CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/82/2011 (by Dept.) and
E/CO/13/2011 (by assessee)

[Arising out of Order-in-Appeal No.198/2010 dt. 15.11.2010 passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

Commissioner of Central Excise,
Trichy — Appellant

Versus

Sree Ranga Polymers — Respondent

Appearance :

Shri S. Govindarajan, AC (AR)
For the Appellant

Shri R.R. Padmanabhan, Consultant
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing : 06.08.2018
Date of Pronouncement: 25.09.2018

FINAL ORDER No. 42464 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that M/s.Sree Ranga Polymers, the respondents herein (assessee) are manufacturers of Pet Flakes and availing SSI exemption under Notification No.8/2003-CE dt. 01.03.2003. They sought to avail the benefit of Notification No.4/2006 (Entry No.78). They also sought to classify their final product under Central Excise Tariff Heading (CETH) 3907.60 of the Central Excise Tariff Act, 1985 (CETA). Department however, took the view that said exemption notification would not be available to them and that these items should be correctly classifiable as waste of plastics / PET flakes under CETH 39159042. Proceedings were initiated by way of issue of show cause notice dt. 24.03.2010 . In adjudication, the original authority vide an order dt. 14.06.2010 held that Parings of PET bottles / PET flakes cleared by the assessee have been rightly classified under CETH 39159042 of the CETA. In appeal, the Commissioner (Appeals) vide the impugned order dt. 15.11.2010 held that the goods manufactured by the assessee are classifiable only under CETH 3907.60 and not under 39159042 and allowed the appeal. Aggrieved, the department is before this forum.

2. Today when the matter came up for hearing, on behalf of the Department, Ld. A.R Shri S. Govindarajan draws our attention to Chapter Note 3 of Chapter 39 of the CETA, to submit that CETH 39.01 to 39.11 apply only to goods of a kind produced by chemical synthesis. He further points out that as per Chapter Note 6 of Chapter 39, the meaning of the expression “primary forms” has been amplified. Chapter Note 6 (b) allows some forms obtained by conversion to be falling within the scope of Chapter Note 3, however such primary form should have been converted from another primary form only. Ld. A.R also reiterates the grounds of appeal filed by the department.

3.1 On the other hand, on behalf of the respondent-assessee, Ld. Consultant Shri R.R. Padmanabhan supports the impugned order. He also submits that notwithstanding the arguments raised by Ld.AR concerning Chapter Notes 3 & 6 of Chapter 39, the Chapter Note 7 also should be considered which clearly states that "*Heading No.39.15 does not apply to waste, parings and scrap of a single thermoplastic material, transformed into primary forms*". Ld. consultant submits that the raw material used by them vix. PET bottles are thermoplastic material and hence wastes are converted into flakes which are primary forms and hence benefit of Notification No.4/2006-CE for items at Entry No.78 should very well be available to the final products.

3.2 Ld. Consultant relies upon the following case laws :

(a) *CCE Bombay Vs Bright Bros. Ltd*. – 1996 (84) ELT 83 (Tribunal)

(b) *CC New Delhi Vs Bhartiya Plastic Udyog* –
1999 (107) ELT 161 (Tribunal)

(c) *Ideal Sheet Metal Stampings & Pressings Pvt. Ltd. Vs CC Ahmedabad* - 2001 (133) ELT 807 (Tri.-Mumbai)

(d) *CC Ahmedabad Vs Surya Exim Ltd.*
2015 (323) ELT 585 (Tri.-Ahmd.)

3.3 Ld. Consultant also submits that even in case the final goods have to be considered as falling within CETH 39.15, it has to be held that no manufacture is involved in conversion of PET Bottles into Flakes. For this purpose, he relies upon the ratio of judgement of the Hon'ble Supreme Court in the case of *Crane Betel Nut Powder Works Vs CC & CCE Tirupathi* – 2007 (210) ELT 171 (SC).

