CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. C/61865/2018

(Arising out of OIA No.LUD-EXCUS-001-APP-1694-1701-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

C.C., Ludhiana **......Appellant**
ICD, GRFL, G.T.Road, Sahnewal, Ludhiana-141001)

VERSUS

Longowalia Yarns Ltd. **......Respondent**
(G.T/.Road, Doraha, Ludhiana)

With

Appeal No. C/61866/2018

(Arising out of OIA No.LUD-EXCUS-001-APP-1673-1678-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

C.C., Ludhiana **......Appellant**

VERSUS

Garg Overseas **......Respondent**

And with

Appeal No. C/61978/2018 to C/61985/2018
(Arising out of OIA No.LUD-EXCUS-001-APP-1673-1678-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

Longowalia Yarns Ltd. **......Appellant**

VERSUS

C.C., Ludhiana **......Respondent**

And with

Appeal No. C/61986/2018 to C/61991/2018

(Arising out of OIA No.LUD-EXCUS-001-APP-1673-1678-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

Garg Overseas **......Appellant**

VERSUS

C.C., Ludhiana **......Respondent**

And with

Application No. C/COD/60258/2019 in Appeal C/60350/2019
Application No. C/COD/60259/2019 in Appeal C/60351/2019
Application No. C/COD/60260/2019 in Appeal C/60352/2019
Application No. C/COD/60254/2019 in Appeal C/60353/2019
Application No. C/COD/60255/2019 in Appeal C/60354/2019
Application No. C/COD/60256/2019 in Appeal C/60355/2019
Application No. C/COD/60257/2019 in Appeal C/60356/2019

(Arising out of OIA No.LUD-EXCUS-001-APP-1694-1701-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

C.C., Ludhiana **......Appellant**

VERSUS

Longowalia Yarns Ltd. **......Respondent**

And with

Application No. C/COD/60249/2019 in Appeal C/60357/2019
Application No. C/COD/60252/2019 in Appeal C/60358/2019
Application No. C/COD/60253/2019 in Appeal C/60359/2019
Application No. C/COD/60251/2019 in Appeal C/60360/2019
Application No. C/COD/60250/2019 in Appeal C/60361/2019

(Arising out of OIA No.LUD-EXCUS-001-APP-1673-1678-18 DT.12.09.2018 passed by the Central Goods and Service Tax, F Block, Rishi Nagar, Ludhiana)

C.C., Ludhiana **......Appellant**

VERSUS

Garg Overseas **......Respondent**

APPEARANCE:

Present for the Appellant: Mr. Vikrant Kackria, Advocate
Present for the Respondent: Mr. M.S. Dhindsa, Authorized Representative

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.C.L.Mahar, Member (Technical)

FINAL ORDER NO.60401-60428/2019

DATE OF HEARING/DECISION: 04.04.2019

PER:ASHOK JINDAL

The Revenue has filed the applications for condonation of delay in filing the appeals on the ground that initially they have filed one appeal whereas they were required to file appeal against each impugned orders. Therefore, there was delay in filing appeals.

2. Considering the reasons for causing delay are satisfactory, we condone the delay in filing the appeals. Accordingly, the application for condonation of delay in filing the appeals are allowed.

3. Both sides are in appeal against the impugned orders.

4. The facts are common in both the importers, therefore, all the appeals have taken together for disposal by a common order.

5. The facts of the case are that the importers filed bills of entry for clearance of 100% recycled polyester staple fibre made from PET bottle flakes (plastic waste)/polyester staple fibre manufactured from plastic scrap or plastic waste including waste PET bottles classifying the same under Tariff Item 550332000 of Customs Tariff Act, 1975 by claiming the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012. The goods were assessed provisionally against Text Bonds and Bank Guarantees for want of chemical analysis to ascertain whether the impugned goods, in question, were manufactured from plastics scrap or plastic waste including polyethylene teraphthalate bottles. The samples were sent to CRCL, New Delhi for testing which reported that the goods could not be tested for want of facility, therefore, the same were sent to CIPET. Initially, CIPET in its test report dt.13.7.2015 stated that the fibre may be considered as regenerated staple fibre made out of pet waste. Later on, vide test report 27.8.2015, it was opined that goods under import can be considered as regenerated and changed its opinion that it is also considered as regenerated staple fibre made from PET/scrap. Again a query was made vide letter dt.28.10.2015 for clarification regarding test report conducted by the CIPET, the query was reply vide letter dt.26.11.2015. Thereafter, the provisional assessment so finalized and the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012 was denied by the adjudicating authority converted into the demand of duty @ 12%. The said order was challenged by the importers before the Commissioner (Appeals), who examined the test report and allowed the benefit of Sl.No.172A of the Notification No.12/2012-CE

