

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11051 of 2015-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-005-15-16 dated 21.04.2015 passed by Commissioner of CUSTOMS-KANDLA]

Century Plyboards I Ltd

...Appellant

6, Lyons Range,
Kolkatta,
West Bangal-700001

VERSUS

C.C.-Kandla

...Respondent

Custom House,
Near Balaji Temple,
Kandla,
Gujarat

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
 HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

Final ORDER NO. A/ 12044 /2023

DATE OF HEARING: 12.07.2023

DATE OF DECISION: 14.09.2023

RAJU

This appeal has been filed by M/s. Century Plyboards I Ltd., against rejection of their refund claim.

2. Learned Counsel for the appellant pointed out that Director General of Anti-Dumping (DGAD), vide final findings dated 07.01.2008, recommended the imposition of anti-dumping duty on phenol originating in or exported from Korea, Taiwan or USA. The said recommendation of DGAD was acted upon vide customs Notification No. 30/2008-Cus dated 03.03.2008. Later in respect

of phenol exported from Taiwan or USA, the DGAD issued final findings dated 09.02.2012. In the said findings the DGAD determined that during the period of investigation i.e. from January 01, 2010 to December 31, 2010, where imports of phenol, lower dumping margin with no injury and recommended withdrawal of levy of anti-dumping duty. The said determination of lower dumping margin and negative injury was done by DGAD vide its final findings No. 15/31/2010- DGAD dated 09.2.12, in the midterm review in respect of imports of Phenol. DGAD therefore, recommended revocation of the anti-dumping duty. The recommendation of DGAD was implemented by the Ministry of Finance vide Notification No. 14/2012-Customs dated 29.02.2012, by revoking the anti-dumping duty.

2.1 The appellant filed a refund claim on the ground that they had paid anti-dumping duty in excess of the actual dumping margin determined for such article. The refund claim was in respect of imports made during April 2010 to February 2012. The Learned Counsel argued that DGAD has come to the conclusion that there was lower dumping margin and negative injury and therefore the anti-dumping duty paid by them during this period was refundable to them.

2.2 Learned Counsel pointed out that the impugned order seeks to deny the benefit of refund on the ground that Notification No. 14/2012 dated 29 February, 2012, does not apply to the past period. He argued that this conclusion is based on the words "except as respects things done or omitted to be done before such suppression" appearing in Notification No. 14/2012. Learned Counsel argued that this exact expression has been examined by the Hon'ble High Court of Madras in the case of M/s. Vetcare Organics Pvt Ltd- 2011 (269) ELT 414

3. Learned AR relied on the impugned order. Learned AR also relied on the decision of Hon'ble Apex Court in the case of ITC Ltd-2019 (368) ELT 216 (SC), to assert that it was mandatory for the appellants to seek reassessment before filing refund claim.

4. We have considered rival submissions. We find that the impugned order denied the refund claim solely on the ground that the notification rescinding the anti-dumping duty does not apply to past clearances. The entire argument in the impugned order is based on the following words appearing in the said notification "except as respects things done or omitted to be done before such suppression". This exact expression has been examined by Hon'ble High Court of Madras in case of Vetcare Organics Pvt Ltd (supra), wherein following has been observed:

"12. We agree with the submission of the learned Senior Counsel appearing for the appellant/assessee in respect of his submission on the vires of the portion of Notification No. 5/2001, dated 22-1-2001, in so far as it seeks to preserve the levy imposed as well as to reserve the authority to touch cases, which were omitted to be brought under levy as violative of the provisions of anti-dumping laws as well as Article 265 of the Constitution of India. Once on factual findings, the Government found that there was no dumping of materials from the People's Republic of China in the local market and hence, the anti-dumping laws could not be invoked, the question of preserving any authority to impose duty under the anti-dumping laws, does not arise.

13. A reading of Rule 18 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury), Rules 1995 (hereinafter referred to as the "Rules") shows that once the Designated Authority arrived at a finding under Rule 17 of the Rules by a Notification in the Official Gazette, the Government could authorise imposition of anti-dumping duty as determined under Rule 17 of the Rules. Rule 18(4) of the Rules states that if the final finding of the Designated Authority is negative, i.e., there was no dumping of any materials and hence there was no basis for imposition for anti-dumping duty, the Central Government has to withdraw the provisional duty imposed within 45 days of the publication of the final finding by the Designated Authority, under Rule 17 of the Rules. A reading of the above Rules leaves no

manner of doubt that on the finding thus given by the Designated Authority, the State cannot proceed further to preserve any order or reserve any jurisdiction on an authority, to protect any act done, either provisionally or otherwise or confer authority to assume jurisdiction to make a fresh levy.

