

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

REGIONAL BENCH - COURT No.-2

Customs Appeal No.2941 of 2011

(Arising out of Order-in-Appeal No.86/2011 dated 17/08/2011 passed by Commissioner (Appeals) Customs, Bangalore)

M/s New Timber Industries

.....Appellant

12/137 & 19, I main road, sheshadripuram
Bangalore-560020

VERSUS

Commissioner of Customs, Mangalore

....Respondent

New Custom House, Panambur, Mangalore-10

APPEARANCE:

Shri Abhishek Misra, Advocate for the Appellant

Shri K. Vishwanath, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

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

FINAL ORDER NO.20777/2023

DATE OF HEARING : 24.07.2023

DATE OF DECISION : 03.08.2023

PER: P.A. AUGUSTIAN

Appellant is a proprietary concern doing import & supply of timber logs. As part of their routine business, they have imported teakwood and filed a Bill of Entry dated 10.07.2009. At the time of import, appellant also paid 4% additional duty amounting to ₹ 3,98,131/-. After sale of considerable part of the goods, appellant submitted a refund application for refund of 4% additional duty paid at the time of import. The refund application was filed with supporting documents in accordance with law. However, show

cause notice was issued on 09.09.2010 and thereafter Adjudication Authority only allowed sanction of refund of ₹1,35,012/- and rejected the claim of ₹ 2,63,119/-. The appellant filed an appeal before the Appellate Authority and the Appellate Authority also upheld the order issued by Adjudication Authority on the ground that the timber logs imported by the appellant was subsequently subject to process like sawing and cutting and due to that reason appellant is not eligible for the refund. Aggrieved by said order, present appeal is filed.

2. When the matter came up for hearing today, learned counsel for the appellant submitted that the observations made in the impugned order regarding the further process is factually wrong. Even if the timber was subject to any process and had resulted conversion of logs into sawn timber, no manufacturing took place and classification of the imported goods remains the same. The learned counsel further submitted that the special additional duty was introduced with effect from 02.06.1998 in order to introduce a level playing field for domestic industry and to neutralise the local tax imposed on domestic products. If the amount paid by the appellant towards local tax is not compensated by allowing refund of special additional duty paid by the appellant at the time of import, object of said notification will be vitiated. The learned council also draw our attention to large number of judgment/final orders issued by the Appellate Forum and Hon'ble High Court of Gujarat and Hon'ble High Court of Karnataka in the case of Bangalore Wood Industries Vs. Asst. Commissioner of Commercial Taxes (Assessment), Hassan & Ors.

dated 15.07.1993. The learned council further submitted that that as per the judgment of the Hon'ble High Court of Gujarat in the matter of **Commissioner, Customs and Others versus Variety Lumbers Private Limited and others** reported in **(2018) 16 Supreme Court Cases 806** similar issue was considered and Hon'ble High Court observed that if only for cutting length of the logs which were in excess of 40 feet sawing operations were carried out and after some cleaning and scaling was done timber logs of smaller pieces were sold, we do not see respondent can be stated to have breached any conditions of the exemption notification. Learned counsel for the appellant further submitted that the issue is settled by large number of orders including final order of Hon'ble CESTAT, Ahmadabad in the matter of **M/s Agarwalla Timbers Pvt Ltd Vs Commissioner of Customs, Kandla reported in 2014 (299) E.L.T 455 (Tri. Ahmd.)**. Learned counsel submitted that it is binding on the respondent and refusal to make the refund is highly arbitrary, illegal and unjustifiable. The binding nature of orders passed by the Supreme forum has been considered by the Apex court in large number of cases including **Commissioner of Central Excise, Bolpur Versus Ratan Melting & Wire Industries reported in (2008) 13 Supreme Court Cases 1** where it is held that circular of Board cannot prevail over law laid down by the court. To hold otherwise and to interpret by ignoring the judgment of the court and follow circulars of the Board is illegal and unsustainable. But to reject the refund claim, respondent has drawn a conclusion from

board circular and held that if goods are not sold in the form in which they were imported, it amounts to change of classification and appellant is not eligible for refund. Regarding claim of refund on goods which is not sold, the learned counsel fairly admits that as stated in Para 10 of the Order-In-Original, they were holding quantity of 23.36 cubic meter of goods at the time of filing the refund application and the amount of special additional duty involved in above case is Rs. 45, 563/- and the appellant is not pressing for refund of the said amount.

3. The learned D.R. appearing on the behalf of the respondent submitted that the timber logs imported by the appellant was subject to some process and due to that reason, the goods are not sold as imported and not eligible for the benefit of notification.

4. We have gone through the facts and submissions made by both the sides. It is an admitted fact that import was made by the appellant by paying the due amount of customs duty and special additional duty. Refund application was submitted only after disposal of considerable part of the goods imported by the appellant with sufficient evidence regarding payment of local tax. The dispute in the present appeal is settled by this Tribunal also in the matter of **Aravind Traders Vs C.C. Cochin-Cus having Final Order No.20403 of 2021 dated 01.07.2021**. The appellant is entitled for the refund of Rs. 2,17,556/- rejected by Adjudication Authority on the ground that said amount related to quantity of 111.54 CBM sold after processing. Thus appellant is

entitled for the refund of Rs. 2,17,556/- with interest in accordance with law. Appeal is partially allowed.

(Order pronounced in the Open Court on 03.08.2023)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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