

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

REGIONAL BENCH – COURT No. III

**Customs Appeal No. 42428 of 2016**

(Arising out of Order-in-Appeal C.Cus.II.No. 863/2016 dated 14.09.2016 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

**M/s. Arun Industries**

Door No. 435/0,  
Thirumangalam-Rajapalayam NH Road,  
Thirali Village, T. Pudhupatti Post,  
Tjhirumangalam Taluk,  
Madurai – 625 704.

**...Appellant**

***Versus***

**Commissioner of Customs**

Chennai II Commissionerate,  
No. 60, Custom House,  
Rajaji Salai,  
Chennai – 600 001.

**...Respondent**

**APPEARANCE:**

For the Appellant : Ms. M. Punnagai, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No. 41486 / 2025**

DATE OF HEARING : 29.10.2025

DATE OF DECISION : 16.12.2025

**Per Mr. VASA SESHAGIRI RAO**

This appeal is directed against Order-in-Appeal  
C.Cus II No. 863/2016 dated 14.09.2016 passed by the  
Commissioner of Customs (Appeals-II), Chennai.

2. Briefly stated, the Appellant had filed three bills of entry No. 4531161 dated 03.02.2014, 4479641 dated 28.01.2014 and 4503699 dated 30.01.2014 for clearance of "Polyvinyl Chloride (PVC) Suspension Resin SP 660". The Appellant self-assessed the classification of the goods under CTH 39042110/39042190 as "Other Poly (Vinyl Chloride): Non-Plasticised: Poly (Vinyl Chloride) Resins" and availed FTA benefit of ASEAN-India Free Trade Area Preferential Trade Agreement under Notification No. 046/2011-Customs dated 01.06.2011 (Sl.No.459); and thereby paid Basic Customs Duty (BCD) @ 2%, CVD @ 12%, E. Cess @ 3% and SAD @ 4% at the time of clearance of the goods.

3. The Department noticed that the test report given by Central Institute of Plastic Engineering upon testing of samples drawn from the consignment of "Polyvinyl Chloride (PVC) Suspension Resin SP 660 Grade" imported by another importer shows that the said item is not in compound form and also not mixed with any other substances like Plasticizer / non plasticizers / any other substances. Department entertained the view that the imported grade of PVC Resin is not classifiable under the CTH 39042110/39042190 and it is rightly classifiable under the CTH Sub-heading 390410- "Poly (Vinyl Chloride) not mixed with any other substances" and more specifically under CTH-

39041090-Other category. Consequently, the impugned goods are not eligible for 2% BCD under notification No. 046/2011-Customs dated 01.06.2011 (Sl.No.459) and instead BCD @ 5% is leviable on the goods under Sl.No. 458 of the said notification. Accordingly, a show cause notice dated 26.12.2014 was issued to the appellant where it was proposed to:

- (i) re-classify the goods under CTH 39041090;
- (ii) deny the benefit of concessional rate of duty @ 2% availed under Notification No. 046/2011 dated 01.06.2011 and charge BCD @ 5% under Sl. No. 458 of the said notification; and
- (iii) demand the short collected duty amounting to Rs. 5,44,937/- under Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28AA *ibid*.

4. On adjudication, all the proposals made in the Show Cause Notice were confirmed *vide* Order-in-Original No. 47191/2016 dated .05.2016. Being aggrieved by the same, the appellant preferred an appeal before the first appellate authority. The first appellate authority upheld the Order-in-Original and rejected the appeal. Hence, the present appeal.

5.1 The Ld. Advocate Ms. M. Punnagai appeared and argued for the appellant and submitted that the impugned order is vitiated by arbitrariness and discriminatory treatment in classifying identical goods imported by two importers. Referring to the Order-in-Appeal C. Cus II No. 3 & 4 of 2015 dated 19.01.2015 passed in the case of M/s. Lila Polymers Pvt. Ltd. wherein the Commissioner (Appeals) held that the product PVC Resin Suspension Grade SP660 is classifiable under CTH 39042110 and is eligible for the benefit of Notification No. 46/2011-Cus, Learned Advocate submitted that even though the appellant has imported goods that are identical in description, end-use, and technical composition, the benefit of classification under the same heading has been arbitrarily denied in the present case based on the test report of identical goods imported by another importer.

5.2 The Ld. Advocate argued that reliance on the aforementioned Order-in-Appeal C. Cus II No. 3 & 4 of 2015 dated 19.01.2015 is further strengthened by the fact that the Customs Appeals Nos. 42143 & 41244 of 2015 preferred by the Department against the above order-in-appeal were dismissed by this Tribunal *vide* Final Order Nos. 41470-41471/2024 dated 14.11.2024. She argued that even though the dismissal of the Departmental appeals was solely on the

ground that the demand was below the monetary threshold prescribed by CBEC for litigation, the binding nature of the Order-in-Appeal continues to operate in full force.