14. In this regard, Rule 19 assumes significance. It states that any provisional duty imposed under Rule 13 of the Rules and anti-dumping duty imposed under Rule 18 of the Rules, shall be on a non-discriminatory basis and applicable to all imports of such articles from whatever sources found dumped. Thus, on a reading of Rules 17, 18 and 19 of the Rules, it is clear that the assumption of authority to levy anti-dumping duty, rests on a positive finding on dumping, which is injurious to the local market, and that, once the finding is otherwise, the question of either maintaining a levy or imposing a fresh one, does not arise. In other words, the question of assuming jurisdiction in such would be contrary to not only the provisions of the Act, but would also be in violation of the Constitutional mandate. Thus going by the above-said provisions, it is clear that the latter portion of the Notification, preserving the rights of the Government in respect of the duty imposed or to impose duty in cases where it was omitted to be done before the rescission of the earlier notification under Notification No. 5/2001 dated 22-1-2001, is contrary to the Scheme of the Anti- dumping laws and violative of Articles 14 and 265 of the Constitution of India.

15. At this juncture, we feel, it would be appropriate to extract the portion of Notification No. 5/2001-Cus., dated 22-1-2001, complained of by the assessee, which reads as follows:

"Now, therefore, in exercise of powers conferred by sub-section (1), read with sub-section (5) of section 9A of the said Customs Tariff Act, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/97-Customs, dated 1st April 1997, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide G.S.R. 190(E), dated the 1st April, 1997, excepts as respects things done or omitted to be done before such rescission."

16. Given the scheme of anti-dumping laws and the facts found on the preliminary imposition made on a prima facie view, it is no doubt true that a provisional demand was made on the assessee. The said demand was challenged by the assessee. Unsuccessful before the various Authorities, the assessee filed a Review Petition before the Designated Authority. On consideration of the materials, the Designated Authority gave the findings in favour of the assessee by passing Notification No. 5/2001 dated 22-1-2001, that there was no anti-dumping. Once those findings as

regards anti- dumping remained unchallenged in any manner by the Revenue, as already pointed out, the next consequence would be applying Rule 18(4) of the Rules. instead of doing so, Notification No. 5/2001- Cus., dated 22-1-2001 travelled beyond what is contemplated under the provisions of Anti-dumping laws, not only to preserve the action taken to levy duty, but also to preserve the authority to take action in cases where there was an omission to impose duty. As already pointed out, such reservation of authority goes against the very scheme of the Anti dumping laws. In the circumstances, we have no hesitation in agreeing with the learned Senior Counsel appearing for the appellant that the levy, as such, cannot be made in the light of the findings given in Notification No. 5/2001 dated 22-1-2001.

17. In the light of the decision thus arrived at, we do not think that it is necessary for us to consider the other issues raised, particularly with reference to the compliance of the actual user licence conditions and the duty exemption scheme, vis-a-vis, the anti dumping laws. Since the entire action is based on Notification No. 5/2001 dated 22-1-2001, we feel that it is suffice that the other issues need not be gone into herein.

18. It must be noted herein that the purpose of introducing the EXIM policy is to accelerate the economic growth to derive maximum benefits from the expanding global market opportunities. In giving a stimulus to sustain the economic growth, the Government thought it fit to provide access to essential raw materials, intermediates, components, consumables and capital goods required for promoting production. The object of this policy, hence, could be achieved only through the co- ordinated efforts of all the Departments of the Government, in general. As enunciated in the Policy, given the objective as stated above, the various Wings of the Government must act with a shared vision and commitment to facilitate better export promotion. The latter portion of the Notification, which is under challenge before this Court, clearly demands the attention of the respondents to the policy of the Government, to give a full thrust to it and not to whittle it down on any assumed interest in the name of implementing the Anti-Dumping Laws. Hence the import of raw materials for export under QBAL Scheme cannot be subjected to anti-dumping duty.

19. In the light of the decision that we have taken in the writ Petition challenging the latter portion of the Notification, we allow writ Petition No. 21504 of 2001 and declare that Notification No. 5/2001-Cus., dated 22-1-2001, issued by the first respondent, in so far as it purports to save things done or omitted to be done before such rescission, is ultra vires Sections 9A, 9AA, 9B and 10 of the Customs Tariff Act, 1975, Article 265 of the Constitution of India and Rules 13, 17, 18(4) and 21(3) of the Customs Tariff (Identification Assessment and Collection of Anti-Dumping Duty

*on Dumped Articles and for Determination of Injury) Rules, 1995,
in so far as the petitioner is concerned."*

5. In view of above the impugned order cannot be sustained. The impugned order is set aside and appeal is allowed.

(Pronounced in the open Court on 14.09.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK