Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.12216 of 2019

(Arising out of OIA-KDL-CUSTM-000-APP-005-006-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Variety Lumbers P Ltd **.........Appellant**
Plot No. 402, Sector 5,
Gandhidham, Gandhidham, Gujarat

VERSUS

C.C.-KANDLA **.........Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

- **Customs Appeal No.12447 of 2019 (SHIV WOOD PRODUCTS)**
- **Customs Appeal No.12448 of 2019 (MPS WOOD PRODUCT PVT LTD)**
- **Customs Appeal No.12449 of 2019 (MANTRI INDUSTRIES)**
- **Customs Appeal No.12452 of 2019 (AKASH INDUSTRIES)**
- **Customs Appeal No.12453 of 2019 (R K LUMBERS P LTD)**
- **Customs Appeal No.12584 of 2019 (Mukeshkumar & Co)**
- **Customs Appeal No.12585 of 2019 (Mukeshkumar & Co)**

(Arising out of OIA-KDL-CUSTM-000-APP-011-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-012-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-008-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-009-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-0010-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-007-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIA-KDL-CUSTM-000-APP-005-19-20 dated 17/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No.12163-12170/2024

DATE OF HEARING: 13.09.2024
DATE OF DECISION: 26.09.2024

SOMESH ARORA

Out of the present bunch of appeals, two are by the appellants who filed ex-bond Bill of Entry and were asked to pay differential duty and remaining six are by sellers against whom personal penalty for facilitating wrongful classification has been levied. Appeal No. C/12584/2019 was taken for discussion by the advocate for the appellant. The appellant filed ex-bond bill of entry No. 4754667 and 4754670 both dated 30.03.2016 for clearance of goods, namely, sawn New Zealand pine logs (bark off) by classifying the same under Chapter heading 4403.

2. Department prepared a panchanama dated 13.04.2016 and took photographs of the goods and detained the same on the ground of mis-declaration and mis-classification.

2.1. According to department, goods were not roughly squared logs but were of standard cut length with extremely accurate dimensions.

2.2. Shri Bhupendra Chaturvedi, Authorized person of the appellant, *inter alia,* clarified in his statement before the department dated 11.05.2016 that the goods would be further planked, only one side is cut, remaining three sides are showing sap wood & rounding in natural condition; that the straightening was done for ease of transportation & removal of rotten and node portion of the logs; that the logs required further sawing for obtaining accurate dimentions.

3. The lower authorities rejected classification under CTH 4403 and ordered for classification under CTH 4407 on the ground that "goods were perfect

cuboids with standard cut length having extremely accurate dimensions with respect to its length, breadth and height

4. It was submitted by the party to the lower authorities that while classifying the goods under CTH 4407 they have ignored the criteria laid down in HSN explanatory notes of CTH 4407. According to this, goods must be chipped to extremely accurate dimensions; a process which results in a surface between than that obtained by sawing and which thereby renders subsequent planning unnecessary. The photographs scanned and reproduced in the adjudication order show that goods are not having extremely accurate dimensions.

5. Reliance was placed placed on the decision of the Tribunal in the case of Atul Timber Ltd. v/s Commissioner of Customs, Nagpur, 2005 (188) ELT 116 (Tri.-Del.) In that case, the Dy. Conservator of Forests found that although the pieces were cut from all the four sides, he did not opine that the goods could be used as such without further machining or planing. On this basis, Hon'ble Tribunal set aside the classification ordered by department under 4407. The appeal filed by Department was dismissed by Hon'ble Supreme Court as reported at 2015 (322) ELT 793 (S.C.).

5.1 In this case, even the lower authorities have not found that goods could be used as such without further machining or planing. Also the valuation has been done without any basis by the appellant.

6. In view of above, it was prayed to set aside the impugned order and allow the appeal filed by the appellant.

7. Authorized Representative (A.R) on the other hand relied upon various findings of the lower authority and submitted that from the examination and also from photographs, it can be seen that the said goods were perfect cuboids with standard cut length having extremely accurate dimension with effect to the length and width and height of all logs of each slots. And it is also evident from photographs that the subject goods do not consist of trunks of tree and were having no rough areas and have accurate dimensions as cuboids He thus reiterated the findings of the lower authority and prayed for acceptance for impugned order. Further, vide its submissions dated 23.09.2024, he added that 10% logs having barks will not make any difference and cited two cases of Central Excise Law in support. It was also submitted that C.H.A Shri. Raju Thaneshwar Chand of the appellant admitted that logs were of standard cut length with extremely accurate dimension, therefore contents of panchnama are not in dispute.

