CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20016 of 2020

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-52/2019-20 dated 16/09/2019 passed by Commissioner of CUSTOMS (Appeals), COCHIN]

M/s Aravind Traders
KP XI/337 Near SN College,
SN Puram PO,
ALAPUZHA
KERALA
688582

Appellant(s)

VERSUS

The Commissioner of Customs-Cochin-CUS
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN
KERALA
682009

Respondent(s)

Appearance:

Shri P.A. Augustian, Advocate for the Appellant
Shri P. Rama Holla, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No.20403/2021

Date of Hearing: 25/03/2021
Date of Decision:01/07/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 16.09.2019 passed by the Commissioner of Customs (Appeals) Cochin whereby the learned Commissioner has rejected the refund claim of the appellant on the ground that the appellant has failed to fulfill the Condition D of Notification No.102/2007-C dated 14.09.2007.

2. Briefly the facts of the present case are that the appellant had imported Sappan Billets (Caesalpinea sappan) through Cochin Port and filed Bill of Entry Nos.6454106 dated 23.08.2016 and 7508160 dated 18.11.2016 for its clearance. Thereafter, on sale of the goods, the appellant filed a refund application seeking refund of Rs.57,681/- as 4% additional duty as per Notification No.102/2007-C against both the Bills of Entry. Thereafter, a SCN was issued to the appellant proposing to reject the refund claim on the ground of violation of the Condition of the said Notification. After following the due process, the original authority vide Order-in-Original dated 07.02.2018 rejected the refund claim of Rs.57,681/- on the ground that the appellant has not complied with the Notification No.102/2007. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the appeal and upheld the Order-in-Original. Hence, the present appeal.

2. Heard both the parties and perused the records of the case.

3. Learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that before the Commissioner (Appeals), the appellant has produced certain decisions squarely covering the issue in favour of the appellant but the learned Commissioner without considering those decisions has rejected the refund claim on the ground that the appellant has not fulfilled the Condition D of the Notification No.102/2007 dated 14.09.2007. He further read out the Conditions of the Notification No.102/2007 and submitted that there is no condition regarding process as stated in the findings of the impugned order. He further submitted that the appellant has not carried out any manufacturing and process on the imported goods before its sale to change the nomenclature of the goods. The appellant has only cut the imported goods into small sizes for the purpose of marketing it locally. He further submitted that the issue whether cutting of imported consignment into small pieces for sale will not amount to manufacture or process was considered by the Hon’ble CESTAT Ahmedabad in the matter of *M/s Agarwalla Timbers Pvt.*

Ltd. Vs CC reported in 2014 (299) ELT 455 (Tri. Ahm.) wherein it was held that mere cutting of large pieces into small pieces for trade will not amount to manufacture or process to deny the benefit of 4% additional duty. Learned Counsel also relied upon the decision of the Hon'ble High Court of Ahmedabad in the case of *CC Vs Variety Lumbers Pvt. Ltd.* reported in *2014 (302) ELT 519 (Gujarat*) wherein also it has been held by the Hon'ble High Court that rejection of refund on the ground that goods sold were having different identity under different tariff entry then the goods imported, by cutting of round log into smaller pieces by sawing no new product came into existence and the identity of the article did not undergo any fundamental change and therefore the rejection of refund is not tenable in law. This decision of the Hon'ble Ahmedabad High Court was upheld by the Hon'ble Apex Court in the case of *CC Vs Variety Lumbers Pvt. Ltd., 2018 (360) ELT 790 (SC)*. Learned Counsel also submitted that the same very issue involved in the present case was considered by the present Commissioner (Appeals) in Order-in-Original No. COC-CUSTM-000-APP-17-2015-16 dated 08.06.2015 wherein the present Commissioner has held that by cutting of logs into smaller pieces by sawing, no new product came into existence, hence the identity of the goods does not undergo any fundamental change and in order to support his findings, the learned Commissioner relied upon the decision of the Hon'ble Gujarat High Court in the case of *CC Vs Variety Lumbers Pvt. Ltd.* (supra).

