CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/21514/2017-SM, C/21515/2017-SM, C/21516/2017-SM, C/21517/2017-SM, C/21518/2017-SM, C/21519/2017-SM, C/21520/2017-SM, C/21521/2017-SM, C/21522/2017-SM

[Arising out of Order-in-Appeal No. 161-169/2017 dated 30/06/2017 passed by Commissioner of Customs (Appeals), BANGALORE]

The Commissioner of Customs,
New Custom House,
Mangalore.

Appellant(s)

VERSUS

M/s. Mohiudeen Saw Mills
Thumbay,
MANGALORE - 574170
KARNATAKA

Respondent(s)

Appearance:

Mr. Mathrup Sharan, AR

For the Appellant

Mrs. Rukmani Menon, Advocate
No.128, 1st Floor, 'A' Wing,
Raheja Arcade, Kormangala,
Bangalore – 560 095.

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20479-20487 / 2019

Date of Hearing: 20/06/2019
Date of Decision: 20/06/2019

Per : S.S GARG

These nine appeals have been filed by the Department against the common impugned order dated 30.06.2017 passed by the Commissioner (A) whereby the Commissioner (A) has allowed the appeal of the assessee-respondent and set aside the Order-in-Original denying refund of SAD under

Notification No. 102/2007. The issue involved in all the 9 appeals is the same and pertains to refund of SAD claimed by the respondent for different periods. The details of the refund claims and period are given herein below:

Sl. No.	Appeal No.	Amount	Period
1	C/21514/2017	Rs.47,898.50	July to August 2015
2	C/21515/2017	Rs.21,392	August 2015
3	C/21516/2017	Rs.42,202	August 2015
4	C/21517/2017	Rs.21,544	August 2015
5	C/21518/2017	Rs.57,009	September to October 2015
6	C/21519/2017	Rs. 1,46,127	September to October 2015
7	C/21520/2017	Rs. 1,42,965	November 2015 to February 2016
8	C/21521/2017	Rs. 1,37,014	January to June 2016
9	C/21522/2017	Rs.2,21,972	December 2015 to June 2016

2. Briefly the facts of the present case are that the respondent-importer imported 'Keruing Face Veneer in various size'. This material is imported for sale in India on payment of VAT. The importer is a Proprietorship concern and the Proprietor is Mr. Ahmed Hajee Mohiudeen, who is also the Proprietor of M/s. Hajee Timber Complex. The importer has been regularly filing refund applications under Notification No. 102/2007 after sale of the imported items on payment of VAT on production of all necessary documents. The objection was that the SAD for which refund was being claimed was paid by M/s. Mohiudeen Saw Mills, Thumbay, Mangalore, whereas the VAT had been paid by M/s. Mohiudeen Saw Mills and Hajee Timber Complex. The objection of the department was that entity who had paid VAT were different and therefore, the importer had failed to satisfy the conditions of the Notification. The original authority rejected the refund claims. Aggrieved by the said order, respondent filed appeals before the Commissioner (A) who set aside the Order-in-Original and allowed the refund claims. Against which, the Department has filed these appeals.

3. Heard both the parties and perused the records.

4. Learned AR for the Revenue has submitted that the order passed by the Commissioner (A) is not sustainable in law as the same has been passed without properly appreciating the provisions of KVAT Act. He further

submitted that the respondent has failed to comply with the conditions of the Notification; specifically Condition (d) and (e) of the Notification. He also submitted that the Commissioner (A) has failed to appreciate that as per KVAT Act, the registration is issued to the main unit and other business premises are added and shown as additional premises in the registration. Whereas in the present case, there are three units working under different premises with distinct addresses and if the main registration is issued to M/s. Mohiudeen Saw Mills and the other two should have been added and shown as additional premises in the registration. He further submitted that in the instant case, the registration is issued by KVAT to the unit M/s. Mohiudeen Saw Mills and Hajee Timber Complex but other two units are not included in the registration as additional business premises. He also submitted that the address of the importer is not mentioned in the registration granted by the KVAT authorities and some other address is mentioned.

