

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.552 of 2012

(Arising out of OIO-01/CEX/COMMR/BRC-I/2012 dated 30/03/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Axel Polymers Ltd

.....Appellant

S.No. 309, Village-Mokshi, Sankarda Savli Road, Tal-Savli,
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:

Shri Anand Nainawati, Advocate for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. A/ 10852 /2023

DATE OF HEARING: 27.02.2023
DATE OF DECISION: 10.04.2023

RAMESH NAIR

This appeal is directed against Order-In-Original No. 01/C.Ex./Commr./BRC-I/2012 dated 30.03.2012 passed by Commissioner Central Excise, Customs & Service Tax, Vadodara-I whereby, the following order was passed:-

- i.) I order to classify the excisable goods viz. Compounds of PBT under Chapter Sub Heading No. 39079190 of the schedule to Central Excise Tariff Act, 1985.
- ii.) I also order to classify the excisable goods viz. Compound of Polyamide, under Chapter Sub Heading No. 39081090 of the schedule to Central Excise Tariff Act, 1985.
- iii.) I confirmed and order to recover the differential Central Excise duty amounting to Rs.2,88,58,033/- (Rupees Two Crore eighty eight lakhs fifty eight thousand and thirty three, including Education Cess and Sec. & High. Ed. Cess), as detailed in annexure "A-1, A-2 and A-3" to the Show Cause Notice, from M/s. Axel Polymers Limited,

- S.No. 309, Village- Mokshi, Sankarda SAVli Road, Tal-Savli, Dist.- Vadodara under proviso to Section 11A(1) of the Central Excise Act, 1944.
- iv.) I order to recover interest from M/s. Axel Polymers Limited, S. No. 309, Village-Mokshi, Sankarda Savli Road, Tal.-Savli, Distt.- Vadodara under Section 11AB of Central Excise Act, 1944 on the Central Excise duty amounting to Rs.2,88,58,033/- confirmed and demanded above.
- v.) I impose penalty of Rs. 2,88,58,033/- (Rupees Two Crore eighty eight lakhs fifty eight thousand and thirty three) upon M/s. Axel Polymers Limited, S. No. 309, Village-Mokshi, Sankarda Savli Road, Tal.-Savli, Distt.-Vadodara under Section 11AC of the Central Excise Act, 1944, read with Rule 25(1) of the Central Excise Rules 2002. However, in terms of first and second proviso of Section 11AC of Central Excise Act, 1944, the amount of penalty of Rs. 2,88,58,033/- is reducible to 25% subject to the fulfilment of conditions specified in said provisos by M/s. Axel Polymers Limited, S. No. 309, Village-Mokshi, Sankarda Savli Road, Tal.-Savli, Distt.-Vadodara.
- vi.) I do not impose penalty under Rule 26 of the Central Excise Rules, 2002.

The adjudicating authority denied the exemption notification number 4/2006-CE dated 01.03.2006 as amended by notification 37/2006-CE dated 20.07.2006 in respect of the excisable goods manufactured by the appellant namely compounds of Polyamide 6 (PA 6) in respect of Polyester Chips and Nylon-6 in respect of nylon chips. The main contention of the adjudicating authority to deny exemption is that as per test conducted on the product since both the product are not pure and the same are compounded with other material therefore, the goods does not fall under the description i.e. polyester chips or nylon chips. The contention of the adjudicating authority is that the term 'Polyester Chips' and 'Nylon Chips' are in respect of pure material and not compounded with other material. The demand was also confirmed invoking the extended period of limitation.

02. Shri Anand Nainawati, learned counsel appearing on behalf of the appellant submits that the exemption from payment of excise duty under the notification supra is provided in respect of Polyester Chips and Nylon Chips. It is his submission that admittedly both the products having active

ingredient i.e. in Polyester Chips is 70.65% and 29.35% of glass fibres plus NV additives in respect of nylon chips. The percentage of pure nylon is 70.45% and 29.55 % is glass fibres plus NV additives. He submits that as per those composition both the products are pre dominantly of Polyester and Nylon so as per the principle of pre-dominance both the product are undisputedly polyester chips and nylon chips respectively. He submits that the learned Commissioner has relied on the chemical examiners clarification that sample is of other than PBT and pure nylon chips. He submits that there is no such condition in the notification moreover, for Polyester Chips the Chapter heading is 3907 and for nylon chips, the chapter heading mentioned in the notification is 3908. It is his submission that this product of the appellant undisputedly falls under 3907 and 3908 respectively, and as per the pre-dominance principle both are polyester chips and nylon chips therefore, the appellant are clearly eligible for exemption notification. He further submits that the entire demand is time barred and there is no suppression of fact on the part of the appellant. The appellant filed their ER1 return for the month of August 2006 on 14.09.2006. It is on the basis of such declaration that the department issued letter dated 15.09.2009 asking them to pay full duty in respect of claiming exemption however, the appellant were of the view that they are eligible for exemption and this was informed to the department vide their letter dated 29.12.2006 .

