CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.C/296/2010

[Arising out of Order-in-Appeal No.381/2010 dt. 19.04.2010 passed by the Commissioner of Customs (Appeals), Chennai]

Vikash Trading Company — Appellant

Versus

Commissioner of Customs, Chennai — Respondent

Appearance:

Shri Hari Radhakrishnan, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 07.12.2017

FINAL ORDER No. 43421/2017

Per Bench

The facts of the case are that appellant filed Bills of Entry dt. 19.01.2006 for import of goods declared as "Glass Fiber Reinforced Guypsum Boards (GRG Board)" of Tapered Edge 'Boral' brand

Customs, Excise & Service Tax Appellate Tribunal

classifying them under CTH 68091900 and claiming the benefit of Central Excise Notification No.6/2012 Sl.No.234. Acting on information that the importers have misdeclared the goods samples of the consignment were sent to Chemical Testing and Analytical Laboratory, Department of Industries and Commerce, Govt of Tamil Nadu for testing and informing the department as to :

1. Whether the samples conforms to ASTM C36 and BS 1230 standards as indicated / claimed by the manufacturer.
2. Whether ASTM C36 and BS 1230are standards for Glass Reinforced Gypsum Board (GRG Board) or for Paper bonded / Reinforced Gypsum Boards.
3. Whether the samples enclosed can be called GRG boards or paper bonded / Reinforced Gypsum Boards.
4. Whether the samples under reference also conforms to IS 2095 (Part 3) 1996 standards for GRG Boards.

Test results were received for the Boral and Elephant Brand samples of GRG Boards submitted for testing to the Chemical Testing and Analytical Laboratory, Guindy. The report dated 20.03.2006 by CTA Guindy, states that :

Customs, Excise & Service Tax Appellate Tribunal

1. The samples Boral & Elephant Brand gypsum Boards conform to ASTM C-36 specification for Gypsum Wall Board and BS 1230 Specification for Gypsum Base Board.

2. ASTM C-36 and BS 1230 are not the specifications for Glass Reinforced gypsum Board. They are the specification for Gypsum Wall board and Gypsum Plaster Boards.

3. The sample so enclosed are Gypsum Plaster Boards.

4. The samples do not conform to IS 2095, part-3, 1996 Specification for Reinforced Gypsum Plaster Board.

2. Department therefore took the view that the impugned goods conform to specification for non-GRG and that goods are Gypsum Plaster Boards. Accordingly, show cause notice dt. 26.12.2006 was issued to appellant inter alia proposing confiscation of the imported goods valued at Rs.5,14,280/-, denial of CV duty exemption claimed under Notification No.6/2002-CE, demand of CVD of Rs.98,452/- with interest and imposition of penalty under various provisions. The original authority confirmed the proposals in the SCN and confiscated the goods and imposed redemption fine of Rs.10,000/- under Section 125 of Customs Act and also penalty of Rs.5000/- under Section 112 ibid. In appeal, Commissioner (Appeals) vide

Customs, Excise & Service Tax Appellate Tribunal

impugned order No.381/2010 dt. 19.4.2010 upheld the order of original authority. Hence this appeal.

2. On 07.12.2017, when the matter came up for hearing, on behalf of appellant, Ld. Advocate Shri Hari Radhakrishnan made the various submissions which can be summarized as follows :

i) Concerned officer of the CTA Laboratory, Department of Industries and Commerce, Govt. of Tamil Nadu who tested the sample was requested by appellant to be produced for cross examination and accordingly the Deputy Director of the lab offered himself for cross-examination. He said that he did not conduct any test to find out the presence of glass fibres in the sample forwarded by the customs. When he was asked as to how in the absence of such a test he could conclusively say that the item was not glass fibre reinforced gypsum board, he said that he conducted the test as laid down in IS standard 2095 Part-1 & 3 for confirming whether glass fibre reinforced gypsum board or it was plain gypsum plaster board. When it was put to him that the samples were glass fibre reinforced gypsum board but not conforming to Indian standards, he did not answer directly but said that the samples did not conform to Indian standards.