4. Heard both sides and have gone through the facts.

5.1 We find that the main bone of contention in this case concerns the eligibility of the PET flakes, manufactured by the appellants for exemption under Sl.No.78 of Notification No.4/2006-CE dt. 1.3.2006. The said Sl.No.78 of the notification is reproduced for ready reference :

Table

S.No.	Chapter or 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 Chapter 39, 54, 55, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 and 96 *Explanation.*- 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	----

The important take away from the above notification entry is that the exemption covers only such reprocessed plastic materials which should be classifiable under CETH 3901 to 3914 of Chapter 39 of the First Schedule to the CETA 1985.

5.2 From the facts on record, it emerges that appellant in their reply dt.23.4.2010 to the SCN have informed that waste PET bottles are crushed and washed using mechanical force and converted into “flakes’ which are then cleared to other manufacturers, who convert it to powder and cleared to manufacturer of PET bottles; that the buyer of the product who converts the “flakes” to powder form is not paying Central Excise duty; that the product waste PET bottle flakes and waste PET bottles in powder form are the two stages of conversion of used and waste PET bottles into a new PET bottle for fresh usage;

that since flakes are converted into PET bottles, they are inputs for such manufacturers and are classifiable under CETH 3907.60 only.

5.3 The appellants who were earlier classifying their final product “PET flakes” under CETH 3915.90 have subsequently claimed classification under CETH 3907.60 vide their letter dt.1.12.2009 and also consequential benefit of Notification No.4/2006-CE (Entry 78).

5.4 The two contending tariff headings are reproduced as under :

Heading No.	**Sub-Heading No.**	**Description of Goods**
1	2	3
PRIMARY FORMS		
39.07	**Polyacetals, other polyethers and epoxide resins, in primary forms, polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms**	
	3907.10	Pollyacetals
	3907.20 3907.30 3907.40 3907.50 **3907.60** 3907.70 3907.80 3907.91 3907.99	Òther polyether Epoxide resins Polycarbonates Alkyd resins Polyethylene terephthalate Diallylphthalate resins including moleic resins and fumeric resins Polybutylene terephthalate – other polyesters : Unsaturated Other
II. WASTE, PARINGS AND SCRAP; SEMI-MANUFACTUTRES ARTICLES		
39.15	**Waste, parings and scrap, of plastics.**	
	3915.10	Òf polymers of ethylene

	3915.20 3915.30 **3915.90**	Of polymers of styrene Of polymers of vinyl chloride **Of other plastics** **3915.9042 – Of Pet Flakes**

5.5 We thus find that the important requirement for goods to be classified in Heading 39.07 is that they should be "primary forms" of plastics. What are primary forms is amplified in Chapter Note 6, which reads as under :

> "6. In headings 3901 to 3914, the expression "primary forms" applies only to the following forms:
>
> *(a)* Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
>
> *(b)* Blocks of irregular shape, lumps, powders (including moulding powders), granules, flakes and similar bulk forms."

5.6 It is thus evident that primary forms for the purpose of Chapter 39 are constituent goods which are "primary" in form and meant to be converted by further polymerisation or chemical synthesis into other materials of Headings 3901 to 3914. This interpretation is reinforced by Chapter Note 3 which clarifies as under:

> "3. Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories :
>
> *a)* Liquid synthetic polyolefins of which less than 60% by volume distils at 300^{o}C, after conversion to 1,013 millibars when a reduced pressure distillation method is used (headings 3901 to 3902);
>
> *b)* resins, not highly polymerised, of the coumarone-indene type (heading 3911);
>
> *c)* other synthetic polymers with an average of at least 5 monomer units;

d) silicons (heading 3910)

e) resols (heading 3909) of other prepolymers.

