NEUTRAL CITATION
2026:GUJHC:29257-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 10 of 2025

==========

THE COMMISSIONER OF CUSTOMS

Versus

CENTURY PLYBOARDS LTD.

==========

Appearance:
MR DEEPAK N KHANCHANDANI(7781) for the Appellant(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 24/04/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The following proposed substantial questions of law arise for determination of the present appeal.

> *"(i) Whether Tribunal is correct in allowing Refund, whereas as per Rule 21 of Customs Tariff (Identification, Assessment And Collection of Anti-Dumping Duty On Dumped Articles And For Determination of Injury) Rules, 1995, there is no provision of Refund in the case of Review of Anti Dumping Duty under Rule 23 ibid?*
>
> *(ii) Whether Tribunal is correct in allowing Refund, whereas the conditions of Section 9AA of Customs Tariff Act, 1995 and Rule 21 A of Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty on Dumped Articles And For Determination Of Injury) Rules, 1995 has not been fulfilled?*
>
> *(iii) Whether Tribunal is correct in Relying upon the Madras high court judgment in the case of Vetcare organics, whereas the Judgment has been passed different set of facts in the case of Advance licens and it is specifically ordered that Notification is ultra vires in so far as the petitioner is concerned?"*

2. The present tax appeal, filed under Section 130 of the Customs Act, 1962 (for short, "the Act"), emanates from the judgment and order dated 14.09.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal,

NEUTRAL CITATION
2026:GUJHC:29257-DB

Ahmedabad (for short, “CESTAT) in Customs Appeal No.11051 of 2015-DB.

3. That M/s. Century Plyboards had claimed Refund of Anti-Dumping Duty paid on imports for the period 2010-11 & 2011-12 in respect of import of Phenol imported from Korea RP, Taiwan & USA on 18.05.2012 to the Deputy Commissioner of Customs, Kandla who rejected the refund claim and passed Order-in-Original (for short, “the OIO”) No. KDL/DC/NC/726/REF/2014 dated 20.06.2014. According to the Respondent herein, they were eligible for refund of excess anti-dumping paid in view of the following:

3.1 The Directorate General of Anti-dumping and Allied Duties (for short, “the DGAD”) vide Final Findings dated 07.01.2008 recommended the imposition of anti-dumping duty on phenol originating in or exported from Korea RP, Taiwan and USA. The recommendation of the DGAD was Implemented by the Ministry of Finance vide Customs Notification No.30/2008-Cus dated 03.03.2008.

3.2 The Central Government also notified the Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012 on 19.01.2012 vide Notification No.05/2012. Section 9A of the Customs Tariff Act, 1975 lays down the overall mandate of imposition of anti dumping duty. It states that where any article from any country or territory to India Is imported at less than its normal value, then upon the importation of such articles into India, the Central Government cannot, by notification, impose an anti-dumping duty in excess of the margin of dumping in relation to such article. In respect

NEUTRAL CITATION
2026:GUJHC:29257-DB

of imports of phenol originating in or exported from Taiwan and USA, the DGAD vide final Findings dated 09.02.2012 determined for the period of Investigation from January 1, 2010 to December 31, 2010 that imports of phenol from Taiwan and USA were at lower dumping margin with no Injury to the Domestic Industry and recommended the withdrawal of levy of anti dumping duty.

3.3 The said determination of lower dumping margin and negative injury was done by DGAD vide its Final Findings No.15/31/2010-DGAD dated 09.02.2012 in mid-term review in respect of imports of phenol originating in or exported from Taiwan and United States. The DGAD, based on such determination, recommended revocation of the anti-dumping duly. The recommendation of the DGAD was implemented by the Ministry of Finance Vide Notification No. 14/2012-Cus dated 29.02.2012 by revoking the anti-dumping duty. Under Section 9AA of the Customs Tariff Act, 1975 an importer is entitled to seek a refund of the anti-dumping duty which was imposed under Section 9A(1) of the Customs Tariff Act, 1975 if he proves to the satisfaction of the Central Government that he has paid the anti-dumping duty in excess of the actual dumping margin determined for such article. The DGAD vide its Final Findings dated 09.02.2012 determined for the period of investigation that the Imports of phenol from Taiwan and USA were at a lower dumping margin with no injury to the Domestic Industry. Therefore, as per the claimant's contention, as a result of the computation of the lower dumping margin, the amount so paid as anti-dumping duty by them was liable to be refunded to them. Based on the aforesaid grounds, the

NEUTRAL CITATION
2026:GUJHC:29257-DB

claimant filed a refund claim on 18.05.2012 for Rs.48,84,374.50/-.

3.4 The Adjudicating Authority rejected the refund and held that, In the final findings of the Directorate General of Anti-Dumping & Allied Duties vide F.No.15/31/2010- DGAD dated 09.02.2012, the DGAD has in paragraph No.88 of the said findings recommended that the Authority is of the opinion that there is no need for the continued imposition of anti-dumping duties on phenol originating in and exported from Chinese Taipei and USA and the same is required to be withdrawn. Based on the said recommendation, the Ministry of Finance issued a Notification No.14/2012-Customs (ADD) dated 29.02.2012.

