

**HIGH COURT OF TRIPURA
AGARTALA**

MFA (Customs Act) No.1 of 2025

1. Union of India, represented by the Commissioner of Customs, Office of the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, Secretariat Hills, Shillong, Meghalaya, Pin-793001.

2. Deputy Commissioner of Customs Division, Agartala, Office of the Deputy Commissioner, 5th Floor, CGST Bhawan, Near Mantribari Road, Netaji Chowmuhan, P.O. – Agartala, P.S. – West Agartala, West Tripura, Pin-799003.

.....Appellant(s);

Versus

M/s Sri Rumon Dey, S/o Sri Nepal Dey, resident of Krishnanagar, Banerjee Para (North), P.O. – Agartala, P.S. – West Agartala, District – West Tripura, Pin-799001.

.....Respondent(s);

For Appellant (s) : Mr. Paramartha Datta, Advocate.

For Respondent(s) : Mr. Sayantan Talapatra, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

ORDER

22/09/2025

This appeal has been preferred by the Revenue challenging the order dt.19.06.2023 passed in Customs Appeal No.75364 of 2016 of the CESTAT, Kolkata.

2. The brief facts are that the respondent was issued with two show cause notices both dated 05.11.2014 alleging that he has evaded additional duties of customs amounting to Rs.12,113/- and Rs.72,677/- respectively by way of undervaluation in as much as cement from the same manufacturer in

Bangladesh imported through Agartala, Land Customs Station (LCS, for short) was having a higher MRP of Rs.320/- per bag of 50 kg.

3. The Adjudicating Authority by the orders-in-original both dt. 06.10.2015, confirmed the demands and imposed equal amount of duty as penalty.

4. Challenging the same, the appellant filed an appeal before the Commissioner (Appeals), Guwahati, on the ground that the impugned Bills of Entry duly which were self-assessed, were not challenged by the department, and hence they became final.

5. But the Commissioner (Appeals), Guwahati, vide order in appeal dt. 05.02.2016 upheld both the orders-in-original and rejected the appeal filed by the appellant.

6. Challenging one of the said orders, the respondent approached the CESTAT, Kolkata Bench.

7. The CESTAT, Kolkata Bench, considered the submissions of the parties and held as under:

“6. The Appellant contended that the impugned Bills of Entry duly self-assessed were not challenged by the department and hence became final. As held by the Hon'ble Supreme Court in the case of ITC Ltd, unless the original Assessment by the assessing officer is challenged, the department cannot demand differential duty subsequently by issuing a demand. Notice.

7. The Appellant cited the decision of the Hon'ble Supreme Court in the case of I.T.C. vs. Commissioner of Central Excise, New Delhi [2019(368) ELT 216 (SC)] wherein it has been held that the department cannot demand differential duty without challenging the self-assessment made by the importer. Accordingly they contended that the impugned order is not sustainable.

8. The Ld A.R reiterated the findings in the impugned order

9. The issue involved in the present appeal is undervaluation of cement imported from Bangladesh. The department alleged that the declared MRP of the cement imported by the Appellant was much less as compared to the MRP declared on the cement imported from the same manufacturer through other ports. We observe that different lots of the impugned goods were imported by different importers through different land ports though the goods were manufactured by the same manufacturer in Bangladesh. The Appellant stated that the MRP printed on the goods imported through other ports can be different as the Place of importation itself was different and hence difference in MRP is quite natural. We observe that MRP on the same item is decided in consideration of a number of factors besides landing cost and duty element. In the instant case the goods were imported through different ports. That itself is a valid reason for the difference in price. There is no evidence to suggest that the goods so imported through different ports under different MRP were being sold at same price. Hence, the price difference cannot be attributed to suppression of the value by the Appellant. Accordingly, we hold that the demand is not sustainable.

10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd, has held as under:

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also.”

8. In this appeal, the counsel for the appellant raised two substantial questions of law which are as under:

“SUBSTANTIAL QUESTIONS OF LAW

(i) Whether CESTAT, Kolkata has wrongly interpreted the Hon'ble Apex Court's judgment of ITC Vs. Commissioner of Central Excise, Kolkata IV, 2019 (368) ELT 216 (SC)?

(ii) Whether the impugned judgment passed by the Hon'ble CESTAT is perverse and suffers from illegality in view to the Explanation to the proviso to sub-section 2 of Section 3 of the Customs Tariff Act, 1975?”

9. The judgment of the Supreme Court in ITC specifically lays down that the self-assessment of the Bills of Entry by the importer has to be challenged by the department and it should be got modified under Section 128 or under other relevant provisions of the Act., if not the same has to be accepted by the department.

10. The learned Tribunal had correctly applied the said principle to the facts of the case as it is not the case of the appellant that it had challenged at any point of time the self-assessment of the Bills of Entry by the respondent.

11. Moreover, the reasoning given in paragraph no.09 of the impugned order is worthy of acceptance and is certainly plausible and based on the knowledge of the members of the Tribunal as to how imports coming through different ports are normally treated by the department itself. The reasoning given by the Tribunal cannot be said to be perverse. So we do not find any merit in this Appeal.

12. Also since value of this Appeal is very small i.e. of Rs.73,000/-, it ought not to have been filed by the appellant.

13. Therefore, the instant appeal fails and is dismissed. Pending application(s), if any, shall stand disposed of. No costs.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

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