8. We have gone through the rival submissions. We find that as per panchanama dated 13.09.2024 enclosed as part of the synopsis, it has been stated as follows:

i) Goods were not found to be "roughly squared logs as declared in the bills of entry but were found to be of standard cut length with extremely accurate dimensions".

ii) All the logs were perfect cuboids having accurate dimensions with respect to length, breadth and height.

iii) Around 10% of logs showed presence of bark traces.

iv) Photographs of goods were taken in presence of panchas, Custom Broker and Custom officers. (These photographs have been scanned and reproduced in adjudication order passed by Ld. Additional Commissioner placed at page 25 to 27 of appeal memo).

The description thus given by the Panchas as per (i) above was as per expressions borrowed from the H.S.N.

8.1. Department on other hand is seeking to rely on the statement of Shri. Raju Thaneshwar Chand C.H.A stating that dimensions were extremely accurate.

8.2 However, during inquiry, statement of Shri Bhupendra Chaturvedi, Authorized Representative of appellant was recorded under Section 108 of Customs Act,1962 on 11.05.2016, wherein, he inter alia stated that:

i) Cutting is not proper; logs are roughly squared; it needed further sawing to get accurate dimension.

ii) Logs were cut for ease of transportation; dimension is uneven and not standard;

iii) The end use is construction as shuttering, RCC roofing, packing material;

iv) It will be first planked and then used as per requirement.

v) As per photographs, only one side was cut; other three sides were showing the sap wood and natural rounding;

vi) The goods cannot be considered as sawn wood because the same were roughly squared and maximum lot had sapwood portion and were unedged and required further sawing.

8.3 We find that on record there is no expert opinion obtained by the department about accuracy of dimensions or about the process involved in making the logs obtain the shape of cuboids. 10% logs were apparently having the bark and statement of A.R of the appellant recorded by the department denies cutting to be proper or accurate. Further, the decisions relied upon by A.R. of the department, on Central Excise side are in a different context and do not advance their case.

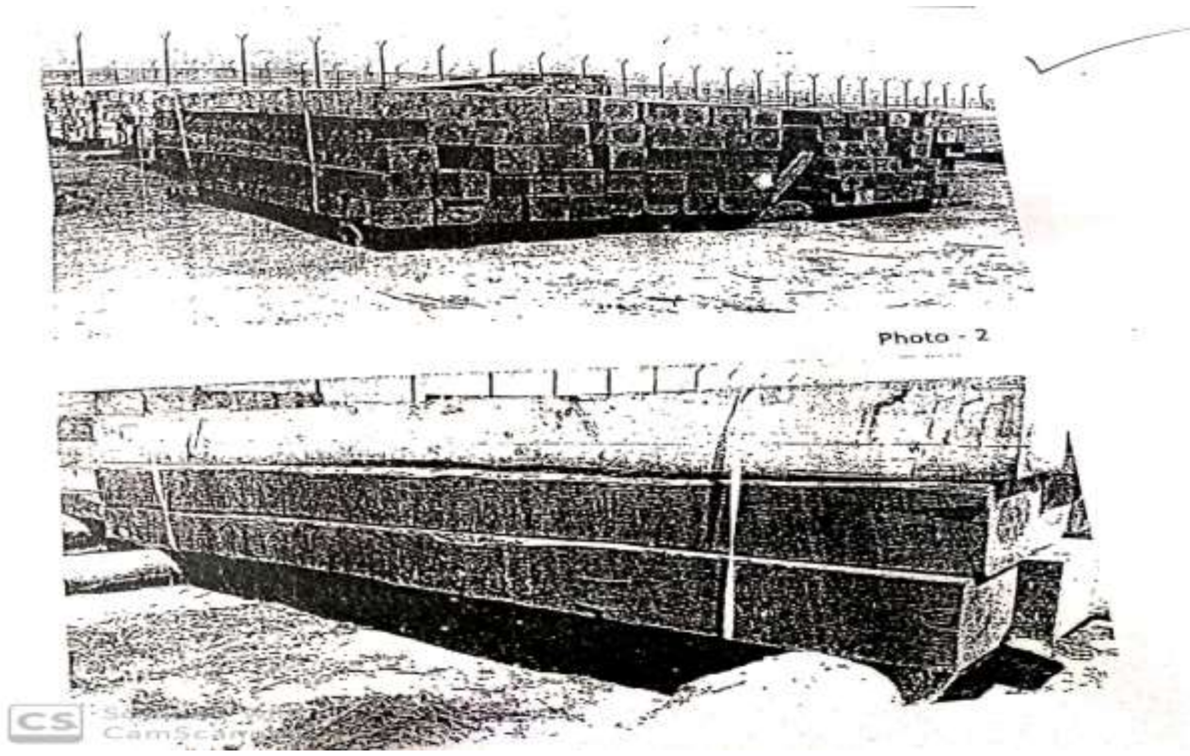
9. The department has ordered classification of goods under CTH 44.07 on the basis of following allegation contained in the Show Cause Notice (page 8 of synopsis, internal page 6 of 9 of show cause notice):