5.7 Discernably, the appellants are not doing any chemical synthesis or polymerization processes on the PET bottles used by them as raw material. On the other hand, the process involves only putting the used PET bottles into a crusher which makes them small pieces and subjecting the resultant goods to washing and packing after which they are cleared from the factory. Though the appellant has argued that they are manufacturing “flakes”, in our view, what is being manufactured is only “parings” of PET bottles. True, these “parings” eventually get converted into new PET bottles, however that will not make the final product of the appellant eligible for classification as “primary form of plastic”. The “flakes” which are included as “primary form” in Note 6 of Chapter 39 will surely have to be a ‘primary grade material”. This is certainly not the case here.

5.8 In the first place, even as per the respondent’s own admission the buyer of their products only convert them into primary form namely, powder form and hence not paying Central Excise duty.

5.9 Secondly, while Chapter Note 7 does clarify that Heading 3915 does not apply to inter alia “parings” of a single thermoplastic material, that is only applicable for such material which has been transformed into primary form (Heading 3901 to 3914). This being so, only when the “parings” manufactured by the respondents are converted into “primary forms” such goods will then go out of CETH 3915.

5.10 Further, respondent has all along not only been importing the "PET Bottle Waste" under classification 39159042, <u>but also</u> exporting the 'PET Flakes Clear, washed' under the same classification 39159042.

5.11 In view of the discussions herein above, we therefore find ourselves in agreement with the following conclusion of the original authority :

> "The issue to be decided is whether the Parings of PET Bottles commonly knows in trade as **'PET Flakes clear'** manufactured by the M/s.SRP is classifiable under CETSH 3915.9042 or under 3907.60 as stated vide their letter dated 01.12.2009. The materials manufactured by the M/s.SRP by cleaning and crushing of used pet bottles are only parings of post-consumer PET Bottles. As per assessee's own reply, pet flakes manufactured by them is further processed and converted into powder form by other companies before used by the recycling companies to manufacture pet bottles & pet fibers in comparison, PET or Poly Ethylene Terephthalate in primary form is a thermoplastic polymer resin of the polyester family. Depending on its processing and thermal history, Poly Ethylene Terephthalate may exist both as an amorphous (transparent) and as a semi-crystalline material. The semi crystalline material might appear transparent (particle size < 500 mm) or opaque and white (particle size up to a few microns) depending on its crystal structure and particle size. PET is produced by the step-growth polymerization of ethylene glycol and telephthalic acid. But the M/S.SRP is not doing any polymerization process. The materials manufactured by the M/S.SRP are only parings of post-consumer PET Bottles. Just because it is used as input in recycling companies, of course after several mechanical processes, the same cannot be equated with PET in primary form. As per Chapter Notes No.3 to Chapter 39 under Section VII of Central Excise Tariff clearly stated that –
>
> Headings 39.01 to 39.11, apply only to goods of a kind **produced by chemical synthesis.**
>
> > As per point No.1 of the General Rules for the interpretation of the schedule "for legal purposes, classification shall be determined according to the terms of the Headings and any relative Section or Chapter notes."
>
> The Tariff heading 3915 applies to Waste, parings and scrap of plastics; The sub headings 3915 90 42 applies to Waste, parings and scrap **of** pet bottles; The word '**of**' in sub Heading has to be given its due importance. The cleaned and crushed pet bottles cannot be considered as PET (Poly Ethylene Terephthalate) in primary form and can be considered only as parings and scrap **of** pet bottles. Hence, I intend to conclude that the materials manufactured by M/s.SRP by cleaning and crushing of used pet bottles is rightly classifiable under Tariff Heading 3915 90 42."

6. In the event, the decision to the contrary by the lower appellate authority cannot be sustained and requires to be set aside, which we hereby do. The Revenue's appeal is therefore allowed with consequential effect of restoring the Order-in-Original No.09/2010- (C.Ex) dt. 14.06.2010 of the original authority. The cross objection filed by respondent gets disposed.

(Pronounced in Court on 25.09.2018)

(P. Dinesha)	**(Madhu Mohan Damodhar)**
Member (Judicial)	**Member (Technical)**

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