ii) The test contemplated was whether the sample was glass fibre reinforced gypsum board or plain gypsum plaster board. It is thus evident that the Deputy Director of the laboratory who conducted the test ought to have ascertained as to whether the sample contained glass fibre or not. It is the presence of glass fibre or absence of it that determines the issue. The vital test to be conducted by the laboratory has not been conducted. It is accordingly submitted that reliance placed by the adjudicating authority and the lower appellate authority on the test report of the CTA laboratory, Chennai is an error in law.

iii) The appellants requested the adjudicating authority to have the sample re-tested. He did not accede to this request. Before the Commissioner (Appeals) request for re-test was again made, but the Commissioner rejected the request stating that the Appellants did not ask for re-test before the adjudicating authority. This is an erroneous finding.

iv) In terms of notification 6/2006 there is no requirement that glass fibre reinforced gypsum board should conform to Indian standards 2095 Part-3-1996 specification. In the absence of such stipulation in the notification, the authorities should have gone by the trade recognition for the product. The product in question is certainly accepted by the trade and the consumers as glass fibre reinforced gypsum board. The trade recognition has to be the basis for classification of the product. The Appellants rely on the following judgments in support of their contention :

a) *Dunlop India Ltd. Vs Union of India* 1983 (13) ELT 1566 SC

b) *Novopan India Ltd. Vs CCE & C,* 1994 (73) ELT 769 SC

c) *Union of India Vs Garware Nylon Ltd.* 1996 (87) ELT 12 SC

v) Ld. Advocate also submitted that in respect of imports of the very same items on subsequent occasions, Chemical Examiner of Custom House, Chennai has opined that the imported goods may be considered as Glass Fibre Reinforced Gypsum Board and accordingly the said subsequent consignments have been allowed benefit of CVD Exemption Notification No.6/2006-CE.

3. On the other hand, ld. A.R Shri Balamurugan supports the impugned order. He submits that the Commissioner (Appeals) has considered all aspects of the matter and has given a reasoned finding that the test report clearly stated that the goods could not be considered as Glass Reinforced Gypsum Boards and has accordingly upheld the order of original authority.

4. Heard both sides and have gone through the facts.

5. Discernably, during cross examination before original authority, the Deputy Director, CTAL has accepted that their laboratory did not

test presence/content of glass fibre in the samples. It is also important to note that earlier consignments of similar / identical goods have been confirmed by Customs laboratory to be Glass Fibre Gypsum Board. So also, as pointed out by the ld. Advocate, the test reports in respect of other imports of the same items imported by Bills of Entry dt. 11.07.2007, 31.08.2005 and 11.07.2007 have clearly reported that the goods are made of calcium sulphate (Gypsum) reinforced with glass fibres. We thus find that on the one hand, the CTA laboratory where the samples of impugned consignment had been sent did not test presence/content of glass fibre. At the same time, the Customs laboratory has confirmed the correctness of the goods as declared in a number of imports made prior and subsequent to the one under dispute. We also find merit in the contention of the appellant that Exemption Notification No.6/2006-CE only exempts goods imported Glass Fibre Reinforced Gypsum Board (GRG) at Sl.No.234 (iv) without any condition thereto. Thus the insistence on IS standards by the customs authorities is not a requirement in the said notification. The Tribunal in the case of *Rama Newsprint & Papers Ltd. Vs CCE & CC Surat* - 1999 (108) ELT 312 (Tribunal) upheld the non-requirement of conformation to IS Standards when the notification does not require so. In the face of such facts, we are unable to appreciate how the

Commissioner (Appeals) has taken a view that the goods are not conforming to the standards of Gypsum Reinforced Gypsum Boards even when the Deputy Director, CTAL has stated in cross examination that they did test presence/content of glass fibre. We are also unable to fathom how even the request for re-testing of the samples made by the appellant has been dismissed peremptorily by the lower appellate authority for the reason that "further re-testing would not serve any fruitful purpose".

6. Viewed in this light, we are of the considered opinion that the impugned order cannot sustain and requires to be set aside, which we hereby do. Appeal is therefore allowed with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)	Sulekha Beevi **(Sulekha Beevi C.S)**
Member (Technical)	**Member (Judicial)**

gs

प्रमाणित प्रति/Certified True Copy
J.S. Ramesh 13/02/18
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकारी/(CESTAT)
चेन्नै/CHENNAI

Customs, Excise & Service Tax Appellate Tribunal