CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

MISCELLANEOUS APPLICATION NO: 86578 of 2018
IN
CUSTOMS APPEAL NO: 936 of 2007

[Arising out of Order-in-Original No: 104/2007/CAC/CC(I)/SP/Gr.III dated 29th August 2007 passed by the Commissioner of Customs (Import), Mumbai – I.]

North West Civil … ***Appellant***
Kapoor House, 272 Carter Road, Bandra,
Mumbai – 400 050

versus

Commissioner of Customs (Import) ***…Respondent***
New Custom House, Ballard Estate, Mumbai - 400001

WITH

MISCELLANEOUS APPLICATION NO: 86577 of 2018
IN
CUSTOMS APPEAL NO: 1027 of 2009

[Arising out of Order-in-Appeal No: 182 & 183/2009/MCH/AC/VII-C/09-10 dated 22nd July 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Vishnu Kapoor … ***Appellant***
M/s North West Civil, Kapoor House, 272 Carter Road,
Bandra, Mumbai – 400 050

versus

Commissioner of Customs (Export) ***…Respondent***
New Custom House, Ballard Estate, Mumbai - 400001

WITH

CUSTOMS APPEAL NO: 1028 of 2009

[Arising out of Order-in-Appeal No: 182 & 183/2009/MCH/AC/VII-C/09-10 dated 22nd July 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

North West Civil … ***Appellant***
Kapoor House, 272 Carter Road, Bandra,
Mumbai – 400 050

versus

Commissioner of Customs (Export) …***Respondent***
New Custom House, Ballard Estate, Mumbai - 400001

APPEARANCE:

Shri Derrick Sam, Advocate for the appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE DR DM MISRA, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/88562-88564 / 2018

DATE OF HEARING:	08/10/2018
DATE OF DECISION:	08/10/2018

PER: C J MATHEW

The miscellaneous applications filed by the appellants are dismissed as withdrawn on specific submission of Learned Counsel.

2. The issue in these appeals arise from order-in-original no. 104/2007/CAC/CC(I)/SP/Gr.III dated 29th August 2007 of Commissioner of Customs (Import), Mumbai – I and order-in-appeal no. 182 & 183/2009/MCH/AC/VII-C/09-10 dated 22nd July 2009 of Commissioner of Customs (Appeals), Mumbai – I in which the import of 'glass fibre reinforced gypsum board' by availing benefit of

notification no. 6/2002-Cus [serial no. 234] exempting payment of additional duties of customs had been fastened with differential duty under section 18 of Customs Act, 1962 and under section 28(2) of Customs Act, 1962, goods held liable to confiscation but allowed to be redeemed on payment of duty and penalties imposed under section 112 of Customs Act, 1962.

3. The case of the customs authorities against the appellant herein is derived from the testing of the samples by the Deputy Chief Chemist and found to be compliant with IS-2095 (Part-III) 1996 for density in kg/m^3 and water absorption but upon being forwarded to National Test House was reported as failing to meet the test standards. The adjudicating authority came to the conclusion that the goods, not conforming to the declaration, were 'plain gypsum plaster board'. In response to the claim of the importer that the notification has to be read solely on its own, the adjudicating authority held that

> *'3. Serial no. 234 of Notification no. 06/2002-C.E. dated 01.03.2002 grants complete exemption from payment of Central Excise duty in respect of the following goods under any Chapter of the Central Excise Tariff.*
>
> *a. Cement Bond Particle Board;*
> *b. Jute Particle Board;*
> *c. Rice Husk Board;*
> *d. Glass Fibre Reinforced Gypsum Board (GRG);*
> *e. Sisal Fibre Board;*
> *f. Baggase Board.*

> *Thus all of the above goods on importation into India, get exemption and such goods do not attract levy of additional duty of Customs, i.e. CVD.'*

4. We have Learned Counsel for the appellant and Learned Authorised Representative.

5. We find that an identical issue had been decided by the Tribunal in *Vikash Trading Company v. Commissioner of Customs, Chennai [final order no. 43421/2071 dated 7th December 2017 in appeal no. C/296/2010]* upon challenge to order-in-appeal no. 381 of 2010 dated 19th April 2010 of Commissioner of Customs (Appeals), Chennai. After examining the facts on record, the Tribunal concluded that

> *'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 dated 11-7-2007, 31-8-2005 and 11-7-2007 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-C.E. 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. v. 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 retesting of the samples made by the appellant has been dismissed peremptorily by the lower appellate authority for the reason that "further retesting 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.'

6. Following the decision, we find that the impugned order is also flawed and must be set aside. Penalty against Shri Vishnu Kapoor is also set aside. Accordingly, the appeals are allowed.

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as08011001*