dt.17.03.2012 as amended. The appellants also contended before the Commissioner (Appeals) as they are not availing of credit on inputs and input service, therefore the assessment of CVD ought to be done @ 2% in terms of Notification No.1/2011-CE dt.1.03.2011 which has been amended by Notification No.8/2014-CE dt.11.7.2014. Against the said order, both sides are in appeal. The Revenue is in appeal on the ground that the importers are not entitled for the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012 whereas the importers are in appeal on the ground that they were not given the benefit reduced CVD in terms of Notification No.1/2011-CE dt.1.03.2011.

6. Ld. AR submits that the test report provided by CIPET is not conclusive which states it may be or can be considered. There is ambiguity in the test report, therefore, these reports cannot be relied upon. He also submits that the composition of the goods shows that the imported goods are virgin grade material, therefore, the test report cannot be relied upon. He further submits that in the case of CC (Import, Mumbai vs. Dilip Kumar & Co.-2015 (361) ELT 577 (SC) the Hon'ble Supreme Court has held that in case any ambiguity in the notification, the benefit of doubt goes in favour of the Revenue. As in this case, there is ambiguity in the test report, therefore, the test report is held to be in favour of the Revenue. Hence, the importers are not entitled for the benefit of notification.

7. On the other hand, Ld. Counsel for the importers submits that the test reports are conclusive in nature and clarification was sought vide letter dt.28.10.2015 and the same has been answered by CIPET

vide its letter dt.26.11.2015, which is testing authority of the sample of the imported goods. The same has been relied upon by the Commissioner (Appeals) in the impugned order and rightly allowed the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012. He also submits that the importers have never availed the credit on inputs and input service, in that circumstance, as per Notification No.1/2011-CE dt.1.03.2011, they are required to pay reduced CVD @ 2% and such contention of the importers have not been considered by the Commissioner (Appeals). Therefore, the impugned orders are required to be modified to that extent.

8. Heard the parties and considered the submissions.

9. On careful consideration of the submissions made by both sides, we find that in these matters, the goods were imported initially and assessed provisionally and the samples were drawn which were sent for testing to CIPET and clarification sought by the Revenue vide letterdt.28.10.2015 by the Additional Commissioner of Customs, Ludhiana and query was answered by the Dr.K.Prakalathan, Manager (Testing). For better appreciation, the letter dt.26.11.2015 is extracted as under:-

...ल इंस्टिट्यूट ऑफ प्लास्टिक
इंजीनि...रिंग एण्ड टेक्नॉलाजी
रसायन एवं पेट्रोरसायन विभाग
रसायन एवं उर्वरक मंत्रालय, भारत सरकार
गिण्डी, चेन्नै - 600 032.
फोन : 91-44-2225 4701 (6 लाइन) तार रू सिपेट
फैक्स : 91-44-22254707
ई-मेल : chennai@cipet.gov.in
वेबसाइट : www.cipet.gov.in

...L INSTITUTE OF PLASTICS
...INEERING & TECHNOLOGY
...partment of Chemicals & Petrochemicals
...of Chemicals & Fertilizers, Govt. of India
Guindy, Chennai - 600 032.
Phone : 91-44-2225 4701 (6 Lines) Grams : CIPET
Fax : 91 - 44 - 22254707
E-mail : chennai@cipet.gov.in
Website : www.cipet.gov.in

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Deputy Commissioner
15
03 DEC 2015
16:00 pm
PSWC,CFS,Ludhia...

Dr. K. PRAKALATHAN
MANAGER (TESTING)

CIPET/CHN/PTC/CUSTOMS_LUD/2015-16/1-117

26.11.2015

To
Shri. Sunil Singh Katiyar, I.R.S.
Additional Commissioner
Customs Commissionerate, Ludhiana
ICD-G.R.F.L, G.T. Road, Sahnewal, Ludhiana.

