CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40778 of 2024

(Arising out of Order-in-Appeal Seaport C.Cus. II No.854/2024 dated 13.09.2024 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001)

M/s. Akshaya Steels **.... Appellant**
No.B-43, CMDA Iron & Steel Yard,
Sathangadu, Manali,
Chennai 600 019.

VERSUS

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

APPEARANCE :

Shri S. Sankaravadivelu, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40612/2025

DATE OF HEARING : 29.01.2025
DATE OF DECISION : 17.06.2025

Per: Shri P. Dinesha

Brief facts as could be gathered from the Order-in-Original No.106376/2024 dated 02.05.2024 are that the importer–assessee filed **(1)** Bill of Entry [**BE**] **No. 8695228 dated 09.11.2023** (prior BE No. 8031595 dated 27.09.2023 which got purged/cancelled); **(2) BE No.7777460 dated 11.09.2023** claiming to be for the imports of consignment containing 'PVC Regrind' supplied by M/s.Khandhan Metal SDN BHD, Malaysia. Apparently based on intelligence, the above consignments were taken up for investigation; upon examination of the first container dated 27.09.2023 by the officers of Special Intelligence and Investigation Branch [SIIB], it was said to contain 25.520 KG +2 Brown colour paper bags of average weight 12.5 kgs. of Poppy Seeds weighing 3062 kgs. concealed behind 28 PP Jumbo bags of the declared PVC Regrind weighing 23978 kgs.

2. In the other consignment covered by BE No. 7777460 dated 11.09.2023, the officers of SIIB appear to have found the declared goods to be PVC Regrind weighing 55,600 kgs, total 66 PP Jumbo bags of PVC regrind weighing 56,080 kgs; as a follow-up of the investigation, it appears that the

statements of the available persons/authorized signatory of the importer-firm were recorded who, in their statements appear to have affirmed that they had placed order as per their invoice for the supply of PVC regrind, the concealed poppy seeds in the consignment came to their knowledge only upon opening of the container by the SIIB, which perhaps was wrongly loaded by their foreign supplier and, in support of the same e-mail conversation between them and the supplier was also submitted.

3. The Original Authority was of the opinion that in terms of FTP 2015–2020, the Poppy Seeds which were concealed in the consignment could be imported only from a few countries and that the importer should produce appropriate certificate from the Competent Authority of the exporting country and hence, the said Poppy Seeds found in the container were liable for confiscation under Sections 111(d), 111(l) and 111(m) and 119 of the customs Act, 1962. Insofar as the consignment in the BE 7777460 is concerned, based on the samples drawn during examination, the consignment was asserted to be PVC Regrind but not a prime material the importation of which was prohibited/restricted in terms of Public Notice [**PN** for short]

No.392(PN) 92-97 dated 01.01.1997. In terms of the above PN, the import of all types of plastic waste/scrap except PET bottle waste/scrap was not permitted, which was also the affirmed vide Policy Circular No. 20/2002–2007 dated 12.03.2003. Appellant vide letter dt. 27.02.2024 requested for adjudication with a personal hearing and made written submissions dt. 28.02.2024 before the Adjudicating Authority. After considering the explanation/written submissions filed by the importer, the Original Authority however, vide OIO No.106376/2024 dated 02.05.2024, rejected the declared value of imported goods viz. 'PVC Regrind' and redetermined the value in terms of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 apart from ordering confiscation of goods and imposing penalties under Section 112 (a) and Section 114AA of the Customs Act, 1962. He also ordered for confiscation of undeclared item "Poppy Seeds" weighing 3062 Kgs. (Net Weight) imported vide BE No.8695228 dt. 09.11.2023 and further ordering for destruction of same at the cost and responsibility of the importer-assessee. It appears that the importer filed an Appeal before the Commissioner (Appeals) challenging the demands confirmed in the OIO. The First Appellate Authority also having dismissed their Appeal vide Seaport C.Cus. II No.854/2024 dated 13.09.2024, the present Appeal has been filed before us.

4. Heard Shri S. Sankaravadivelu, ld. Advocate for the Appellant and Shri Anoop Singh, ld. Joint Commissioner for the Respondent. We have carefully considered the documents placed on record. Having heard the rival contentions, the following issues arise for our consideration:

(i) whether the Appellant was liable to be penalized for import of Poppy Seeds?

(ii) Whether the penalty imposed for the import of PVC Regrind of 23978 kgs. is required to be upheld?

(iii) Whether the PVC Regrind deserves to be allowed for domestic clearance on payment of appropriate redemption fine?

(iv) whether PVC Regrind of 56080 kgs. imported separately deserves to be allowed for domestic clearance? and

(v) whether the said import invites the fine and penalty?

5. Facts are not in dispute; the Appellant is also not disputing the presence of Poppy Seeds in the first consignment. However, according to the appellant, its

invoice was only for the import of 'PVC Regrind' and that the Poppy Seeds was supplied by mistake. Further, it is the case of the appellant that it placed order for PVC Regrind which was tested by CIPET wherein it was reported that the goods were 'PVC Regrind but not a prime material'. Even from the statements of the persons recorded, their answer is very categorical to the effect that what they ordered/mentioned in the Bill of Entry was nothing but 'PVC Regrind'. Further, it has been very categorically admitted before us that the appellant is not contesting the confiscation and destruction of Poppy Seeds which were found to be concealed in the imported consignment. Insofar as the 'PVC Regrind' is concerned, it was pleaded that it was neither prohibited nor restricted for the import of the same; the Poppy Seeds covered in the same shipment which was available for confiscation and therefore, it was requested for determination of redemption fine and penalty for the release of PVC Regrind alone. In respect of the other consignment of 56080 kgs of PVC Regrind which was separately imported, the same was not liable for confiscation fine and penalty since the same was neither prohibited nor restricted for import.

6. It was further explained by Sri. S. Sankaravadivelu, ld. Advocate, that the goods namely ‘PVC Regrind’ is a material obtained from used PVC products as well as rejects from manufacturing, for mixing with prime PVC granules or using as such, as raw material in the manufacture of PVC products and hence, PVC Regrind is a ‘single thermoplastic material’ as certified in the test report as well. The very nomenclature itself suggested that the same was the result of re-grind which could never be of prime material and hence, in the first place, no test was required since the Appellant itself declared the same as PVC Regrind and in any case, the test report only affirmed what they had declared. In terms of ITC HSN policy provisions, goods falling under Heading **3904** PVC are **‘freely importable’** as against the goods falling under **3915** which specifically mentions **waste parings and scrap of plastics** the import of which are restricted in terms of Policy Circular No. 20/2002–2007 *supra*.

7. Reliance was also placed in support, on the following orders of Tribunal, viz.:

(i) **M/s. Ideal Metal Stampings & Pressings Pvt. Ltd. Vs CC Mumbai** - 2001 (131) ELT 189 (Tri.-Mum.)

(ii) **M/s. Surya Exim Ltd**. **Vs CC Ahmedabad** [Final Order No.A/10249/2015 dated 13.03.2015 (in Appeal C/11690/2013) passed by CESTAT Ahmedabad.]

(iii) **M/s. Anmol Ratan Enterprises** [Final order No.815371/2024 dated 01.04.2024 (in Customs Appeal No.85264/2023] passed by CESTAT Mumbai

8. *Per contra*, Shri Anoop Singh, learned Joint Commissioner supported the findings of the lower authorities. He would also invite our attention to the findings of the Original Authority in the context of Public Policy Circular *supra* whereby, the import of plastic waste/scrap stands prohibited. He would contend that the impugned OIA is therefore required to be upheld since the same is the correct view.

9. At the outset, what the appellant declared in its Bill of Entry as observed by both the authorities is 'PVC Regrind'; the same is also confirmed in the test report of CIPET, Chennai. Relevant findings in the OIO at para-6 reads thus:

> "As per the declarations made in the Bill of Entry 8695228 dated 09.11.2023, the

> description of the goods was "PVC Regrind", with declared net weight as 26.750 M/T. However, on examination it was found to contain Poppy Seeds weighing 3062 Kgs concealed behind 28 PP Jumbo bags of declared goods (PVC Regrind) weighing 23978 Kgs.

10. At least to this extent, the declaration in the first import is correct. The declaration is absolutely perfect insofar as the second Bill of Entry is concerned.

11. Regarding the concealment of 'Poppy Seeds' is concerned, we have observed, as admitted by learned Advocate, that the Appellant is not contesting the confiscation and destruction of the same since they were not responsible for the import of the same. It is useful to reproduce the findings at paras 5 & 6 in OIO in this context:

> "On being asked of the concealment of Poppy Seeds in the consignment, he states that they ordered only PVC regrind and they came to know about the presence of poppy seeds only after examination by the SIIB; that they enquired with supplier and the supplier stated that the handling people wrongly loaded the Poppy seeds along-with the PVC items; that he also submitted mail conversation between him and the supplier;

> that he was not aware anything about the import policy of Poppy Seeds; that he was not aware of item Poppy seeds and he disowned the said Poppy seeds.
>
> ....
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> Hence, the Poppy Steeds weighing 3062 Kgs (Net weight) and the 28 PP Jumbo bags of PVC Regrind weighing 23978 Kgs were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 16.11.2023 bearing DIN-20231173MY00005025A4 [Corrigendum of Seizure memo issued on 17.11.2023 with CBIC DIN-20231173MY00002732DE issued on reasonable belief that the said goods were liable to confiscation under Section 111 (d), 111 (l), 111(m) and 119 of the Customs Act, 1962."