3.5 Further, the DGAD's recommendation was only to the extent of discontinuance of the imposition of anti-dumping duties on phenol originating in and exported from Chinese Taipei and USA The DGAD has nowhere recommended for grant of retrospective benefit and withdrawal of the same. Similarly, there is no such mention in the Ministry of Finance's Notification No.14/2012-Customs (ADD).

4. Based on the above reasoning the Adjudicating authority rejected the refund claim of the Respondent-importer. Aggrieved by the order, the Respondent herein filed an appeal before the first appellate authority i.e Commissioner, who vide Order-in-Appeal (OIA) No. KOL-CUSTM-OOO-APP-005-15-16 dated 21.04.2015 passed the OIA in favour of the revenue reiterating the reasoning and stand taken by the adjudicating authority in the OIO.

NEUTRAL CITATION
2026:GUJHC:29257-DB

5. Being aggrieved the Respondent approached the Hon'ble CESTAT who vide final order no FO/C/A/12044/2023-CU(DB) dated 14.09.2023 has completely relied upon the judgement of M/s VETCARE ORGANICS PVT. LTD. Versus CESTAT, CHENNAI as cited in 2011 (269) E.L.T. 444 (Mad.)

6. Learned Senior Standing Counsel Mr.Khanchandani, has submitted that the Tribunal has committed error while placing reliance on the judgment of the Madras High Court in the case of Vetcare Organics Pvt Ltd., (supra). It is submitted that before the Madras High Court the facts suggest that the levy of anti-dumping duty on imports made under a Quantity Base Advance Licence (QBAL), which were against the Notification No.41/97-Cus., dated 30.04.1997.

7. He has further submitted that even after 2011 (the Year of judgment of High Court) all the anti-dumping duty notifications being rescinded are having the same expression "except as respects thing done or omitted to be done before such suppression". Hence, it is clear that this expression has not been held *ultra vires* universally, it has been held so only in specific case based on the facts of that particular case.

8. Learned Senior Standing Counsel Mr.Khanchandani, has submitted that there is no provision which enables the importers to claim refund of anti-dumping duty, which is already levied and hence, the impugned judgment and order may be quashed and set aside.

9. The facts recorded by the Tribunal are not in dispute. The Directorate General of Anti-Dumping & Allied Duties (DGAD)

NEUTRAL CITATION
2026:GUJHC:29257-DB

vide final findings dated 07.01.2008 recommended the imposition of anti-dumping duty on phenol originating in or exported from Korea RP, Taiwan and USA. The said recommendation of the DGAD was implemented by the Ministry of Finance vide Customs Notification No.30/2008-Cus dated 03.03.2008.

10. The appellant filed a refund claim on the ground that they had paid anti-dumping duty in excess of the actual dumping margin determined for such article. The refund claim was in respect of imports made during April, 2010 to February, 2012. The Learned Counsel argued that DGAD has come to the conclusion that there was lower dumping margin and negative injury and therefore the anti-dumping duty paid by them during this period was refundable to them.

11. The entire case of the appellant – Customs hinges on the Notification NO.14/2012 dated 29.02.2012, which was contended before the Tribunal and the same does not apply to the past period and the words used in the said Notification “except as respects things done or omitted to be done before such suppression”, would not apply to the case of the respondent.

12. The Tribunal after considering the judgment of the Madras High Court in the case of Vetcare Organics Pvt. Ltd., (supra), on the Notification having retrospective effect has quashed and set aside such Notification by holding as Ultra vires Sections 9A, 9AA, 9B and 10 of the Customs Tariff Act, 1975, Articles 265 of the Constitution of India and Rules 13, 17, 18(4) and 21(3) of the Customs Tariff (Identification

NEUTRAL CITATION
2026:GUJHC:29257-DB

Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in so far as the petitioner is concerned.

13. In the present case, it is not in dispute that, by Notification dated 29.02.2012, the expression “except as respects things done or omitted to be done before such rescission” was incorporated while rescinding the earlier Notification dated 03.03.2008. The Directorate General of Anti-Dumping Duty considered the relevant aspects and accordingly recommended that there was no need for the continued imposition of anti-dumping duty on phenol originating in or exported from Chinese Taipei and the USA, and that the same be withdrawn. Based on this recommendation, the Ministry of Finance issued the Notification dated 29.02.2012 rescinding the Notification dated 03.03.2008, with a clear stipulation that it would not have retrospective effect and would apply only to future imports. In the case of the respondent, all claims pertaining to anti-dumping duty were paid prior to 29.02.2012, and such payments are required to be treated as “things done before rescission.”

14. We may, at this stage, refer to the final findings dated 09.02.2012 recorded by the Ministry of Commerce and Industry, Department of Commerce (Directorate General of Anti-Dumping and Allied Duties), wherein the name of the appellant also figures along with other importers. The conclusions recorded by the Designated Authority reveal that there was no adverse impact on the domestic industry during

NEUTRAL CITATION
2026:GUJHC:29257-DB

the period of investigation (POI) as well as the post-POI period, and that there was no evidence of price suppression or depression during the said period. Ultimately, it was concluded that there was no justification for the continued imposition of anti-dumping duty on Phenol originating in or exported from Chinese Taipei and the USA and that the same was liable to be withdrawn.

15. Thus, in view of the aforesaid final findings, we are not inclined to entertain or answer any substantial question of law, much less frame any such question. Accordingly, the appeal stands dismissed.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(PRANAV TRIVEDI,J)

MAHESH/88