IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No.41284/2014

(Arising out of Order-in-Appeal C. Cus. No.381 of 2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Rajvir Industries Ltd. **Appellant**
Surya Tower, 1st Floor
103, Sardar Patel Road
Secunderabad – 500 003.

Vs.

Commissioner of Customs **Respondent**
Custom House
No. 60, Rajaji Salai
Chennai – 600 001.

AND

Customs Appeal Nos. 42808 & 42809/2014

(Arising out of Order-in-Appeal C. Cus. No.1490 & 4191/2014 dated 14.8.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Rajvir Industries Ltd. **Appellant**
Surya Tower, 1st Floor
103, Sardar Patel Road
Secunderabad – 500 003.

Vs.

Commissioner of Customs **Respondent**
Custom House
No. 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order Nos. **40348-40350 / 2020**

Date of Hearing: 12.02.2020
Date of Decision: 12.02.2020

Per Ms. Sulekha Beevi C.S.

Appellants are the manufacturers of all types of textile yarns and the basic raw material for manufacture of polyster yarn is "recycled polyster staple fibre'. Appellants had imported 'recycled polyster staple fibre' and filed the Bill of Entry bearing Nos. 6800773 dated 11.5.2012; 7076909 dated 12.6.2012 and 7291939 dated 4.7.2012 claiming the classification under Tariff Item 5503 2000. The above bills of entries were filed in self-assessment regime. Appellants at the time of import, paid BCD, CVD, cess and SAD. On being known that the aforesaid imported goods are eligible for exemption from payment of CVD under Sl. No. 172A of Notification No. 12/2012-CE dated 173..2012 as amended by 24/2012-CE dated 8.5.2012, appellants filed 3 refund claims before the jurisdictional officer. The details of refund claimed are as follows:-

S. No.	BE No. and Date	Date of filing of refund claim	Refund claimed in Rs.
1.	6800773 dt. 22.5.2012	6.3.2013	8,65,441/-
2.	7076909 dt. 12.6.2012	6.3.2013	8,89,966/-
3.	7291939 dt. 4.7.2012	6.3.2013	12,06,498/-

2. The adjudicating authority rejected the refund claims as not maintainable on the sold ground that the appellant had not challenged the assessment orders in appeals. While doing so, adjudicating authority had relied upon the judgments of Priya Blue Industries, Flock India and Eurotex Industries and Exports Ltd. etc. The appellate authority upheld the findings of the adjudicating authority. It is the contention of the appellant that the refund claim has been filed in terms of section 27 of Customs Act, 1962. Self

assessment was introduced in the customs in the year 2011 and consequential to the introduction of self-assessment, necessary amendments were also carried out in Section 27 of Customs Act, 1962.

3. Appeal C/41284/2014 is filed against rejection of refund on the ground that the appellant has not sought for re-assessment of the Bill of Entry. By abundant caution, the appellants have then requested for reassessment and also challenged the order of rejection of refund by filing the above appeal before the Tribunal. The request for reassessment was rejected by the department stating that the goods are not available for testing and also that the appellants have not challenged self-assessment within the period prescribed by law. The ld. counsel was fair enough to submit that the judgment of the Hon'ble Supreme Court in the case of ITC Ltd. Vs. Commissioner of Central Excise, Kolkata -2019 (368) ELT 216 (SC) has decided the issue against the assessee.

4. The ld. AR Ms. T. Usha Devi appeared and argued for the department. She submitted that benefit would be eligible only if the goods relate to Sl. No. 172A of Notification No. 24/2012-CE dated 8.5.2012. Since the appellants have not challenged the assessment within the prescribed period and also for the reason that the goods were not available for testing as to whether they are manufactured from plastic scrap or plastic waste, the authorities below have rightly rejected the belated request for reassessment. As per the judgment of the Hon’ble Supreme Court, refund cannot be claimed by the

appellant as they have not challenged the assessment even though it is a self-assessment.

5. Heard both sides. Relying upon the judgment of the Hon'ble Supreme Court, we find that these appeals are devoid of merit. The impugned orders are upheld and the appeals filed by the appellants are dismissed.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**ANIL G. SHAKKARWAR**)
Member (Technical)

Rex