12. The next point is, whether the authorities below were justified in ordering re-classification of PVC Regrind under Heading 3904?

13. Admittedly, the test report also confirms the goods as 'PVC Regrind material and of single thermoplastic material' which the Revenue treated as 'waste and scrap'. It was the Department which disbelieved the declaration and got it tested by CIPET, Chennai and having obtained their report, they chose to ignore the same. The fact remains that this

view is bereft of any supporting documentary evidence. From the report, it is even clear that goods sent for examination was a 'single thermoplastic material transformed into regrind chips'. It is the settled position of law that it is the responsibility of the Revenue to prove its case when the classification declared by an importer is sought to be meddled with. It is also the settled position of law that allegations how-so-ever grave or strong, cannot take the place of proof.

14. The fact that even the test report suggested that the PVC Regrind is a single thermoplastic material, itself justifies that the same was not a waste/scrap. Findings at para 6.1 in Order-in-Original in this regard, are as follows:

> "As per the declarations made in the Bill of Entry No.7777460 dated 11.09.2023, the description of the goods is "PVC Regrind", the number of packages were declared as 1 lot in each Container, the gross weight and net weight were declared as 55600 Kgs. The same was examined and found to contain PVC regrind weighing total 56080 Kgs were found, which appears to be regrind and extracted from old plastic pipes through visual appearance and CIPET Report (Reference No TR/24013127 & Report No 76155) dated 12.01.2024 received on

> the basis of representative samples drawn during the examination proceedings, in which the said Items were identified as **PVC Regrind but not a prime material**."

15. After the above observation, the ld. Original Authority presumes, without any discussion that what was imported was plastic waste/scrap and proceeds to examine the same in the context of Public Circular No.20/2002-2007 *supra*. Surprisingly at para-4 after the table (page 84), he holds as under :

> "From the visual appearance it is readily apparent that the material under import is **re-grinded PVC pipes**. Therefore, it would appear that the import being PVC pipes **not of prime material** can be imported only **with a specific DGFT license, and permitted only to the actual users who have the required facility for recycling such scrap/waste and who are duly registered with the competent State / Central authority and also possess clear pollution clearance certificate from the concerned State Pollution Board where the unit it is located, as well as a capacity assessment certificate."**

16. We are unable to comprehend any link with the test report obtained by the Department from CIPET and we are

sure that obtaining an expert opinion is being reduced into a waste and the appearance though said to be deceptive, is having an edge over the opinion of an expert in the field. Further, the Adjudicating Authority also observes at para-7 of the OIO that during the course of further investigation, premises of the appellant was also searched and copies of import documents i.e. Bill of Entry, Invoice, Packing List, Bill of Lading which were the same as submitted with the Bill of Entry pertaining to the said import were seized and apart from that no incriminating documents pertaining to the said import were either recovered or seized. From this, we find that there is sufficient material to hold that the appellant had acted in good faith and hence, its bonafides regarding the contents of the consignments cannot be doubted. We find that to be a sufficient reason to delete the penalties as the levies are clearly for no fault.

17. We would thus accept the contentions of the appellant insofar as the bonafide declaration in the Bill of Entry are concerned; we do not find any misdeclaration insofar the import/declaration of PVC Regrind is concerned, since the appellant itself is not responsible for the import of Poppy Seeds, the action of the Original Authority in ordering confiscation and destruction of the same is justified and

since the same was part of the same import of PVC Regrind, the only liability on the appellant would be the cost insofar as the destruction of the poppy seeds are concerned. The PVC Regrind imported vide Bill of Entry No.7777460 dated 11.09.2023 deserves to be allowed for home consumption however, subject to the payment of appropriate duty since we agree that there is no violation to any Foreign Trade Policy. Insofar as BE No.8695228 dt. 09.11.2023 [prior Bill of Entry No.8031595 dated 27.09.2023], the PVC Regrind are 23978 Kgs. deserves to be allowed for home consumption on payment of appropriate duty with fine and penalty.

18. Resultantly, the penalties are set aside. The impugned order is modified to this extent. The appeal stands disposed of on the above terms.

(Order pronounced in open court on 17.06.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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