5.3 The Ld. Advocate for the appellant averred that the inconsistent classification of identical goods by the same Adjudicating Authority violates the principles of legal certainty, uniformity, and equality. In this regard, she relied on the judgment in the case of *Novozymes South Asia Pvt. Ltd. v. Joint Commissioner of State GST, (2024) 22 Centax 75 (Guj.) / 2024 (89) G.S.T.L. 333 (Guj.)* to submit that the Hon'ble Gujarat High Court struck down contradictory classification orders issued by the Appellate Authority in materially identical cases involving bio-fertilizer products by emphasizing that such inconsistency erodes the predictability and fairness of tax administration. To the same effect is the judgment of the Hon'ble High Court of Madras dated 01.04.2025 in C.M.A. No. 2268 of 2024 in the case of *M/s. Viewsonic Technologies India Pvt. Ltd. v. The Customs Authority for Advance Rulings & Anr.*, wherein it is held that the same model of projector could not be classified differently in two rulings by the same authority, and such inconsistency, in the absence of any distinguishing feature, violated the rule of law and principles of uniform classification. Applying the same principle, in the light of a

prior binding decision in favour of M/s. Lila Polymers involving the same goods, the rejection of the appellant's classification claim under CTH 39042110 is discriminatory and unsustainable.

5.4 The Ld. Advocate further submitted that the Department relied upon the test report No. 24936 dated 25.11.2024 in respect of goods imported by another importer, viz. M/s. Ramnath & Co. Pvt. Ltd. to reject the appellant's classification under CTH 3904 21 10. However, it is to be noted that in Final Order No. 40748/2025 dated 21.07.2025, this Tribunal allowed the appeal preferred by the said importer, namely, M/s. Ramnath & Co. Pvt. Ltd. against the rejection of the classification. In the said Order, this Tribunal held that appropriate Customs Tariff Heading for the goods were 3904 21 10.

5.5 The Ld. Advocate relied upon the decision of the Tribunal in *M/s. Surabhi Enterprises Pvt. Ltd. vs. Commissioner of Customs (Port), Kolkata, reported in 2025(7) TMI 576* to submit that CTH 3904 10 90 covers "Other" which is a residuary entry and that the same cannot be preferred over a specific entry. She further submitted that in Final Order No. 40767/2025 dated 29.07.2025 in the case of *M/s. Arun Polymers vs Commissioner of Customs*, this

Tribunal held that Poly vinyl chloride resins are classifiable under CTH 3904 21 10.

5.6 The Ld. Advocate for the appellant contended that the impugned order suffers from a fundamental misreading of the tariff structure under Heading 3904. In this regard, she submitted that the six-digit heading CTH 3904 10 covers "Poly (vinyl chloride), not mixed with any other substances," and is sub-classified into:

*CTH 3904 10 10 – Binders for pigments, and*

*CTH 3904 10 90 – Other.*

Therefore, the tariff provides for a separate single-dash entry for "Other poly (vinyl chloride)", which is sub-classified at the six-digit level into:

*CTH 3904 21 – Non-plasticised, and*

*CTH 3904 22 – Plasticised.*

The non-plasticised category (CTH 3904 21) is further divided at the eight-digit level, where CTH 3904 21 10 specifically covers "Poly (vinyl chloride) resins." Learned Advocate contended that a harmonious reading of CTH 3904 21 (non-plasticised) and CTH 3904 21 10 (PVC resins) leaves no doubt that the impugned goods squarely fall under CTH 3904 21 10. In contrast, CTH 3904 10 90 is a residual category under CTH 3904 10, which covers goods not mixed

with other substances and having specific uses such as binders for pigments.

5.7 The Ld. Advocate further submitted that CTH 3904 21 10 is the specific heading applicable to non-plasticised PVC resins, and CTH 3904 10 90 is a residuary heading. She referred to Rule 3(a) of the General Rules for the Interpretation of Import Tariff to submit that "the heading which provides the most specific description shall be preferred to headings providing a more general description" and therefore, classification under the residual heading CTH 3904 10 90 is legally impermissible when a specific heading CTH 3904 21 10 squarely covers the goods in question. Furthermore, the presence of CTH 3904 21 and CTH 3904 22 as distinct sub-headings under Heading 3904 reinforces the legislative intent that CTH 3904 10 does not cover either plasticised or non-plasticised PVC resins. Therefore, classification of the impugned goods under CTH 3904 10 90 is legally unsustainable.

5.8 The Ld. Advocate for the appellant prayed for setting aside the impugned Order-in-Appeal No. 863/2016 dated 14.09.2016.

6.1 *Per contra*, Ms. Anandalakshmi Ganeshram, the Ld. AR for the Revenue submitted that in the proceedings before the adjudicating authority and the lower adjudicating authority the appellant has contended that the item imported by them is not a pure PVC resin. They have also submitted that the PVC resin imported by them has additives. However, the appellant have not adduced any evidence in support of the contention. The appellant at this stage also could not state what are the additives and non-plasticizers added to the Resin imported by them. They could have very well obtained these details from the supplier/manufacturer in support of their contention. Whereas the CIPET test report is very categorical in stating that the sample may be considered as polyvinyl Chloride (PVC) resin, which is a single thermoplastic material in powder form, it may be considered as prime material and it may not be considered as compound since it is not mixed with any other substances. In their letter dated 25.02.2015, CIPET has further clarified as under: -

*"With reference to you above cited letter we have thoroughly verified the supplied sample of PVC resin SP660 bearing B.E. No. 6884672 dated 25.09.2014 and confirmed that the sample is PVC resin and not a compound. Though the sample is containing volatile matter, in the range of 0.23 to 0.24% it may not be considered as compound because of the additive added therein. The volatile loss permissible in PVC resin is referred as per IS:4669.*

*However, it is evidently proved that the resin is dissolved completely without any insoluble matter in the solvent Cyclohexanone which is correlated & confirmed by K-value test result obtained.*

*In case if the material is added with any of the inorganic additive which will reflect in filter constant as residue. But the test result is showing nil. Furthermore the submitted sample of PVC resin (SP660) is white in colour and free flowing powder in nature and hence the sample is confirmed as PVC resin without any additives including plasticizers."*

6.2 The Ld. AR contended that it is very clear from the test report along with the clarification given by CIPET that the item imported (i) is a PVC resin, a single thermoplastic prime material; (ii) is not a compound since it is not mixed with any other substance; and (iii) is a PVC resin without any additives including plasticizers. In view of the categorical report by CIPET the contention of the appellant that non-plasticizers have been added in the item imported is without any basis and cannot be accepted.

6.3 Referring to the Order-in-Appeal C. Cus II No. 3 & 4 of 2015 dated 19.01.2015 passed in the case of M/s. Lila Polymers Pvt. Ltd. which has been relied by the appellant, the Learned AR submitted that the same is not applicable to the present case as the CIPET test report in that case was different from the CIPET test report relied upon in the present case.

6.4 The Ld. AR has relied upon the Adjudicating Authority's finding on classification of the imported product

as detailed in paras 15 and 16 which are extracted for ease of reference: -

**"15)** *The HSN Explanatory Notes to Chapter Sub heading 3904 reads as follows.*

*39.04-Polymers of vinyl chloride or of other halogenated olefins, in primary forms.*

*3904.10 - Poly(vinyl chloride), not mixed with any other substances*

*- Other poly(vinyl chloride):*

*3904.21 -- Non-plasticised*

*3904.22 -- Plasticised*

*3904.30 - Vinyl chloride-vinyl acetate copolymers*

*3904 40 - Other vinyl chloride copolymers*

*3904.50 - Vinylidene chloride polymers*

*- Fluoro-polymers:*

*3904.61 -- Polytetrafluoroethylene*

*3904.69 -- Other*

*3904.90 - Other*

*This heading covers poly (vinyl chloride) (PVC), vinyl chloride copolymers, vinylidene chloride polymers, fluoropolymers and polymers of other halogenated olefins. For the classification of polymers (including copolymers), chemically modified polymers and polymer blends, see the General Explanatory to this chapter.*

*PVC is a rigid colourless material with limited heat stability and with a tendency to adhere to metallic surfaces when heated. For these and other reasons, it is often necessary to add stabilisers, plasticisers, extenders, fillers, etc, to make useful plastics. In flexible sheet form PVC is used widely as a waterproof material for curtains, aprons, raincoats, etc., and as high grade imitation leather for upholstery and interior decoration in all types of passenger transportation. Rigid PVC sheets find application in the fabrication of covers, ducts, tank linings and many other items of chemical plant equipment. PVC floor tiles are also common.*

*The most important copolymers of vinyl chloride are vinyl chloride-vinyl acetate copolymers which are mainly used for gramophone records and flooring.*

*Copolymers of vinylidene chloride are used largely for packaging of food products, for upholstery, fibres, bristles and latex coatings and in the manufacture of pipes for chemical processing equipment.*

*Polytetrafluoroethylene (PTFE), one of the most important fluoro-polymers, has very wide-ranging applications in the electrical, chemical and engineering industries. Because of its high working temperature it is an excellent insulating material and due to its resistance to chemicals it is almost indestructible.*

*Other fluoro-polymers include polymers of chlorotrifluoroethylene, poly (vinylidene fluoride), etc.*

