

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20376 of 2017**

(Arising out of Order-in-Appeal No. 197/2017-18 dated 19.01.2017  
passed by the Commissioner of Customs (Appeals), Cochin.)

**M/s. Malankara Wood Industries,**  
KPV/553, Eliyarackal,  
Konny - 689 691.

Appellant(s)

*VERSUS*

**The Commissioner of Customs,**  
Custom House,  
Cochin - 9.

Respondent(s)

**APPEARANCE:**

Mr. Joseph Dominic, Chartered Accountant for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)  
HON'BLE MRS R BHAGYA DEVI, MEMBER  
(TECHNICAL)**

**Final Order No. 20036 / 2025**

DATE OF HEARING: 08.01.2025

DATE OF DECISION: 08.01.2025

**PER : DR. D.M. MISRA**

Heard both sides.

2. The appellant filed Bill of Entry No.7852253 dated 30.12.2004 for clearance of 91.5277 HT (Hoppus Tons) of Pyinkado Timber valued at USD 109,833.24 from Myanmar. The appellant filed invoices, country of origin certificate along with Bill of Entry for assessment. They claimed the benefit of concessional rate of duty under Notification No.46/2011 dated

01.06.2011. The assessing authority denied the benefit of the Notification on the ground that country of origin filed by the Appellant was issued by Myanmar Chamber of Commerce and Industries and not by the authority as mentioned in the said Notification. Aggrieved by the said order, they filed an appeal before the learned Commissioner (A), who in addition to the said grounds, observed that the country of origin certificate does not disclose any details of the third country invoicing and the value shown in the commercial invoice submitted by the appellant and the value shown in the county of origin certificate does not tally. Consequently, she rejected the appeal.

3. At the outset, the learned advocate for the appellant has submitted that both the authorities below have proceeded on a wrong premise that the country of origin certificate was issued by the Myanmar Chamber of Commerce and Industries, which is not an appropriate authority. He has placed the copy of the said certificate No.YAI-1072/2014 dated 24.12.2014 which was also placed before the authorities below which clearly mentions that the certificate was issued by 'The Republic of the Union of Myanmar, Director of Trade, Ministry of Commerce, Yangon, Myanmar.', which is the appropriate authority. Hence, the order is bad in law. Also, he has submitted that the learned Commissioner (A) upheld the order by traveling beyond the scope of the grounds raised in their Appeal and finding of the adjudicating authority, hence, bad in law in view of the principles laid down by the Hon'ble Supreme Court in the case of **Warner Hindustan Ltd. vs. CCE, Hyderabad: 1999 (113) ELT 24 (SC)**.

4. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities.

5. The short issue to be decided in this appeal is whether the appellant is eligible to the benefit of concessional rate of duty under Notification No.46/2011 dated 01.06.2011. We find that the country of origin certificate dated 24.12.2014 issued by the Republic of the Union of Myanmar which is in compliance with the format enclosed with the relevant Notification. Further, we find that the learned Commissioner (A) has decided the case on different grounds, which are extraneous and not deliberated by the lower authority while denying the benefit of Notification No.46/2011-Cus. dated 01.06.2011. Hence, raising a new ground at the appellate stage is contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of **Warner Hindustan Ltd.'s** case (supra). In view of above, the impugned order is set aside and the appeal is allowed with consequential relief if any as per law.

*(Operative part of this Order was pronounced in  
Open Court on conclusion of the hearing.)*

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

RV