 declaring the goods as white wood powder but on receiving communication from the foreign seller on 18<sup>th</sup> September, 2021, the appellant intimated to the department that the goods has been wrongly loaded. Therefore, the goods are required to be recalled by the foreign seller. In that circumstances, the appellant relinquished their right to claim ownership of the goods therefore, the proceedings are not sustainable.

14. It is further submitted that the past import vide bill of entry no. 5257900 dated 31<sup>st</sup> August, 2021, the allegation of mis-declaration is on the basis of assumption and presumption and in that import also, the appellant has mis-declared the goods as white wood powder. All allegations are assumption and presumption. Therefore, the goods are not liable for confiscation. Consequently, no duty and penalty can be imposed on the appellants.

15. On the other hand, the Ld. Authorized Representative is saying that on filing the bill of

entry on 14.09.2021, the intimation was sent to the customer procured for 100% examination of the goods but goods were not present and consequently on 18.09.2021 a copy was e-mailed by the importer and on 18.09.2021, they have received the said communication and appellant to relinquished the same. The said bill of entry was sent back to the concerned appraising group for further orders and the appraising group reported back the bill of entry to the said officer. After that the said office conducted 100% examination of the goods and requested the importer and the custom broker. And during the course of examination, it was found that the goods were mis-declared and the same was only after thought.

16. Therefore, the proceedings were rightly initiated against the appellant and the appellant has mis-declared the goods and the goods were liable for confiscation and penalties were imposed.

18. Heard the parties. Considered the submissions.

19. In this case the appellant filed bill of entry and intimated to the department and an e-mail from the foreign seller has received and relinquished the consignment as wrong container has been loaded by the exporter before examination of the goods. But for better appreciation of the facts, the said letter given by the foreign supplier in this regard, is extracted below:

ANNEXURE 'B'

18

PROLONG SHIPMENT

11/09/2021  
www.rkgalaxy.com  
11/09/2021

Dear Sir,

We are sorry to inform you that inadvertently warehouse labour has loaded "Black pepper" in your container, in place of "White Wood Powder TL" shipped via our Invoice No. RKGPI-KRI 3799 dt. 02.09.2021 corresponding B/L No. RKG CCU 2127973 dt. 02.09.2021.

This we have come to know from our other customer today that they have not received their order of Cargo of Black pepper. On enquiry it is found that due to labour mistake, exchange of goods happened in warehouse.

Henceforth, we direct you to return the cargo immediately at the instant material expenses, i.e. Govt. taxes, Container Rent, Port charges and other expenses, if any will be paid by us.

Please handle the cargo carefully and we are extremely sorry for this inconvenience caused to you.

We will shipped your goods soon.

Thanks & regards:

Sudharaj

**RK GALAXY PTE LTD**

1 NORTH BRIDGE ROAD

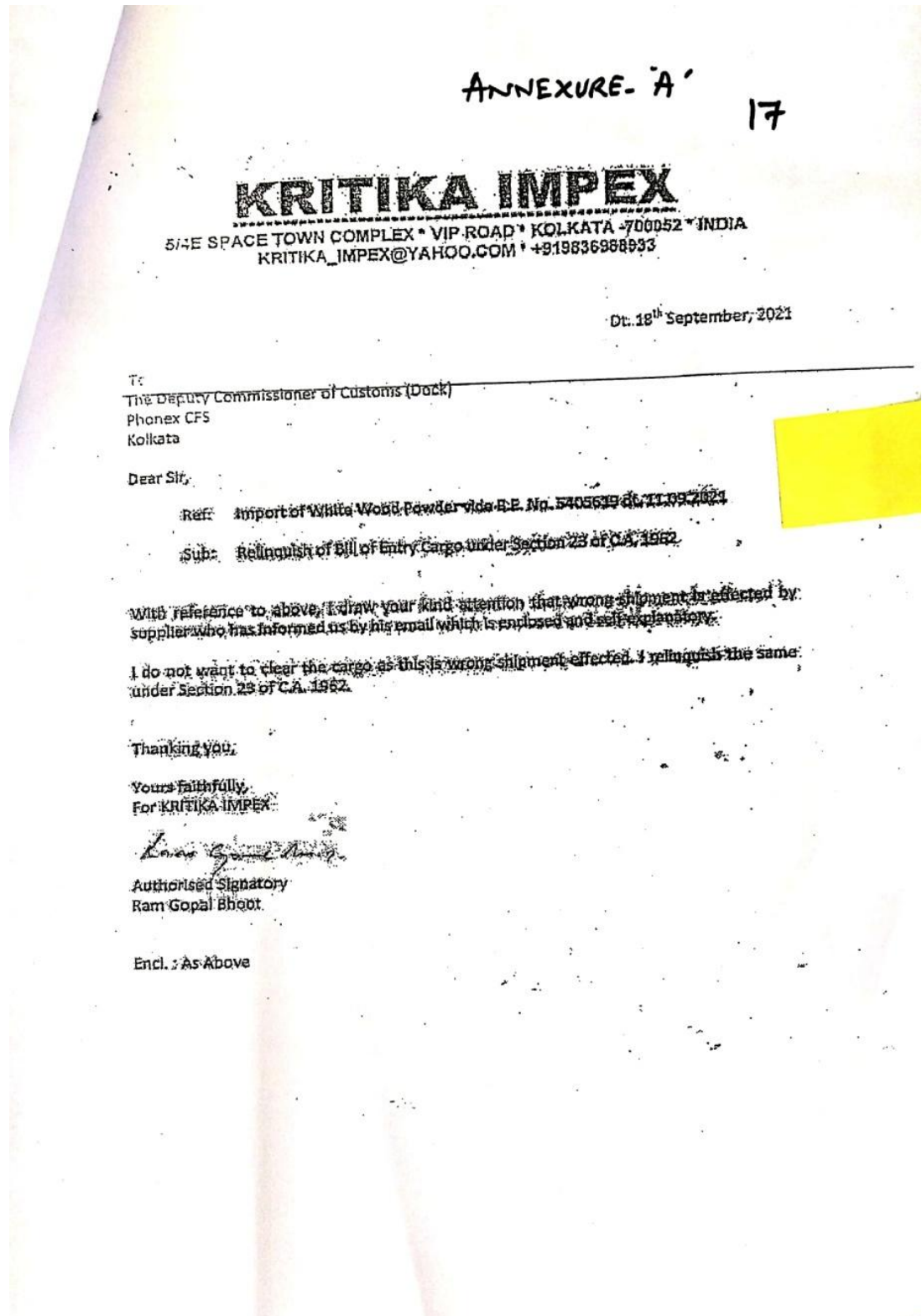
#22-08 HIGH STREET CENTRE

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20. Consequently, the appellants intimated the same to the Deputy Commissioner of Custom on the same date. The said letter is excerpted herein below:



21. The claim of the Revenue is that on the basis of the above intimation to the custom broker, 100% examination of the goods left was not present for physical examination. It was not coming out from the facts of the case that the custom broker was intimated for 100% examination and left without information. In that circumstances, it cannot be held that the appellants were having prior knowledge of mis declaration of the goods as the foreign supplier admitted his mistake and the appellant is not claiming the ownership of the said consignment.

22. In that circumstances, benefit of doubt comes in favour of the appellant. Therefore, the appellant is not at fault for mis-declaration found in bill of entry no. 5405619 dated 11<sup>th</sup> September, 2021.

23. In that circumstances, no penalties can be imposed on the appellant having act of mis declaration in bill of entry no. 5405619 dated 11<sup>th</sup> September, 2021.

24. We further take note on the fact that on the basis of mis-declaration found in the bill of entry no. 5405619 dated 11<sup>th</sup> September, 2021, it is alleged that in the past import made by the appellant vide bill of entry no. 5257900 dated 31<sup>st</sup> August, 2021, the appellant has mis declared the goods.

25. Such allegation has been made against the appellant by the Revenue without any evidence brought in record by the Revenue that the said goods covering by the Bills of Entry no. 5257900 dated 31<sup>st</sup> August, 2021 were mis declared. The said allegation is only on assumption and presumption basis.

26. We hold that the consignment covering bill of entry no. 5257900 dated 31<sup>st</sup> August, 2021 is not liable for confiscation as the mis-declaration has not been proved by the Revenue.

27. Therefore, demand of duty against the bill of entry no. 5257900 dated 31<sup>st</sup> August, 2021 is set aside and no penalty is imposable on the appellants. In that circumstances impugned order qua demand of duty against the bill of entry no. 5257900 dt. 31<sup>st</sup> August, 2021 is set aside and no redemption fine and penalties were imposable against the said bill of entry.

28. In these terms, we hold that no proceedings are sustainable against the appellants. Accordingly impugned order qua imposing demand of duty in bill of entry no. 5257900 dt. 31<sup>st</sup> August, 2021 and confiscation of the goods covering the said bill of entry and imposing penalties on the appellants, is set aside and for mis-declaration on bill of entry no. 5405619 dt. 11<sup>th</sup> September, 2021, no penalties are imposable on the appellants.

28. In these terms, the appeals are allowed with consequential relief, if any.

(Pronounced in the open court on \_02.05.2025)

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

**(K.ANPAZHAKAN)**  
MEMBER (JUDICIAL)

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