

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No.75976 of 2018

(Arising out of Order-in-Appeal No.Kol/CUS/Port/AA/174/2018 dated 15.01.2018 passed by Commissioner of Customs (Appeals), Kolkata)

M/s Sujog Aquatech Private Limited

(259, Kaliandas Udyog Bhavan, Behind Century Bazar, Prabhadevi, Mumbai-400025)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata)

Respondent

APPEARANCE :

Mr.B.N.Pal, Advocate for the Appellant

Mr.Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75057/2025

DATE OF HEARING : 7 JANUARY 2025

DATE OF DECISION : 7 JANUARY 2025

Per R.Muralidhar :

The appellant has imported 4011 pkgs of Paddle Wheel Aerators consisting of 276 units and 92 units respectively of Model No.YH-2004L & 2006L from Zheijian Yiyuan Aetator Equipment Company Limited, Zegug City, Wenling, Zhejiang, China vide invoice No.SY-170306 dated 04.03.2017. The appellant has classified the imported goods under CTH 8436, but the Customs Officials took a view that the goods are required to be classified under CTH 8479. In order to clear the goods for their requirement, the appellant filed their revised Bills of Entry under CTH 8479 and paid higher Customs duty after filing a letter to the effect that they are paying higher Customs duty "under protest". Further, the appellant has filed an appeal before the Ld.Commissioner (Appeals) on

Customs Appeal No.75976 of 2018

31.07.2017. The Id. Commissioner (Appeals) has noted that this appeal has been filed after 87 days from the date of assessment of Bills of Entry. Noting that no proper justification has been given by the appellant, the Id.Commissioner (Appeals) has dismissed the appeal on this ground alone. Being aggrieved with this order, the appellant is before the Tribunal.

2. The Id.Counsel for the appellant submits that the concerned person was having medical issues and a copy of the Medical Certificate issued by P.D.Hinjuja National Hospital and Medical Research Centre, was as an evidence before the Id.Commissioner (Appeals). He submits that the appellant was admitted in the said Hospital on 19.06.2017 and on 24.06.2017, he was discharged. Therefore, he submits that the Id.Commissioner (Appeals) should have condoned the delay and could have taken up the issue on merits. He further submits that the issue is squarely covered by the co-ordinate Bench of this Tribunal in the case of M/s Suyog Agro Poultry Products Private Limited Vs. Commissioner of Customs (Sea-Imp.), Chennai vide Final Order No.41645/2015 dated 04.12.2015, wherein this Tribunal has held that the goods are classified under CTA 8436. The Id.Counsel for the appellant further submits that the Department has not preferred any appeal against the order of this Tribunal and hence it has reached finality.

3. The Id.A.R. for the Revenue reiterates the findings of the lower authorities and submits that the issue was not heard on merits by the lower authorities and hence it may be remanded to the Id.Commissioner (Appeals).

Customs Appeal No.75976 of 2018

4. Heard both sides and perused the appeal papers and other documents placed before us.

5. We find that admittedly, the Id.Commissioner (Appeals) has dismissed the appeal on the sole ground that it was filed belatedly after 87 days. Since this is within the condonable period along with proper justification under Medical Certificate, in the normal course, we would have remanded the matter to the Id.Commissioner (Appeals).

6. However, we find that the issue is squarely covered by the decision of this Tribunal vide Final Order No.41645/2015 dated 04.12.2015, wherein this Tribunal has held as under :

"Further above definition of "farmer" includes poultry, live stock rearers, fisherman, bee-keepers, pastoralists etc. The aqua culture, aqua farming, shrimp farming are synonyms of fishery. The above definition is issued under the provisions of Act for framing the Agricultural Policy and it is binding on other departments Including customs. Since there is no dispute that the paddle wheel aerators used in aqua farming by aqua farmers for cultivation of fish/shrimps etc., we are of the considered view that these are rightly to be considered as other agricultural machineries and rightly classifiable under Ch. 84368090. When the item can be classified by specific description with specific function as other agricultural machines, the question of classifying the goods under residual entry "8479" is not justified and not acceptable. In view of the above findings, we hold that the impugned goods "paddle wheel aerators and its parts" are rightly classifiable under Ch.84368090 of CTA and not under Ch. 84799090 and eligible for exemption. Therefore, the differential duty demanded is liable to be set aside.

7. In view of the forgoing discussions, we hold that paddle wheel aerators are used for fisheries/aqua culture and are classifiable

Customs Appeal No.75976 of 2018

under chapter heading 8436 of the CTH. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.”

7. We also find the documentary evidence to that effect that the said CESTAT's Final Order has been accepted by the Department and no further appeal was filed before the Higher Forum.

8. Considering the factual details and the statutory provisions and the ratio laid down by this Tribunal, we allow the appeal filed by the appellant. The appellant would be eligible for consequential relief as per law.

(Dictated and pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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