CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 86956 of 2019

(Arising out of Order-in-Appeal No. MUM-CUS-RN-IMP-235/2018-19 dated 29.03.2019 passed by the Commissioner (Appeals), Mumbai Customs Zone-I, Mumbai)

Rajendra Agarwal **.... Appellant**
No.33, NRI Colony, Mandakini
GK-IV, Greater Kailash
New Delhi – 110019.

VERSUS

Commissioner of Customs (Import) **.... Respondent**
Inland Container Depot (ICD), Mulund
New Custom House
Ballard Estate, Mumbai – 400001.

APPEARANCE:

None for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85191/2025

Date of Hearing: 18.10.2024
Date of Decision: 17.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by Shri Rajendra Agarwal, New Delhi (herein after, for short, referred together as 'the appellant') assailing the Order-in-Appeal No. MUM-CUS-RN-IMP-235/2018-19 dated 29.03.2019 (referred to, as 'the impugned order') passed by the Commissioner (Appeals), Mumbai Customs Zone-I, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant herein, *inter alia*, is local trader dealing with imported timber from abroad and supplies the same to the buyers in India. He has been in the field of timber trade since 2007. In the investigations conducted by the Directorate of Revenue Intelligence (DRI), Hyderabad for alleged mis-declaration and under valuation in the imports undertaken by M/s Shree Laxmi Teakwood (P) Limited, Mumbai, the appellant was also issued Show Cause Notice dated 25.11.2014 for imposition of penalty under Sections 112(a) and 114AA of the Customs Act, 1962. In adjudication of the said SCN dated 25.11.2004, the original authority vide Order-in-Original dated 31.03.2016 read with Corrigendum dated 01.06.2016, *inter alia*, had imposed penalty on the appellant for an amount of Rs.3,00,000/- and Rs.50,000/- under Section 112(a) and Section 114AA ibid, respectively. Being aggrieved with the above order, the appellant had filed an appeal before the Commissioner (Appeals). In the Order-in-Appeal dated 29.03.2019, which is impugned herein, he had dismissed the appeal on the ground that the appellant connived with the importer by abetting in the act of undervaluation and consequent evasion of customs duty. Feeling aggrieved with the said impugned order, the appellants have filed these appeals before the Tribunal.

3. When the matter was called up for hearing, none from the side of the appellant had appeared. It is on record that various opportunities have been given to the appellant earlier on 08.05.2024, 11.07.2024, 09.09.2024; and that on previous occasions, when the matter had come up for hearing, it was adjourned at the specific request made by the appellant's side on 09.11.2022, 22.09.2022, 08.02.2023, 02.05.2023, 16.11.2023, 02.01.2024. Considering that sufficient opportunities have been given for both sides and the matter could be taken up on the basis of the records available in the file and with the assistance of the learned Authorized Representative for the department, the appeal was taken up for disposal on the merits of the case.

4.1 It is a fact on record that in respect of the SCN dated 25.11.2014 issued to the main noticee M/s. Shree Laxmi Teakwood (P) Limited, Mumbai and in another SCN dated 29.04.2013 issued to one another importer M/s Beena Sales Corporation, Jaipur, the issues were common. Further, the DRI investigation had relied upon for issue of SCN for the charges of alleged undervaluation and demand of customs duty on the basis of same set of documents, records along with hard disk, lap top recovered under panchanama dated 27.06.2011 in a common search proceedings conducted at the office and residential premises of the appellant on 27.06.2011.

4.2 The dispute in respect of imports by Beena Sales Corporation, Jaipur, was decided by the Coordinate Bench of this Tribunal in Final Order No. A/10376/2019 dated 26.02.2019, wherein the demand of duty and the penalties imposed on the importer were held as not sustainable and the original order confirming the adjudged demands were set aside. Since, the relied upon documents on the basis of which penalties imposed on the appellant have already been set aside in respect of one another importer to whom he had supplied the timber, the appellant had submitted in the appeal paper that the present case should also be decided on the basis of such order passed by the Co-ordinate Bench of the Tribunal.

5. From the records of the case, I find that in the case of Beena Sales Corporation, Jaipur, the Coordinate Bench of the Tribunal at Ahmedanad in Final Order No. A/10376/2019 dated 26.02.2019, have held that the adjudged demands cannot be sustained on the ground that the statements of Shri Rajendra Agarwal is not a tangible and cogent evidence, and the Department had failed to prove under valuation in imports. Further, I find that the Department had filed a Civil Appeal in Diary No. 38671/2019 before the Hon'ble Supreme Court which was dismissed vide judgement delivered on 06.12.2019.

6. In view of the above, I do not find any merits in impugned order dated 29.03.2019. Therefore, by setting aside the impugned order, I allow the appeal filed by the appellant in his favour.

(Order pronounced in open court on 17.02.2025)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha