

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 13179 of 2013-DB

(Arising out of OIO-DMN-EXCUS-000-COM-001-13-14 dated 19/06/2013 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN(Appeal))

Intercontinental Polymer Pvt Ltd

.....Appellant

Plot No. 58, Survey No.187/1,
Panchal Udyog Nagar, Bhimpore, Daman (U T)

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station, Vapi, Gujarat - 396191

APPEARANCE:

Shri. Devashish K. Trivedi, Advocate for the Appellant

Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11209 /2023

DATE OF HEARING: 20.04.2023
DATE OF DECISION: 07.06.2023

RAMESH NAIR

The brief facts of the case arise for consideration are that Appellant are engaged in the manufacture of excisable goods i.e. Polypropylene Compound, Polypropylene Oxide, Abs Compound, Polyamide Chips etc. During the course of audit of records of the appellant, central excise officers observed that appellant was also manufacturing re-processed Plastic Granules and clearing the same without payment of duty under Notification No. 04/2006-C.E. dated 01.03.2006. As per the department, it appeared that Appellant had wrongly cleared re-processed plastic granules without payment of duty. The said Notification actually specified that, Plastic materials falling under Chapter Heading No. 3901 to 3914 of Central Excise Tariff Act, 1985, reprocessed out of waste of goods falling under chapter 39,54,56,59,64,84,85,86,87,90,91,92,93,94,95 and 96 can be cleared at 'Nil' rate of duty. Whereas appellant had received imported Acrylic Re-

processed Granules [Mix Color] falling under chapter heading no. 39069010 & recycled Floorweep of Mix Plastic Granules falling under heading No. 39123911, which are not covered under the waste because as per the Customs Tariff Act, 1975, all the waste, paring and scrap are covered under Chapter heading 3915. Coming to such a conclusion, show cause notice was issued to the Appellant. The Appellant agitated the show cause notice before the adjudicating authority on merits. The adjudicating authority did not find any merits in the contentions raised by the appellant and confirmed the demand of central excise duty and imposed penalty vide impugned Order dated 19.06.2013. Aggrieved by such an order, the Appellant has preferred the present appeal.

2. Shri Devashish K. Trivedi, Learned Counsel appearing on behalf of appellant submits that the Central Excise Exemption Notification No. 4/2006-CE dated 01.03.2006 clearly mentions that for manufacturing goods of Tariff Items 3901 to 3914, the waste falling under Chapter 39 must be used. It is nowhere mentioned that waste falling under Chapter 3915 must be used. This means the Notification itself was drafted, completely understanding and believing that waste of plastics which is reprocessed in India and cleared under the aforesaid exemption Notification could fall anywhere under entire Chapter 39. It is not necessary that the same would only fall under Tariff items 3915. Further, the foreign supplier has specifically certified that the goods supplied by them and imported by the appellant for reprocessing the same into India under the bill of entries are waste of plastics in primary form.

2.1 He also submits that at the time when the goods were imported, the Assistant Commissioner of Customs, had drawn the sample of the said imported goods. Sample were taken from the lot covered under some of the bill of entries. As per the test report the goods are "material not of prime grade".

2.2 He further submits that the Ld. Adjudicating authority had totally ignored the submission that inputs imported are waste and scrap although same do not classify under Tariff Item 3915. They are waste of plastics in primary form classified under Tariff Item 3906 and 3912 respectively. The Ld. Adjudicating authority has failed to appreciate that even Tariff Item 3906 and 3912 respectively, covers waste of the said respective Tariff Item. The Ld. Adjudicating authority has also failed to appreciate the documents evidencing beyond any scope of doubt that what was imported and reprocessed in the factory of the appellant in India was nothing but waste of Plastics of Chapter 39 only.

2.3 He also argued that assuming that the classification of imported waste of plastics was wrongly mentioned in the respective Bill of Entry, even in that view of the matter, fact remains that what was imported was waste of plastic only. Needless to mention that if any particular classification is wrongly made by mistake, simply for that reason the product would not become different product than what it actually is. It is settled law that simply because a wrong classification is made by mistake, benefit of exemption notification could not be denied. He placed reliance on following judgment.

- Sundaram Fasteners Ltd. Vs. Collector of Central Excise, Madras – 1987(29)ELT 275.

2.4 He further submits that it is a settled law that Notification is to be read as it is. If the notification deliberately uses the words "Scrap or waste of goods falling under Chapter 39-----", the same cannot be restricted to be interpreted as "scrap or waste of goods falling within Tariff Items 3915----- --". He placed reliance on the following judgments:-

- Mahindra & Mahindra Ltd. Vs. Collector of C.Ex., Aurangabad – 2000 (115) ELT 802 (Tribunal)
- Shree Kansara Sarvodya Sahakari Udg. Mandli Ltd. Vs. CCE Baroda- 1999 (106) ELT 325 (Tribunal)

- Metrosyl, Jesidih Industrial Area Vs. Collector of C.Ex.- 1991 (53) ELT 93 (Tribunal)
- BASF India Ltd. Vs. Collector of Central Excise – 1989(40) ELT 363 (Tribunal)

2.5 He further submits that show cause notice was barred by limitation. The Adjudicating authority had also failed to appreciate the same. The period in dispute is from December 2006 to September 2011. The show cause notice dated 11.11.2011. As per the Annexure –A to the show cause notice details of the clearances of the final products made under exemption is given. According to the same, demand is made towards the said period. Total demand is of Rs. 52,96,314/-. It may be seen that the majority of the demand is for the period prior to 18.11.2010. Only a small fraction of the demand is of the period of past one year from the show –cause notice i.e. in between 18.11.2010 to 18.11.2011. In the present matter there is no fraud, wilful mis-statement, suppression of facts, intent to evade payment of duty, mala-fide, etc. It is so because the raw materials was imported openly in front of the customs authority. Bills of entry were filed. The samples of imported waste of plastic which were classified in the bill of entry under tariff Item 39069010 being described as " Arcylic Reprocessed Granules (Mix Colour)", under Tariff items 39121190 being described as "Recycled Mix Plastic Granules", and Tariff Items 39069010 being described as "Recycled Floorweer of Mix Plastic Granules" were tested on the instance of the Assistant Commissioner of Customs. It was confirmed according to the Test Report that they were waste of Plastic. Subsequently, said waste of plastics were brought in the factory of appellant. Same were reprocessed and final product was manufactured and cleared under exemption Notification No. 4/2006-CE dated 01.03.2006. Appellant had also filed their statutory periodical ER-1 return under Central Excise Law. In the said return, it was particularly declared that benefit of aforesaid exemption notification is availed. There was no suppression at all. Longer period of limitation for the

purpose of issuing show cause notice is not invokable. He placed reliance on the following decision.

- 2011(24) STR 572(Tri. Delhi) –CCE Indore Vs. Medcaps Ltd.
- 2012(25) STR 46 (Tri. Ahd.) – Parekh Plast (I) Pvt. Ltd. Vs. CCE, Vapi.
- 1989(40) ELT 276 (SC) – Collector of Central Excise Vs. Chemphar Drugs & Liniments
- 1989(43) ELT 195(SC) – Padmini Products Vs. CCE
- 2005(188) ELT 251 (SC)- Gopal Zarda Udhyog Vs. CCE
- 1994(73) ELT 257 (SC) – Lubri-Chem Industries Ltd. Vs. CCE
- 2005(188) ELT 149 (SC) –Anand Nishikawa Co. Ltd. Vs. CCE
- 2007(216)ELT 177(SC)- Continental Foundation JT. Venture Vs. Commissioner of Central Excise, Chandigarh –I

2.6 He also submits that whether exemption from payment of excise duty is available in accordance with Exemption Notification No. 4/2006-CE dtd. 01.03.2006 or not is a matter of interpretation. It is settled law that in matter pertaining to interpretation, classification of products, when exemption is availed, it cannot be alleged that there was fraud or mala-fide on part of the assessee availing the same. He placed reliance on the following decisions:

- Chanasma Taluka Srvodaya Majoor Kamdar Sahakari Mandli Ltd. Vs. CCE Ahmedabad – 2012(25)STR 444 (Tri- Ahmd).
- Lanxess ABS Ltd. Vs. Commissioner of Central Excise, Vadodara – 2010(259)ELT 551 (Tri. Ahmd)

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of revenue reiterated the finding of the adjudicating authority.

4. Heard both the side and perused the case records. We find that the main bone of contention in this case concerns the eligibility of the Re-

processed granules, manufactured by the appellants for exemption under Sl. No. 78 of Notification No. 4/2006-C.E., dated 1-3-2006. The goods imported by the appellant for manufacturing of re-processed granules, fulfill the condition of the Notification No. 04/2006-CE dated 01.03.2006 as amended, or otherwise. The said Sl. No. 78 of the notification is reproduced for ready reference :

TABLE

S. No.	Chapter heading or sub-heading or Tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
.....				
78	3901 to 3914	Plastic materials reprocessed in India out of the scrap or the waste of goods falling within Chapters 39, 54, 55, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 and 96 <i>Explanation.</i> - For the removal of doubts, it is hereby clarified that nothing contained in this exemption shall apply to plastic materials reprocessed in a free trade zone, a special economic zone or a hundred per cent export-oriented undertaking and brought to any other place in India	Nil	

4.1 We find that in the present matter the case of the revenue is that as per the Customs Tariff Act, 1975 “Waste, Parings and Scrap; Semi-Manufactures; Articles Waste, Parings and Scrap of Plastics” falls under chapter heading 3915, while the input imported and used by the Appellant for manufacturing of re-processed plastics granules fall under Chapter

heading 3906 and 3912 and therefore do not fulfil the condition of Notification No. 04/2006-CE dated 01.03.2006.

4.2 We find that the exemption under notification No. 4/2006 (Sl. No. 78) is available to plastic materials manufactured in factory using *waste and scrap of goods* falling under Ch. 39, 54 etc. as input. Clearly, benefit of exemption under Notification No. 4/2006 (Sl. No. 78) is available where inputs are waste and scrap *of goods* falling under Ch. 39, 54,... The words "*of goods*" is of critical importance. It is not merely "waster and scrap" but "*waste and scrap of goods*". It obviously applies to used and discarded goods of Ch. 39, 54,... etc. assorted and collected as waste and scrap. In the present matter documents i.e. Certificate of foreign supplier, Test Report of imported goods produced by the appellant clearly show that the goods imported by the appellant are material not of prime grade. Further in the present matter there is no dispute on the use of the imported goods as waste & scrap by appellant in factory premises. Thus, it is evident beyond the scope of any doubt that the imported plastics granules were nothing but waste and scrap of goods falling under chapter 39. In the present matter we are of the considered view that imported goods have to be considered as waste & scrap of goods falling under chapter 39 and entitled to above exemption. Hence we do not find any merit in impugned order.

4.3 The appellant have vehemently argued that the demand for the longer period is time bar as there is no suppression of fact. We find that the demand show cause notice was issued on 11.11.2011 for the period of December, 2006 to September, 2011 by invoking the extended period. The issue is the eligibility of the Notification No. 04/2006- CE dated 01.03.2006 which has a clear condition that the goods are exempted if it is manufactured out of scrap falling under chapter 39. The appellant have claimed the exemption notification and declared in the ER-1 return. The Revenue was not prevented to find out the eligibility of the exemption

notification and view of the Revenue could be expressed immediately on filing of ER-1 return and the show cause notice could have been issued within a normal period. Therefore, claiming the exemption notification which was in the knowledge of the Revenue, the suppression of fact or malafide on the part of the appellant cannot be attributed. The issue involved is clearly an interpretational issue of exemption notification and the interpretation made by the Revenue could have been made from the claim of notification as declared in their ER-1 return. It is also fact on record that the appellant have cleared the goods by filing bills of entry and the fact that the goods imported is not classified under 3915 was well informed to the Department. Therefore, in the peculiar facts as noted above there is no suppression of fact or malafide intention on part of the appellant, therefore, the invocation of extended period is illegal and incorrect. Accordingly, the demand for the longer period is not sustainable on the ground of time bar also. The demand is set aside on merit as well as on limitation.

5. As per our above discussion and finding, the impugned order is set aside and the appeal allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 07.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)