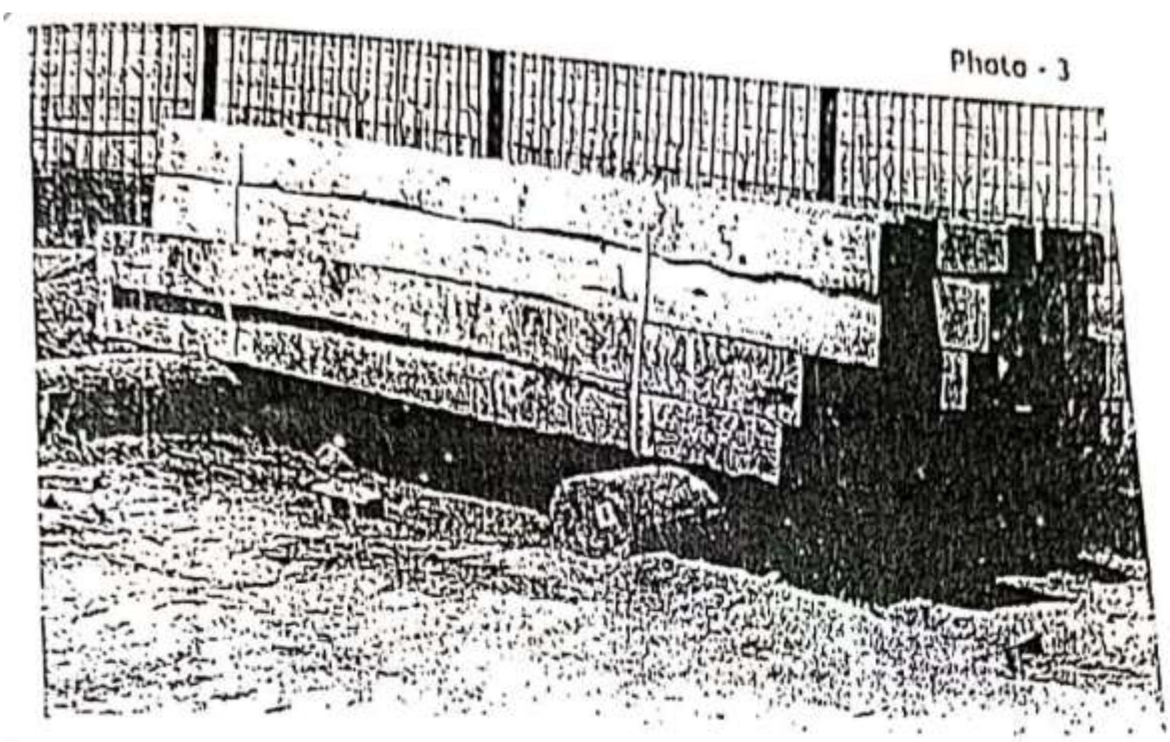
> *"Explanatory notes of CTH 44.07 states that the heading covers all wood and timber of any length but of a thickness exceeding 6 mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling, It is also stated that such wood and timber includes sawn beams, planks, flitches, boards, laths, etc. <u>It is seen that the subject goods are in the form of beams with accurate dimensions as detailed in the import documents. It was also found that the goods were smoothly squared dry Pine logs of standard dimensions kept in bunches/lots</u>. <u>The dimensions have been re-verified at the time of Panchnama proceedings and matched with dimensions as declared by the importer.</u> In view of the nature and characteristics of the goods observed during examination, the subject goods merits classification under CTH 44071020. Therefore, the goods are liable to be assessed @ 10% BCD + 4% Additional duty."*
>
> *(Underline Supplied)*

To classify the goods under CTH 44.07, department has to show that goods were found cut in standard length with extremely accurate dimensions. Burden of proof is on the department, as it has sought to re-classify the product.

