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**(1988) 03 CAL CK 0019**  
**In the Calcutta High Court**  
**Case No : Matter No. 674/82**

Curickshank and Co. Ltd.

APPELLANT

Vs

Appellate Collector of Customs

RESPONDENT

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**Date of Decision :** 29-03-1988

**Acts Referred:**

Customs Act, 1962 — Section 116

**Citation :** (1988) 36 ELT 246

**Hon'ble Judges :** P.C. Barooah, J

**Bench :** Single Bench

**Advocate :** Ajit Roy Mukherjee, for the Appellant; S.K. Mitter, for the Respondent

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## Judgement

P.C. Barooah, J.—By an order dated 24-8-1980 Shri P.N. Malhotra Deputy Collector of Customs, Manifest Clearance Department imposed a penalty of a sum of Rs. 3,00,000 (Rupees Three Lakhs) on the petitioners under the provisions of Section 116 of the Customs Act, 1962 in respect of the alleged short-landing of 33 pallets of Low Density Polyethene Film against line No. 26, ex; M.V. Sikiang. In coming to the conclusion the officer relied on an Outturn Report of the Calcutta Port Trust dated 23-12-1977 a copy of which is Annexure "B" to the petition.

2. Against this order the petitioner preferred an appeal and Shri Tarun Roy, the Appellate Collector of Customs by an order dated 2-9-1981 dismissed the appeal and upheld the penalty imposed by the Deputy Collector. The order of the Appellate Collector a copy of which is Annexure 1 to the petition is the subject-matter of challenge in this Rule.

3. I have heard Mr. Ajit Roy Mukherjee on behalf of the petitioner and Mr. S.K. Mitter on behalf of the respondents. It appears from the impugned order passed by the Appellate Collector, who upheld the order of the Deputy Collector that the petitioner was directed to pay the penalty on the basis of the Outturn Report dated 23-12-1977 submitted by the Calcutta Port Trust. It further appears that

although a reference was made to the Survey Report submitted by Norman Stewart & Co. On 28-6-1978 a copy of which is Annexure "X" to the petition. The Appellate Collector did not give any reason why the said Survey Report was being rejected. In my view the Outturn Report only gives one side of the picture, and to arrive at a correct conclusion as to the alleged short-landing the Survey Report should also be taken into consideration.

4. Under the circumstances, I set aside the order of the Appellate Collector as well as the order of the Deputy Collector and remand the case back to the Deputy Collector who will consider the matter afresh in accordance with law after giving the parties an opportunity of being heard. In considering the matter the Deputy Collector will also take into consideration the Survey Report regarding the alleged short-landing and if the same is rejected by him he must give his reason why he is not accepting the Survey Report. The other points urged in this writ petition are left open. If possible, the Deputy Collector should dispose of the matter within a period of eight weeks after receiving the signed copy of the operative portion of this judgment. The Rule is thus disposed of. There will be no order as to costs.

5. All parties will act on a signed copy of the operative portion of this judgment on the usual undertaking.