2.1 He submits that the issue is of pure question of interpretation of relevant entries of notification therefore, there is absolutely no suppression of fact on the part of the appellant accordingly, the demand for extended period is not sustainable. He placed reliance on the following judgments:-

- UNION OF INDIA V/s. INTER CONTINENTAL (India)- 2008 (226) ELT 16 (S.C.)
- INTER-CONTINENTAL (INDIA) V/s. UNION OF INDIA- 2003 (154) ELT 37 (Guj.)
- TATA TELESERVICES LTD V/s. CC- 2006 (194) ELT 11 (S.C.)
- GUJARAT POLYCRETE PRIVATE LTD. V/s. CCE, AHMEDABAD 1999 (114) ELT 843 (Tribunal)
- Continental Foundation JT Venture Vs CCE Chandigarh- 2007 (216) ELT 177 (S.C)
- Larson & Turbo Ltd Vs CCE, Mumbai –II 1998 (103) ELT 404 (Tribunal)
- CCE, Mumbai-III Vs Narendra Kumar & Co. 2008 (232) ELT 866 (Tri-Mumbai)

- CCE & C, Guntur Vs Crane Betel Nut Powder Works 2007 (208) ELT 376 (Tri-Bang.)
- Oswal Agro Mills Ltd. Vs CCE 1993 (66) ELT 37 (S.C)
- Anand Nishikawa Co. Ltd VS CCE, Meerut 2005 (188) ELT 149 (S.C)
- Polyester Moulding Co. Pvt Ltd. Vs CCE Pune 2001 (129) ELT 699 (Tri-Mum)
- Poddar Pigments Ltd Vs CCE, Jaipur 2012 (280) ELT 558 (SC)
- Collector of Central Excise Vs Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
- Padmini Products Vs Collector of C, Ex, 1989 (43) ELT 195 (SC)
- Shree Baidyanath Ayurved Bhawan Pvt. Ltd Vs CCE, Allahabad 2000 (126) ELT 879 (T)
- Baidyanath Ayurved Bhawan Ltd Vs CCE 2004 (165) ELT 494 (SC)

03. Shri Tara Prakash, learned Deputy Commissioner (AR) for the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the demand was confirmed mainly denying the exemption notification no. 4/2006-CE, exemption entries are reproduced below:-

(1)	(2)	(3)	(4)	(5)
80A.	3907	Polyester Chips	8%	-
80B.	3908	Nylon Chips	12%	-

From the above exemption entry, we find that the exemption is granted to polyester chips falling under chapter heading no. 3907 and nylon chips falling under heading no. 3908. It is to be noted that for the purpose of exemption eight digit subject heading has not been prescribed under the notification therefore, it is clear that all the polyester chips falling under 3907 is eligible for exemption similarly, all the nylon chips falling under 3908 is eligible for exemption. The adjudicating authority has denied the exemption relying on the clarification given by the Chemical examiner and chemical examination report which is reproduced below:-

"1. Polyester chips: The sample is in the form of white chips mainly composed of Polyester and additives, glass fibre

% of Polyester = 70.65% (Approx)

% of Glass Fiber+ NV additives = 29.35

The sample is other than pure Polyester chips. It is glass fiber reinforced Polyester composite chips (Polyester compounded chips). This item can't be used in textile industry. It is used in preparation of moulded articles.

2. Nylon chips: The sample is in the form of Black coloured chips mainly Composed of Nylon and additive, glass fibre.

% of Nylon =70.45 (Approx)

% of Glass Fibre+ NV additives = 29.55

The sample is other than pure Nylon chips. It is glass fibre reinforced nylon composite chips (Nylon Compounded Chips). This item can't be used in textile intermediates"

From the above chemical examination test report, it is clear that in respect of polyester chips the percentage of polyester is 70.65% and in respect of nylon chips the percentage of nylon is 70.45% remaining portion in both the product is glass fibres and additives. As per the composition, the product is pre-dominantly consisting of polyester and nylon respectively. The adjudicating authority has put entire emphasis on the clarification issued by Chemical Examiner that against the question raised before the chemical examiner that whether the product compound of PBT can be reported as polyester chips or not. The chemical examiner has answered as above that the sample is other than pure PBT and other than pure nylon chips. From the above clarification, it is also clear that even though both the products are not pure PBT and pure nylon chips but both are pre-dominantly consists of more than 70% of polyester and nylon.

4.1 It is pertinent to note that the chemical examiner has not answered that even though it is not pure PBT or pure nylon chips, the same will fall under polyester chips or nylon chips respectively therefore, the adjudicating authority has given of his own assumption that since the PBT and nylon chips are not pure the same cannot be considered as polyester chips and nylon chips which is very absurd observation of the learned Commissioner. It is settled law that any chemical compound is classifiable on the basis of its active ingredient only. In the present case, since both the products are admittedly pre-dominance of Polyester and Nylon, the same are classifiable under 3907 and 3908 respectively. Undisputedly, the form of the product is

in chips so therefore, both the products are clearly qualified as polyester chips and nylon chips being constituent of pre-dominantly polyester and nylon respectively. The classification of the product decided by the commissioner will have no adverse effect on the eligibility of the notification so long the product falls under chapter heading 3907 and 3908 and the same is polyester chips and nylon chips irrespective of the same is not in the pure form therefore, in our considered view the appellants are eligible for exemption notification in respect of their product namely polyester chips and nylon chips.

4.2 As regard the invocation of extended period, we are completely agreement with the submission of the learned counsel that the appellants have correctly declared their claim of notification in their ER-1 returns in 2006 itself and on that basis only the revenue has written letter dated 15.09.2006 denying the exemption and asked the appellants to pay full duty instead of claiming exemption. The appellants categorically informed the department vide letter dated 29.12.2006 that they are eligible for exemption. With these correspondence, the revenue was absolutely free and nothing prevented them to issue show cause notice well within the normal period of limitation. However, the show cause notice was issued on 02.11.2010 covering the period from August 2006 to June 2009 invoking proviso to Section 11A(1) of the Central Excise Act, 1944.

4.3 We find that as per the above fact, there is absolutely no suppression of fact on the part of the appellants therefore, the entire demand raised under the extended period will not sustain on limitation itself therefore, the demand is liable to be set aside on the ground of limitation also.

05. As per our above discussion and findings, the impugned order is not sustainable hence, the same is set aside. Appeal is allowed with consequential relief if any, in accordance with law.

(Pronounced in the open court on 10.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)