CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 22352 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-95/2015-16 dated 31.07.2015 passed by the Commissioner of Customs (Appeals), Cochin)

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

Appellant(s)

VERSUS

M/s. Popular Timbers
XXIV/1617-D, Ground,
CPOA Building,
Indira Gandhi Road,
Willington Island,
Cochin – 682 003.

Respondent(s)

WITH

Customs Appeal No. 22190 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-16-2015-16 dated 08.06.2015 passed by the Commissioner of Customs (Appeals), Cochin)

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

Appellant(s)

VERSUS

M/s. Surabhi Woods
Near Railway Station,
Angamally,
Ernakulam – 683 572.

Respondent(s)

AND

Customs Appeal No. 22191 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-17-2015-16 dated 08.06.2015 passed by the Commissioner of Customs (Appeals), Cochin)

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

Appellant(s)

VERSUS

M/s. Surabhi Woods
Near Railway Station,
Angamally,
Ernakulam – 683 572.

Respondent(s)

APPEARANCE:

Shri K. Vishwanatha, Superintendent (AR), for the Appellant
None for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20503 - 20505 /2024

DATE OF HEARING: 11.06.2024
DATE OF DECISION: 11.06.2024

PER : R. BHAGYA DEVI

The respondents M/s. Popular Timbers and M/s. Surabhi Woods had filed refund claims of 4% Special Additional Duty (SAD) in terms of Notification No. 102/2007 dated 14.09.2007 which was rejected by the Original Authority on the ground that the respondents had not sold out the entire quantity imported. On appeal, the Commissioner (Appeals) held that the rejection of the refund claims were unsustainable as there is no finding that the documents produced by the competent authority were deficient for any reason and relying on the Final Order No.25040-25042/2013 of this Tribunal, the Commissioner (Appeals) allowed the refund. The department is in appeal against these impugned orders.

2. In the grounds of appeal, the Revenue submits that to bring a uniformity of practice throughout the country, based on the directions of the Hon'ble High Court of Kerala in WP (C) No.29872 / 2011 dated 1.12.2011 the Board issued instructions vide F.No.336/28/2011/TRU dated 26.4.2012 stipulating the conversion factor of 1 Hoppus Tonne (HPT) = 1.8027 Cubic Meter (CBM) for clearance of round logs and sanctioning of SAD refund on resale of imported logs by all Customs Formations. It is also submitted that in the instant cases, the local sale invoices did not certify under which Bill of Entry the logs were imported

and non-admissibility of CENVAT credit was also not endorsed in the invoices. It is further stated that all the imported logs have not been sold as such. Hence, the refund claims were rightly rejected by the Original Authority.

3. None appeared for the Respondents

4. Heard learned Authorised Representative for the Revenue. The Board issued instructions vide Circular F.No.336/28/2011/TRU dated 26.4.2012 stipulating the conversion factor of 1 Hoppus Tonne (HPT) = 1.8027 Cubic Meter (CBM) for clearance of round logs and sanctioning of SAD refund on resale of imported logs by all Customs Formations. The Original Authority rejected the refund claim only based on the above conversion formula of 1 Hoppus Tonne = 1.8027 CBM based on the TRU Circular as against the respondent's claim of 1.416 CBM. The Commissioner (Appeals) has rightly observed that at the time of import, the declaration of the importer that 1 HPT = 1.416 CBM was accepted and therefore, at the time of refund claim, the same cannot be rejected based on the conversion which is different from what was declared at the time of import. The Bills of Entry were filed on 14.12.2011 in respect of M/s. Popular Timbers and 2 Bills of Entry were filed on 02.01.2012 in respect of M/s. Surabhi Woods, which was much before the issuance of the Circular dated 26.4.2012. The Original Authority has rejected the refund claims stating that the quantity of logs sold is less than the quantity imported only based on the conversion factor, which cannot be accepted for the reasons discussed above. Moreover, the question of applying the Circular dated 26.4.2012 cannot be sustained in as much as the conversion factor reflected in the Circular was not applicable to these imports which were prior to the issuance of the Circular. It is also seen that a similar issue with regard to conversion based on which SAD refund was rejected has been already decided in favour of the importers, in large number of cases, by this Tribunal in E. Oriental Timbers and Ors. Vs. CC vide Final Order Nos.20671-20711/2015 dated 11.3.2015. In the present cases,

in view of the fact that the conversion factor was accepted as declared by the respondents at the time of import, the question of changing the conversion factor at the time of sanction of the refund claim cannot be sustained.

5. In view of the above, the impugned orders are upheld and the department's appeals are rejected.

(Operative portion of the order was pronounced
in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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