10. The photographs taken in presence of panchas that are scanned and reproduced on page 25 to 27 of impugned order reveal that the goods are having dimensions of cuboids but it cannot be considered to be of extremely accurate dimensions, as is the requirement of the note. The terms used by Panchnama of "goods being were not found to be squared logs, but were found to be of standard cut lengths with extremely accurate dimensions" are as per H.S.N. Panchnama also indicates that 10% logs showed presence of bark traces. It was indicated that dimensions were not extremely accurate. Further the photos on records, as under also do not reveal 'extremely' accurate dimensions.

- **<u>Photo for reference are reproduced below:</u>**





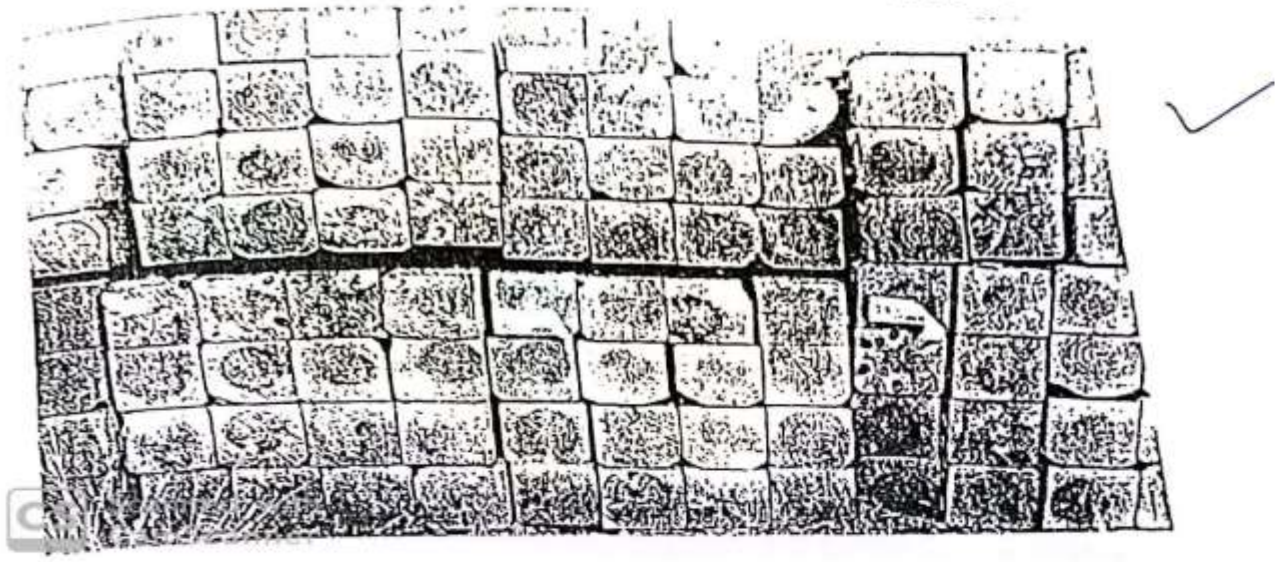


Photo - 5

10.1 Further Para 7 of the order passed by Ld. Commissioner (Appeals) is reproduced below for the ease of reference (page 27 of appeal memo) reads as follows:-

> "7 *As per HSN explanatory notes of CTH 44.07 it is mentioned that:*
>
> *"With a few exceptions, this heading covers all wood and timber, of any length but of a thickness exceeding 6 mm, sawn or chipped along with the general direction of the grain or cut by slicing or peeling. Such wood and timber includes town beams, planks, flitches, boards, laths, etc. and products regarding as the equivalent of sawn wood or timber, which are obtained by the use of chipping machines and which have been chipped to extremely accurate dimensions, a process which results in a surface better than that obtained by sawing and which thereby renders subsequent planing unnecessary..."*

