CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - SM 3 B3

Customs Appeal No. C/42288/2014,
Customs Appeal Nos. C/42289/2014,

(Arising out of Order-in-Appeal No. 1339/2014 dated 30.07.2014 and Order-in-Appeal No. 1225/2014 dated 21.07.2014, passed by the Commissioner of Customs (Appeals), Chennai).

1. M/s. Alto Polymers Pvt. Ltd. **Appellants**
No. 25 A/1, T.V. R. Complex,
Chinnandankovil Road,
Karur-639001.

2. M/s. P.P. Products Pvt. Ltd.
No. 37/12-1 Archana Complex
4th Cross, Lalbagh road,
Bangalore-560 027

Vs.

The Commissioner of Customs, **Respondent**
Chennai Sea Port, Customs House,
No. 60, Rajajisalai,
Chennai-600 001.

APPEARANCE:

Shri Ramesh Ananthan, Learned Advocate
Shri Sundarraman K., Learned Advocate
for the appellant.

Shri M. Jagan Babu, AC, Ld. Departmental Representative for the Respondent

CORAM:

HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER Nos. 40495-40496/2020

Date of Hearing: **27.01.2020**
Date of Pronouncement: 20.02.2020

The only issue involved in these appeals is the denial of refund of 4% Special Additional Duty (SAD for short) under the Customs Notification No. 102/2007-Cus. dated 14.09.2007, as amended. During adjudication, the Assistant Commissioner of Customs (Refunds) denied the refund on the ground that the description of the imported goods was different than the one mentioned in the subsequent sale invoices which rendered the refund claims ineligible. Above view of the adjudicating authority came to be upheld by the first appellate authority vide impugned orders-in Appeal Nos. 1339/2014 dated 30.07.2014 and 1225/2014 dated 21.07.2014, who also found interalia that there was likelihood of mix up of goods of different grades. The above denial has resulted in these appeals.

2. When the matter was taken up for hearing Shri Ramesh Ananthan, Learned Advocate along with Shri K. Sundarraman, Learned Advocate appearing for the appellant submitted that the above issue is no more res integra as the same is settled by this Bench in the case of M*/s. Chakrapani Vyapar Private Limited Vs. Commissioner of Customs, Chennai* vide Final Order No. 40016/2020 dated 20.01.2020 and also a decision of the Hon'ble High Court of Judicature at Madras in the case of *P.P. Products Ltd. Vs. Commissioner of Customs, Chennai* in Civil Miscellaneous Appeal No. 2030 of 2017 and Civil Miscellaneous Petition No. 10896 of 2017 dated 04.04.2019. Per contra, Shri M. Jagan Babu, AC, Learned DR appearing for the Revenue supported the findings of the lower authorities.

3. Heard both sides. After going through the discussions in the impugned orders as also the order of this Bench relied on by the Learned Advocate, I find that the assertion of the Learned Advocate of the appellant to be true since the very same issue has been dealt with and answered, in favour of the assessee. Further, I also find that even the Hon'ble High Court of Judicature at Madras in the case of P.P. Products Ltd. (supra), after going through the facts of the case, has held as under:-

> "**11.** In our considered view, the Commissioner (Appeals-II), the first appellate authority was right in its observations/findings which are quoted herein below :-
>
> "………. It is seen from the tabular column of discrepancy given in the Order-in-Original by the lower authority, only the grades of the granules are missing but the description 'HDPE' and 'LDPE' is found in both the documents. It is seen that the appellants have used the generic description of the imported goods in the sales invoices and non-mentioning of grade will not change the imported goods different. Hence, the goods imported and the goods sold are one and the same and are co-relatable. The lower authority has not issued any DM or PH to the appellants for making the deficiencies good or to make any submissions. The department has not proved that the goods sold are different from the goods imported. The lower authority has not disputed the fulfillment of the other substantive conditions of the notification by the appellants. Rejection of partial amount of refund on this flimsy ground is not sustainable."
>
> **12.** The finding of the Tribunal, in our considered view, is not sustainable, considering the facts and circumstances of the case, as the adjudicating authority himself was satisfied that substantial amount of claim for refund was sustainable.
>
> **13.** Thus, for the above reasons, this appeal, filed by the appellant is allowed, the order passed by the Tribunal is set aside and the order passed by the Commissioner (Appeals-II) is restored and the substantial questions of law are answered in favour of the appellant. No costs. Consequently, connected miscellaneous petition is closed."

4. In view of the above, impugned orders deserve to be set aside, which I hereby do. Consequently, appeals of the assessee are allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 20.02.2020)

(P.DINESHA)
JUDICIAL MEMBER

BB