

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1006 of 2012

(Arising out of Order-in-Original No. 16/2011-Cus dated
31/01/2012 passed by Commissioner of Customs, Cochin)

KSE LTD

IRINJALAKUDA, TRICHUR DIST,
KERALA 680 121

Appellant(s)

VERSUS

**Commissioner of Customs
COCHIN-CUS**

NULL CUSTOM HOUSE, WILLINGDON
ISLAND
COCHIN - 682009
KERALA

Respondent(s)

APPEARANCE:

Shri Susheel Shankar, Advocate for the appellant.
Smt. D.S. Sangeetha, Addl. Commissioner(AR) for the
respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20278 / 2023

Date of Hearing: 20/02/2023

Date of Decision: 20/02/2023

Per : DR. D.M.MISRA

This appeal has been filed against the Order-in-
Original No.16/2011 dt. 31/01/2012 passed by Commissioner of
Customs, Cochin.

2. Briefly stated the facts of the present case are that the appellant had filed the Bill of Entry No.243902 dt. 20/04/2009 for clearance of the goods imported declaring the same as "Machinery for preparing Animal feeding stuff (critical equipments / machineries for 500 TPD Cattle Feed Plant)" claiming its classification under CTH 8436 1000. The Department proposed its classification under CTH 8438 8090 and the assessment order was passed accordingly. Aggrieved by the said order, they had filed appeal before this Tribunal. This Tribunal considering the amount involved is less than Rs.2.00 lakhs, not entertained the appeal. Aggrieved, they have filed appeal before the High Court of Kerala at Ernakulam. By its order dt. 11/11/2022, the Hon'ble High Court remanded the matter to this Tribunal to consider the case afresh on merit.

3. Learned advocate for the appellant submitted that the issue of classification of the imported goods relating to Bill of Entry No.234169 dt. 18/10/2008 which claimed by them under CTH 8436 1000 has been considered by the Hon'ble High Court of Kerala at Ernakulam in Appeal No.8/2017 dt. 11/11/2022. The Hon'ble High Court rejected the said classification while upholding the order of the CESTAT. He has contended that the present appeal may be decided accordingly following the said judgment.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner and submitted that the issue being now settled by the Hon'ble High Court of Kerala, the present appeal be

decided by confirming the classification as held in the impugned order.

5. We have considered the submissions advanced by both the sides and perused the records. We find that the classification of the imported goods has been claimed under CTH 8436 1000 by the appellant before the Hon'ble High Court of Kerala at Ernakulam. However, the Hon'ble High Court has rejected the said contention and upheld this Tribunal's finding that claimed classification under CTH 8436 1000 is unsustainable; the goods imported against the Bill of Entry No.234169 dt. 18/10/2008 merits classification under CTH 8479 8999. In the present case, learned Commissioner while adjudicating Bill of Entry No.243902 dt. 20/04/2009 after analyzing the goods imported observed that the same being conveying / handling equipments like silos, aeration system etc. having individual function not elsewhere specified, rightly classifiable under CTH 8438 8090 and not under 8436 1000 as claimed by the appellant. Both sides have submitted in all fairness to follow the judgment of the Hon'ble High Court of Kerala dt. 11/11/2022. Applying the ratio laid down by the Hon'ble High Court to the facts of the present case, we do not find merit in the claim of the appellant that the correct classification of aforesaid imported goods could be directed under CTH 8436 1000. On the other hand, it merits classification under CTH 8438 8090 as reasoned by the Adjudicating Authority. Consequently, the order of the learned

Commissioner is upheld and the appeal being devoid of merit is rejected.

(Order pronounced in the open court on **20/02/2023**)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...