

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No. 1403 of 2010-DB

(Arising out of Order-in-Appeal No.42/2010 dt. 22.04.2010 passed by the
Commissioner of Customs(Appeals), Cochin)

M/s. Kerala Feeds Ltd.,
Kallettumkara,
Thrissur – 680 683..

.....Appellant(s)

Versus

**The Commissioner of
Customs,**
Customs House,
Cochin – 682 009.

.....Respondent(s)

Appearance:

Mr. M. Balagopal, Advocate for the appellant.

Mr. K.A. Jathin, Deputy Commissioner(AR) for the respondent.

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Final Order No. 20653 / 2023

Date of Hearing: 27/06/2023

Date of Decision: 27/06/2023

Per : JUSTICE DILIP GUPTA

M/s. Kerala Feeds Ltd., Thrissur¹ has filed this appeal to
assail the order passed by the Commissioner of Customs (Appeals)²
holding that the adjudicating authority had correctly classified the

¹ **the appellant**

² **the Commissioner(Appeals)**

spare parts imported for the animal feed plant and the contention of the appellant that spare parts should be classified under Customs Tariff Head³ 8436 99 00 was not accepted.

2.1. Learned counsel for the appellant has placed the order passed by the Deputy Commissioner of Customs (Imports) dated 02.08.2022, on remand by the Tribunal, holding that the spare parts for animal feed plant would fall under CTH 84361000 (should be 8436 99 00). Learned counsel for the appellant has also placed number of orders passed by the Commissioner(Appeals) holding that the parts of machinery for manufacturing of animal feed would be classifiable under CTH 8436 10 00. These decisions have been rendered taking into consideration the fact that the machinery would be classifiable under CTH 8436 10 00.

2.2. Learned counsel for the appellant has also stated that the aforesaid orders passed by the Deputy Commissioner of Customs and the Commissioner(Appeals) have attained finality.

3. Learned authorised representative appearing for the Department has, however, placed reliance on a decision of the Tribunal in the case of **KSE Ltd. Vs. Commissioner of Customs, Cochin**⁴ holding that the 500 TPD cattle feed manufacturing plant should be

³. CTH

⁴. **2017(352) ELT 46 (Tri.-Bang.)**

classified under CTH 8479 89 99. This order of the Tribunal would not help the Department for the reason that the machinery in the present appeal itself was classified by the Department under CTH 8436 10 00.

4. Such being the position, when the Department itself has classified the machine under CTH 8436 10 00 and also the Deputy Commissioner and the Commissioner(Appeals) have also classified spare parts of the same machine under CTH 8436 99 00, the order passed in the present appeal cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...