5. To counter the argument of the learned AR, the learned counsel appearing for the respondent submitted that all these objections raised in the present appeal by the Revenue have been considered by the Commissioner (A) in the impugned order and the Commissioner (A) has rejected the objection raised by the Department. She further submitted that in the present case, the importer was M/s. Mohiudeen Saw Mills and the invoices for the local sales were issued by M/s. Mohiudeen Saw Mills and M/s. Hajee Timber Complex, both are sole proprietorship concern and have a common proprietor Mr. B. Ahmed Hajee Mohiudeen. She also submitted that as per the KVAT Act, one individual is entitled to only one TIN number for all businesses owned by him in the state of Karnataka and there is no provision for issuing separate TIN numbers. In fact, the registration certificate also indicated the registration under VAT, and also indicated Mr. Ahmed Hajee Mohiudeen as the proprietor of M/s. Mohiudeen Saw Mills and M/s. Hajee Timber Complex. She further submitted that there is an endorsement from the Commercial Tax Officer, Bhantwal dated 14.03.2016, which certifies that Mr. B. Ahmed Hajee Mohiudeen is the sole proprietor of M/s. Mohiudeen Saw Mills and M/s. Hajee Timber Complex registered dealer under Section 22 of

the KVAT Act, 2003, borne on the files of VSO 261, Bantwal bearing TIN No.29510061860. She further submitted that in the past on the same issue, the Department has not raised any objection and for the earlier period April 2015 to july 2015, the Commissioner (A) has passed a similar order dated 15.3.2017 bearing No.69-72/2017 on this very same ground but in those cases the department for the reasons best known to them has not filed any appeal against that order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the respondent is a proprietor of both the organization and he has been allotted one TIN number for both the concerns under VAT Act. Further, I find that the certificate issued by the VAT clearly certifies that Mr. Ahmed Hajee Mohiudeen is the proprietor of M/s. Mohiudeen Saw Mills and M/s. Hajee Timber Complex and they have been registered dealer under the Karnataka VAT. Therefore, the objection of the Department that these two concerns are separate entities is not justified. Moreover, the Commissioner (A) has dealt with this issue at length and has rejected the objection of the department. It is pertinent to reproduce the relevant findings of the Commissioner (A), which is recorded in para 12 and 13, which is reproduced herein below:

> "12. In this regard the importer has contended before the lower authorities that the importer and Hajee Timber Complex are two different entities. They have produced their balance sheet and IT returns for both the entities. Further they have submitted that both the Proprietorship concerns had a common Proprietor Mr. Ahmad Hajee Mohjudeen. In fact, the commercial Tax Officer has issued an endorsement dated 14.3.20 16 which has been produced by the importer which reads as follows:
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> > *"This is to certify that Mr. B. Ahmaed Hajee Mohiudeen, is a sole proprietor of* M/s. *Mohaiudeen Saw Mills and Hajee Timber Complex, registered dealer under Section 22 of the Karnataka Value Added Tax Act, 2003, borne on the files of VSO 261 Bantwal bearing TIN 29510061860. As per the*

KVAT Act one individual is entitled to only one TIN number for all the business owned by him in the State of Karnataka.

There is no provision to issue more than one TIN number to an individual under KVAT Act, 2003."

Though this endorsement had been produced by the importer before the lower adjudicating authority he has not taken into consideration these important documents issued by the VAT authorities which has an important bearing on the issue. It is on account of this that the VAT payment challan indicate the name as Mohiudeen Saw Mills and Hajee Timber Complex and common return have been filed. However, this is only because two entitles have a single TIN No., as they have a common Proprietor and under the VAT Laws as explained by the Commercial Tax Officer, Proprietorship concerns having the same Proprietor can only be allotted one TIN No. Therefore, it cannot be said that the importer has not paid the VAT with respect to the sale of the imported material in India nor can it be said that the importer has not satisfied the conditions of the Notification No.102/2007. I therefore, hold that the importer has substantially complied with the requirements of Notification NO.102/2007 and there is no reason whatsoever to reject the refund claims."

7. In view of the detailed and reasoned order passed by the Commissioner (A), I do not find any infirmity in the impugned order, which I uphold by rejecting the appeals filed by the Department.

(Operative portion of the Order was pronounced
in Open Court on **20/06/2019**)

S.S GARG
JUDICIAL MEMBER

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