

**Customs: Refund of SAD on imported timber despite cutting: CESTAT**

The appellant is an importer of Timber logs. Refund claims were filed under Notification No 102/2007 Cus for refund of Additional duty of Customs (SAD) as the imported goods were sold on payment of VAT. However, refund claims were allowed only on the logs sold as such and in cases where the logs were sold as “cut sizes”, refund was denied by relying on the CBEC Circular No 15/2010 Cus dated 29.06.2010. Commissioner (Appeals) also upheld the adjudication orders. Aggrieved by the same, the appellant is before the Tribunal.

**After hearing both sides, the Tribunal held:**

The issue involved is whether the appellants are eligible for the refund of SAD paid on imported timber logs sold as “cut sizes” of timber logs. The invoices show that some of the logs were sold as such whereas some logs were cut into sizes. It is the case of appellant that the timber logs were cut and sawn only for the purpose of transportation and that it did not change the nature of the goods imported. The question is whether mere cutting and sawing of the goods for facilitating transportation would render the goods ineligible for refund of SAD.

This issue has been considered and decided by the Tribunal in the case of M/s. Agarwalla Timbers Pvt. Ltd. Vs. CC, Kandla & M/s. Variety Lumbers Pvt. Ltd. Vs. CC, Kandla = 2010-TIOL-1378-CESTAT-AHM. The Tribunal held that even when the imported timber was sawn and sold, if the sales tax liability was discharged, the appellants would be eligible for refund.

The said judgment was challenged by Revenue before the Hon'ble High Court of Gujarat and the Hon'ble High Court has upheld the view taken by the Tribunal vide judgment reported in 2012-TIOL-821-HC-AHM-CUS. Against the said judgment of Hon'ble High Court, the Revenue filed SLP before the Hon'ble Supreme Court and vide order dt. 24/11/2011, the Hon'ble Apex court ordered that the claims for refund of SAD shall be processed by the Assessing Officer and the amount due to the respondents therein shall be refunded within a period of 4 weeks subject to the condition that the respondents therein furnish a bank guarantee for half of the amount to be refunded to the satisfaction of the Assessing Officer.

It also stated that the bank guarantee shall be kept alive till the disposal of the appeal before the Supreme Court. Thus it is noticed that the issue whether the appellants are eligible for refund when the imported timber logs were sawn and sold is pending decision of the Hon'ble Supreme Court. However, the Hon'ble Supreme Court has not passed any order staying the operation of the order passed by the Hon'ble High Court of Gujarat.

Further the Hon'ble Apex Court has directed to process and grant the refund imposing condition of furnishing a bank guarantee. In this background, the order passed by the Tribunal which was confirmed by the Hon'ble High Court of Gujarat is binding even though the appeal is pending before the Hon'ble Apex Court. In obedience to judicial discipline following the dictum laid in the case of M/s. Agarwalla Timbers Pvt. Ltd. & M/s. Variety Lumbers Pvt. Ltd. (supra), I find that the appellants are eligible for refund. The denial of refund is unjustified. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any.