10.2. From a bare reading of the panchnama, it is clear that the following requirements are not satisfied for classification under CTH 44.07:

i) *There is no record that the goods have been sawn or chipped along with the general direction of the grain or cut by slicing or peeling.*

ii) *In the photographs reproduced in the order-in-original (page 25 to 27), goods appear to be somewhat of accurate dimensions but not "extremely" accurate dimensions. The word "extremely" employed in HSN cannot be rendered otiose or redundant.*

iii) *The expression "extremely accurate dimensions" for classification under CTH 44.07 is also defined in the HSN. According to this, chipping machines must have been used and the process of chipping must have resulted in a surface better than that obtained by sawing* ***so as to render subsequent planing unnecessary****. Neither panchas nor the lower authorities have*

> *found that surface of logs was such that subsequent planing was unnecessary.*

Further, logs with traces of bark, in any case cannot be considered as having extremely accurate dimensions. Department has also not shown that process of chipping was used to obtain better surface than sawing. Benefit of conflicting and in complete statements of panchas, C.H.A and A.R of the appellants in the absence of any expert opinion by the department as chipping having been involved also has to be construed in favour of the appellant, as burden of proof in classification matters is on the department.

11. In view of the foregoing, we find merit in the submissions made that the impugned goods deserve classification under 44.03 and not under T.H. 4407.

12. Reliance in this regard also is placed on the decision of Hon'ble Tribunal in the case Bhairamal Gopiram v/s Commissioner of Customs, Calcutta, 2001 (134) ELT 239 (Tri. – Kolkata), wherein, it was held that:

> ***"8.*** *The question which now arises is as to whether the timber in question has been further worked upon apart from squaring and removal of bark to such an extent that the same would get excluded from the purview of heading 44.03 and would fall under 44.07. The question essentially becomes one of evidence. We find that in the case of Hanuman Goel & Co. v. CC, Visakhapatnam - 1994 (69) E.L.T. 715 (Tribunal) it has been observed in Para 19 that sap wood is outer life of the trees. The said sap wood unless treated gets decayed and for the purposes of transportation wood logs to the saw mills the sap wood and the outer chips are removed either by sawing by means of axe or adze or by coarse sawing to form wood of roughly rectangular.* ***It has been further observed by the Tribunal that explanatory notes for wood sawn under heading 44.03 clearly state that the wood and timber falling under this heading would have been sawn or chipped along with the general direction of the grain or cut by slicing or peeling. The wood is obtained by the use of chipping machines and which has been chipped to extremely accurate dimensions - a process which results in a surface better than that obtained by sawing and thereby renders subsequent planing unnecessary.***
>
> ***9.*** *In the instant case we find that the opinion of the Range Officer given by him on 5-2-1998 which in any case was not conclusive has been changed by him on cross-examination. As such the Commissioner after observing that the two opinions of the Range Officer were self-contradictory has held the same to be unreliable. If the said opinion of the Range Officer is excluded from consideration,* ***there is no other evidence on record to support the Revenue's contention that the timber in question has been sawn to such an extent so as to get it covered by heading 44.07. There is nothing on record to show that the timber in question has been further manufactured apart from sawing and such further sawing is to such an extent so as to not require any further planning.*** *The appellants' contention is that the wood in question was coarse sawn for the purposes of smooth transportation and merited classification under heading 44.03. The Revenue has not*

placed any evidence on record to the contrary. It is well settled that the burden in such cases is upon the Revenue to show that the goods fell under 4407. We also take note of another Tribunal's decision in the case of A.G. Daftry v. CC, Bombay - 1997 (92) E.L.T. 584 (Tribunal) where wood logs sawn on two sides were held to be classifiable as wood roughly squared and half squared but not further manufactured and falling under heading 4403.99 of the Customs Tariff Act, 1975.

10. *The Hon'ble Supreme Court has also in the case of Display or of Customs, Bombay v. Sony Enterprises - 1998 (98) E.L.T. 579 (S.C.) has held that the wood roughly squared and half squared and not further manufactured as classifiable under 44.03. As such following the ratio of the decisions we set aside the impugned order and allow the appeal with consequential relief to the appellants."*

13. We find that for reasons stated above by us, department has failed to discharge the burden of reclassification.

14. In view of the foregoing, we find no merit in holding impugned goods as classifiable under T.H. 44.07. We accordingly, find that same have been correctly classified under T.H. 4403.99. Since classification dispute is at the core of the controversy and same has been decided as above by us in favour of the party, other issues for decision are relegated to redundancy.

15. Appeals are accordingly allowed.

(Pronounced in the open court on 26.09.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi