


 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सातवां मंजिल पॉलिटेक्निक के पास अम्बावाडी, अहमदाबाद-380015 079-26305065		 GST Building, 7th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : **V2(44)07/GNR/2017-18** 11/08/17 to 10/09/17

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0141-17-18**

दिनांक Date : **27.10.2017** जारी करने की तारीख Date of Issue: 27-11-17

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

A. file

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
78/D/2000 दिनांक : **30.03.2000** से सृजित

Arising out of Order-in-Original: **78/D/2000**, Issued by: Assistant Commissioner,
 Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Turakhia Oversease Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- 70बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

M/s Turakhia Overseas Pvt Ltd, Kothari Indu. Estate, Santej, Kalol (present address-B/904, West Gate Building, Nr.YMCA Vlub, SG Highway, Vejalpur, Ahmedabad) [hereinafter referred to as "the appellant"] against Order-in-Original No.78/8/2000 dated 31.03.2000 [impugned order] passed by the then Assistant Commissioner of Central Excise, Rural Division, Ahmedabad-II [adjudicating authority].

2. Briefly stated, the appellant is engaged in the manufacture of Decorative Plywood and Veneer falling under chapter 44 of the CETA, 1985. As an alternative to decorative plywood, they were also manufacturing another product by adopting the same manufacturing process on fibre board which came within the purview of "similar laminated wood" of Note 5 of Section IX of CETA, 1985. The appellant has classified the said product viz "Veneered Fibre Board" under chapter 4407.90, attracting duty @8%. As it observed that the said product was appropriately classifiable under chapter 4408.90 and chargeable to duty @16%, a show cause notice dated 28.01.2000, demanding short paid duty amounting to Rs.22,308/- with interest and imposition of penalty for the period of August 1999 to November 1999 was issued. Vide the impugned order, the adjudicating authority has classified the said product under chapter 4408.90 and confirmed the demand with interest. A penalty of Rs.2,000/- was also imposed.

3. Being aggrieved, the appellant has filed the appeal on the grounds that:

- the adjudicating authority has wrongly classified the products Veneered Fibre Board under chapter 44.08; that the said products is not having decorative veneers on any face falls under chapter 4406.30, meaning thereby, the one having decorative veneers would fall under chapter 4406.90; that fibre board falling under chapter 44.07 and as such veneered fibre board would rightly fall under chapter 4407.90.
- As per note 5 of chapter 44, the expression "similar laminated wood" includes block board, laminated board and batten board, in which the core is thick and composed of block, laths or batten of wood glued or otherwise joined together and surfaced with the outer plies and also panels in which the wooden core is replaced by other materials such as a layer or particle board, fibre board, wood waste glued or otherwise joined together, asbestos or cork. In their case, there is not surfaced with outer plies on both side.
- No duty can be demanded retrospectively in light of decision of the Hon'ble Supreme in case of CCE V/s Cotspun Ltd [1999 (133) ELT 353]; that no penalty is imposable in cases where the case of clandestine removal of goods could not be established.

4. A personal hearing in the matter was held on 06.10.2017. Shri S.J.Vyas, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He further stated that as per Order No.15/Commr/2003 dated 25.08.2003 of the Commissioner of Central Excise, Ahmedabad-III, the classification of the product should be 4408.30; that show cause notice does not propose this rather 4408.90; hence no legal basis and required to be dropped.



5. I find that the instant case was place for personal hearing in the year 2004 and at the time of personal hearing, the appellant has argued that the product in question should be classified under chapter heading 44.06 in view of decision in case of CCE Noida Vs Kitply Industries Ltd [2003 (151) ELT 560-Tri. Del]. I observe that the department has not accepted the said decision and preferred an appeal before the Hon'ble Supreme Court. Since the identical issue is pending before the Hon'ble Supreme of India, the instant appeal was transferred into call book in the year 2005. However, the appeal was retrieved from call book in view of final decision pronounced by the Apex Court [2011 (272) ELT 3].

6. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited points to be decided in the matter is whether the product viz "Veneered Fibre Board" merited classification under sub heading 4407.90, attracting duty @8% as argued by the appellant or under chapter sub heading 4408.90 and chargeable to duty @16% as held by the department.

7. The period of dispute in this case is from August 1999 to November 1999. Before proceeding to analyze the issue of classification in the instant case, it is worthwhile to mention the relevant tariff entries here.

- | | | |
|--------------|---|--|
| 44.07 | - | Fiber board of wood or other ligneous materials, whether or not bonded with resins or other organic substances. |
| 4407.10 | - | Insulation board and hardboard |
| 4407.90 | - | Other |
| 44.08 | - | Plywood, veneered pales and similar laminated wood. |
| 4408.10 | - | Marine plywood and aircraft plywood. |
| 4408.30 | - | Decorative plywood |
| 4408.40 | - | Cuttings and trimmings of plywood of width not exceeding 5 centimeters |
| 4408.90 | - | Other". |

8. Chapter Heading 44.08 speaks about 'plywood veneer panels and similar laminated wood'. Whereas Heading 44.07 speaks about 'fibre board of wood or other ligneous materials, whether or not bonded with resins or other organic substances, Insulation Board and hardboard and other. The impugned notice seeks classification of "Veneered Fibre Board" under chapter heading 4408.90 as the said products manufactured by the appellant comes within the purview of "similar laminated goods" in view of the note 5 of Section IX of CETA and raw material fibre board does not remain as fibre board as such but emerged different end product As stated, the Chapter Heading 4408 speaks about 'plywood, veneered panels and similar laminated wood'. Chapter Note 5 of Heading 44.08 is reproduced as under:

"For the purposes of Heading No. 44.08, the expression "similar laminated wood" includes blockboard, laminboard and battenboard, in which the core is thick and composed of blocks, laths or battens of wood glued or otherwise joined together and surfaced with the outer plies and also panels in which the wooden core is replaced by



other materials such as a layer or layers of particle board, fiberboard, wood waste glued or otherwise joined together, asbestos or cork".

Therefore, the product in question "Veneered Fibre Board" was appropriately classifiable under chapter heading 44.08 and not under 44.07.

9. Further, I find that Hon'ble Supreme Court of India has decided the classification of similar products in case of CCE Noida V/s M/s Kitply Industries Ltd supra, on the basis of which the instant appeal has been transferred and retrieved into/from call book. Since the said decision of Apex court is squarely applicable to the instant case, the same is reproduced the decision here.

"13. *It is not in dispute that the product before the lamination is not classifiable under Tariff Heading 44.08. However, it is the case of the appellant that after the lamination, the panels so obtained become a distinct product falling outside the purview of 44.06. Hence, what needs to be determined by us is whether even after the lamination, the products falls under sub-heading 4406.90 and 4407.90 or would it fall under sub-heading 4408.90.*

14. *For this purpose, it is important to refer to the statement of the factory manager Shri B.V. Rao, who stated that in the process of manufacture of the panels, plain panels of the mother boards (plain particle/MDF fiber) are used. Papers are passed through the impregnating unit wherein the resin and other required chemicals are spread on the paper and the paper gets impregnated. The impregnated paper is further dried and cut into required length. These paper sheets are assembled with the mother boards in such a way that the impregnated paper is placed on the upper side and one layer of impregnated design paper is placed over one layer of impregnated tissue paper. This assembly is put for pressing under the required heat and pressure. The above assembly is taken out as pre-laminated boards and is ready for dispatch.*

15. *From the above process, it is clear that the products are pre-laminated wood, most aptly falling under Chapter Heading 44.08 as the said chapter heading specifically speaks of plywood, veneered panels and similar laminated wood. The word "similar" discussed in the above para has been discussed by this court in the case of CCE, Shilling v. M/s. Wood Craft Products Ltd. (supra) wherein a similar issue with regard to "Block board" had arisen. For sound reasons recorded, this Court held that 'Block board' should be classified under Heading No. 44.08. The logic applied in the case of 'Block board' can very well be applied in the instant case. In the said judgment, this Court observed as under in paras 5 and 6 -*

"5. *It is significant that Heading No. 44.12 of the HSN is the same as Heading No. 44.08 of the Indian tariff and reads "Plywood, veneered panels and similar laminated wood." The explanatory notes on the HSN indicate the meaning of the expression "similar laminated wood" as under :-*

"similar laminated wood. This group can be divided into two categories:

Block board, lamin board and batten board, in which the core is thick and composed of blocks, laths or battens of wood glued together and surfaced with the outer plies. Panels of this kind are very rigid and strong and can be used without framing or backing."

6. *It is clear that if the expression "similar laminated wood" in the Indian Tariff is understood as it meant under the HSN on which pattern the Central Excise Tariff Act is based, then block boards of all kinds would fall within the expression "similar laminated wood". This is how the amended Chapter Note reads expressly. The question is whether it can be so read even for the earlier periods particularly the first period before amendment of Chapter Note 5 to expressly include block board in the expression "similar laminated wood".*

16. *Heading 44.08 in the instant case covers "plywood", "veneered panels" together with all kinds of "similar laminated wood". In other words, it is treating "plywood" or "veneered panels" as "laminated wood". Therefore, it covers all kinds of*

laminated wood bearing any resemblance to "plywood" or "veneered panels". The word used is "similar" and not "same". Thus, some resemblance to "plywood" or "veneered panels" is enough, provided the article can be treated as "laminated wood". The sweep of the heading is, therefore, quite wide.

17. Therefore, for the product to be classified under the above heading, it is enough if it is similar to laminated wood, which in the instant case is proved beyond reasonable doubt. Even factory Manager, Shri B.V. Rao admitted the facts with regard to lamination. At this point we may again refer to the case of M/s. Wood Craft Products Ltd. (supra). It has been mentioned therein that "The meaning of the significant words and description of the wood products as intermediate materials meant for manufacture of final products clearly indicate that "laminated wood" means a wood product prepared by placing layer on layer and "block board" is a plywood board with a core of wood. Any plywood board with a core of wood in which there are layers, one above the other is, therefore, laminated wood similar to plywood or, veneered panels. It is "similar laminated wood" included in the heading "Plywood, veneered panels and similar laminated wood". Similarity with, and not identity with plywood or veneered panels is required".

18. From the above, it is clear that the product is similar to plywood and veneered panels and hence Tariff Heading 44.08 is squarely applicable. Further, in the instant case, the core layer is made up of the particle board or MDF board (referred to as "mother boards" in the process mentioned above) and joined together with the help of resins and then laminated with plasticised paper (paper impregnated with melamine formaldehyde resin). Hence it is also clearly seen that the laminated panels manufactured by the respondent are covered under Chapter Note 5 to Chapter 44 of the schedule to the Act. The product need not be same as plywood or veneered panels but mere similarity with them is enough for Chapter Note 5 to apply.

19. The Tribunal has erred in holding that as "particle board" is specifically covered under Heading 44.06, laminated particle board will come under the scope of "similar board of wood" under the said heading. It is clear that the product after the lamination is a distinct marketable commodity different from the original one. This conclusion is further substantiated by the fact that Shri B.V. Rao said in his statement that the panels after lamination, become water resistant and look attractive due to printed paper and brings about a change in the name, usage etc. Therefore, the Tribunal's conclusion that the laminated board is similar to 'particle board' is incorrect and cannot be accepted.

20. The respondent has placed reliance on the *pari materia* heading in the HSN 44.10 to contend that the product is classifiable under Chapter Heading 44.06. We cannot accept this argument. In the proviso to the said heading, it has been mentioned that if the manufacturing process gives the product the essential character of articles of another heading, then Chapter Heading 44.12 will not apply. In the instant case, going by the statement of the respondent's own officer, the product after lamination assumes a distinct marketability and brings about a change in the product. This change, after lamination makes the product fall outside the purview of Chapter Heading 44.06 and that would place the product under Chapter Heading 44.08 as the word used under Chapter Heading 44.08 is "similar laminated wood" (emphasis supplied). Further recourse may also be taken to Rule 3(c) of the Rules for interpretation of the Act which envisages that if the products are capable of classification under two chapter headings, then as per the said rule, the classification must be under the heading which occurs last in the numerical order. Therefore, Heading 4408.90 would be the appropriate sub-heading for classification of the product in question.

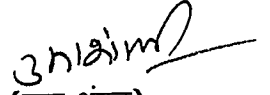
21. In terms of the above conclusions arrived at and on appreciation of the materials on record, we are of the view that the findings arrived at by the Tribunal are unjustified and cannot be accepted. The impugned judgments and orders passed by the Tribunal in both the appeals are, therefore, set aside and it would be open to the appellant to assess the respondent as per the above findings. Accordingly, the appeals are allowed but leaving the parties to bear their own costs."

10. The appellant has contended that vide Order-in-Original No. 15/Commr/2003 dated 25.08.2003, the jurisdictional Commissioner has decided the classification dispute for the period of 1997, wherein the classification of the product in dispute

has finalized under chapter sub heading 4408.30. Therefore, the show cause notice issued for classifying the said products under chapter heading 4408.90 is not tenable and accordingly impugned order confirming the classification is not sustainable. The said argument is not correct and acceptable as the impugned notice and the impugned order was issued prior to issuance of the said order dated 25.08.2003. Further, both the chapter sub heading attracts the same rate of duty. Moreover, the Hon'ble Apex Court has finalized the classification of the disputed products under chapter sub heading 4408.90.

11. In view of above discussion and following the decision of Apex Court supra, the product "veneered fibre board" is appropriately classifiable under chapter sub heading 4408.90. Therefore, I do not find any merit to interfere the impugned order. Therefore, I upheld the same with regard to demand of duty with interest and penalty.


12. The appeal filed by the appellant disposed of accordingly.


(उमा शंकर)

आयुक्त (अपील्स)

Date: /10/2017.

Attested


(Mohanan V.V)
Superintendent (Appeal)

By RPAD

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Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, Gandhinagar
3. The Addl./Joint Commissioner, (Systems), CGST, Gandhinagar
4. The Dy. / Asstt. Commissioner, CGST Kalol Division
5. Guard file.
6. P.A