4. On the other hand, learned AR reiterated the findings of the impugned order and submitted that the appellant is not entitled to refund under Notification No.102/2007 because he has not fulfilled the Conditions of the said Notification as held by the authorities below. He further submitted that by cutting the imported goods into smaller pieces, the appellant has carried out the manufacturing process by which the nature, the character and the identity of the goods has undergone change. He relied upon the decision of the Hyderabad Bench in the case of *Seven Hills Solvents Pvt. Ltd. Vs CCT reported in 2019 (366) ELT 349* wherein it was held that the goods which were not sold but were processed and hence the assessee is not entitled for said refund under Notification No.102/2007. He also cited the decision of the

Hon'ble Gujarat High Court in the case of *Proflex System Vs CC, 2017 (353) ELT 142* which was upheld by the Hon'ble Apex Court reported in *2017(355) ELT 883*. The learned DR also cited the Circular No.15/2010 dated 19.06.2010.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant has imported the Sappan Billets (Caesalpinea sappan) and has cut them into small pieces for the purpose of marketing locally but the said cutting into smaller pieces does not change the identity of the goods and further no new product has come into existence. The identical issue has been considered by the Division Bench of the Tribunal in the case of *Agarwalla Timbers Pvt.Ltd.* (supra) wherein it has been held that mere cutting of large pieces into small pieces for the purpose of trade will not amount to manufacture or processing in order to deny the benefit of 4% additional duty. The Division Bench of the Tribunal has considered the conditions of the Notification as well as the Circular issued by the Board and has also considered other decisions of the Tribunal wherein it has been held that mere cutting of the imported goods into small pieces will not amount to manufacture and refund of additional duty under Notification No.102/2007 cannot be denied. Further, I find that the Hon'ble Gujarat High Court in the case of *CC Vs Variety Lumbers Pvt. Ltd*. (supra) has also considered the identical issue.

5.1. Further, I find that the decision of the Hon'ble Ahmedabad High Court has also been upheld by the Hon'ble Apex Court as reported in *2018 (360) ELT 790* wherein the Hon'ble Apex Court in Para 2 and 3 has held as under:

> *"**2.** The Learned Counsel for the appellant-Revenue has sought to dislodge the view taken by the Customs, Excise and Service Tax Appellate Tribunal and the High Court by contending that the subsequent sale must be in the same form in which the goods were received on import. The contention advanced on behalf of the appellant-Revenue is not supported by a plain reading of the exemption notification which even if construed in the strictest terms does not permit such a view to be taken. That apart, the materials on record clearly shows that for purpose of transit of logs, the same necessarily had be reduced in size due to conditions imposed by the State for transport/ movement of timber. The said fact itself would belie the stand of the Revenue. We, therefore, take the view that a mere*

> *conversion of imported logs in the Sawn Timber without loss of identity of the original product would not deprive the importer of the benefit of the exemption notification.*
>
> ***3.*** *The appeals of the Revenue, therefore, are dismissed. The orders of the Tribunal and the High Court are affirmed.*

5.2. Further, I find it very strange to note that the same Commissioner in another case has held in favour of the importer vide his Order dated 08.06.2015 (supra) by relying upon the decision of the Hon'ble Gujarat High Court in the case of Variety Lumbers Pvt. Ltd. (supra). Further, I find that the decision in the case of Seven Hills Solvent Pvt. Ltd. (supra) relied upon by the Respondent is not applicable in the facts and the circumstances of this case because in that case, the assessee has undertaken the manufacturing and processes and new product emerged which was sold separately and therefore the Tribunal has come to the conclusion that the importer has undertaken a manufacturing process and hence not entitled to the benefit of refund under Notification No.102/2007. Simultaneously the other decisions relied upon by the Revenue in the case of *Proflex System* (supra) is also not applicable in the present case because the facts are entirely different. Further, the decision relied upon by the appellant is squarely applicable in the present case and therefore by following the ratio of the said decisions, I am of the considered opinion that the impugned order holding that the appellant has violated the Condition D of the Notification No.102/2007 dated 14.09.2007 is not sustainable and therefore I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Order pronounced in Open Court on 01/07/2021)

(S.S GARG)
JUDICIAL MEMBER

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