Sh Dhendse
DC/Group
This was already recd on email

Respeted Sir,

Sub: Clarification regarding Polyester staple fibre manufactured from PET waste bottles- reg.
Ref: Your Ltr. D.O.C. No. B.E. No. 5957023 dated 28.06.2015/9361 dtd: 28.10.2015

Please refer our earlier letters dated 17.01.2014 and 05.12.2014 in which we have stated that the Intrinsic Viscosity (IV) of virgin grade PET for fiber forming process used in variety of applications are in the range of 0.4 – 0.98 dL/g with authentic literatures.

Though we stated as "the submitted sample may be considered as regenerated staple fiber made out of PET waste" vide in our Test Report No. 43572 dtd: 19.03.2014, but later on based on the feedback from different customs and other sources we felt that the above comment may be little discomfort in taking a prompt decisions by customs. In view of this we made a little modification in the comment as "Based on the above test results and visual appearance, the submitted sample is confirmed as Polyethylene terephthalate (PET) which is a single thermoplastic material transformed into staple fibre form. The submitted sample of fibre is also considered as regenerated staple fibre made from polyethylene terephthalate waste / scrap," as given in the Test Report No. 47879 dtd: 27.08.2015.

With reference to the critical testing parameters, we have already submitted adequate information about Intrinsic Viscosity and its importance to ascertain the quality/grade of PET to your good office.

Regarding overlapping of IV for both bottle flaks grade and bottle flake fiber grade, to the best of our knowledge this is to convey that in recycling of PET, the bottle flake are utilized to convert only as staple fiber and not as bottle because it will create the processing difficulties in making the quality bottles including physical shapes. In such case the overlapping of IV may not play a role as we also received the samples in the form of fiber only.

1 of 2

Head Office : CIPET, Guindy, Chennai - 600 032. मुख्यालय : गिण्डी, चेन्नै - 600 032.
चेन्नै, अहमदाबाद, लखनऊ, हैदराबाद, भुवनेश्वर, भोपाल, अमृतसर, मैसूर, इम्फाल, हाजीपुर, हल्दिया, गुवाहाटी, औरंगाबाद, जयपुर एवं ...
...: Chennai, Ahmedabad, Lucknow, Hyderabad, Bhubaneswar, Bhopal, Amritsar, Mysore, Imphal ...

10. As clarification was answered by CIPET vide its letter dt.26.11.2015 and on the basis of said clarification, the Commissioner (Appeals) held that the goods in question are made out plastic waste/scrap/waste PET bottles flakes. No report contrary in support of their claim by any expert has been produced by the Revenue. In that circumstance, the test report give by the CIPET has been relied upon and is to be considered conclusive report.

11. Regarding reliance placed by the Ld.AR in the case of Dilip Kumar & Co. (supra), we find that in the said case, the Hon'ble Supreme Court has observed that in case any ambiguity in the notification, the benefit of doubt goes in favour of the Government. But in this case, there is no ambiguity in the notification which has been relied upon by the importers. It is case based on facts and test conducted on these imported goods and no contrary test report produced by the Revenue against the test report of CIPET and the Commissioner (Appeals) has rightly allowed the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012 to the importers of the imported goods in question.

12. We also take note of the fact that earlier consignment imported by the importers, the benefit of notification was granted on the basis of test report given by the CIPET. Therefore, we do not find any infirmity in the impugned orders quo allowing to the importers the benefit of Sl.No.172A of the Notification No.12/2012-CE dt.17.03.2012. Therefore, the Revenue appeals have no merit and the same are dismissed.

13. Now, come to the appeals filed by the importers, we find that it is the contention of the importers that they have not taken the credit on inputs and input service, therefore, they are entitled to take the benefit of reduced duty to pay 2% in terms of the decision of the Hon'ble Apex Court in the case of SRF Ltd. vs. Commissioner of Customs, Chennai-2015 (318) ELT 607 (SC) and the said issue has not been examined by the Commissioner (Appeals). Therefore, for the said limited purpose, the appeals are remanded back to the

Commissioner (Appeals) to decide the issue on the basis of records produced by the importers and the case law relied:-

"whether the importers have not taken credit on inputs and input and are entitled for the benefit of exemption Notification No.1/2011-CE dt.1.03.2011 or not."

14. In view of the above, the following order is passed:-

(a) the appeals filed by the Revenue are dismissed and

(b) the appeals filed by the importers are allowed by way of remand to the Ld. Commissioner (Appeals) to decide the issue of benefit of reduced duty @ 2% only.

15. With these terms, the appeals are disposed of.

(operative of the order was pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

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