**16)** *As per the Explanatory Notes above PVC is a rigid colourless material and it is often necessary to add stabilizers, plasticisers, extenders, fillers etc to make it useful plastics. The additives are added according to the requirement and use of the resin for different purposes Test Report vide no. 24936 dated 25/11/2014 given by CIPET in the case of M/s Ramnath & Co Pvt Ltd in respect of identical goods imported from the same producer and supplier as mentioned above states that the sample resin is dissolved completely without any insoluble matter in the solvent Cyclohexanone which is correlated & confirmed by K-Value test result obtained and in case if the material is added with any of the inorganic additive which will reflect in filler content as residue. However in this case the test result is showing nil residue, other than standard residue which is permissible as per test standards Hence the imported item is unmixed PVC and therefore rightly classifiable under 390410 only."*

6.5 Further, referring to the website ([www.thaiplastic.co.th](http://www.thaiplastic.co.th)) of manufacturer of the impugned goods imported by the appellant, the Learned AR submitted that specific literature found upon browsing the said website revealed the following details:

*"Product description:*

*Polyvinyl Chloride Homopolymer having medium molecular weight, is white and free-flowing resins produced by suspension polymerization process. The resin can easily*

*blend with variety of additives to achieve desired qualities needed in many applications. Applications are ranging from general purpose to special products regarding customer's satisfactions.*

*Typical application:*

*Rigid pipe, Door and Window Frames, Edge Band, Conduit, Other Rigid Profiles*

*Physical Properties:*

<i>Property</i>	<i>Test Method</i>	<i>Unit</i>	<i>Typical Value</i>
<i>K-Value</i>	<i>DIN 53726</i>	<i>-</i>	<i>66*</i>
<i>Apparent Bulk Density</i>	<i>ISO - 60</i>	<i>g/ml</i>	<i>0.57</i>
<i>Volatile Matter</i>	<i>ISO - 1269</i>	<i>%</i>	<i>&lt; 0.3</i>
<i>Impurity and foreign matter</i>	<i>ISO/R - 1265</i>	<i>Specks/100sq</i>	<i>&lt; 10</i>

*Processing guideline:*

*PVC resin needs to be compounded with the properly additives by using standard mixing techniques. The optimum processing condition for each convertor depends on the formulation and the machine"*

The Learned AR averred that from the literature it is confirmed that the subject goods are "PVC resin" having application from general purpose to specific products, the resin can easily blend with variety of additives to achieve desired qualities needed in many applications. This PVC resin needs to be compounded with the properly additives by using standard mixing techniques. Thus it appears that the imported item is a PVC resin produced by suspension polymerization process and depending upon the application, it will be mixed with the suitable additives as and when required by the manufacturers/end users and it is not mixed with any additives.

7. Heard both sides and perused the appeal records.

8. The only issue for consideration in this case is: -

- i. Whether the item imported by the Appellants, *viz.* "PVC Resin SP660 Suspension Grade", is classifiable under CTH 39042110 as "Other Poly (Vinyl Chloride): Non-Plasticised" or under the CTH Sub-heading 390410- "Poly (Vinyl Chloride) not mixed with any other substances" and more specifically under CTH-39041090-Other category; and
- ii. Consequently, whether BCD is chargeable @ 2% on the impugned goods by granting exemption under Notification No. 046/2011-Customs dated 01.06.2011 (Sl.No.459) or chargeable @ 5% BCD under Sl. No. 458 of the said notification.

9. In this case, Revenue has classified the goods under CTH 39041090 by placing reliance on the test report and clarification dated 25.02.2015 given by CIPET in respect of goods imported by another importer, *viz.* Ramnath & Co. Identical issue came up for consideration before this Tribunal in the case of M/s. Arun Polymers wherein Revenue had similarly relied on exactly the same test report and clarification dated 25.02.2015 given by CIPET but in its Final Order No. 49467/2025 dated 29.07.2025, this Tribunal

followed its own decision in the case of *Ram Nath Co. Pvt. Ltd. Vs. Commissioner of Customs (Final Order No. 40478/2025 dated 21.07.2025)* where it was held that the imported goods are correctly classifiable under sub-heading 3904.21 (Tariff Item 3902 21 10). The relevant portions of the said decision in Final Order No. 49467/2025 dated 29.07.2025 in the case of M/s. Arun Polymers read as under: -

**"3.1** *The Ld. Counsel for the appellant submitted that the test report dated 25.11.2014 given by CIPET was in favour of the appellant and it stated that the sample may be considered as 'Polyvinyl chloride (PVC) resin'. He stated that hence the said goods fall under the specific CTH 3904 2110 of the Customs Tariff. However since certain doubts were raised by revenue they had sought a clarification from CIPET, through the department, and who again vide their letter dated 25.02.2015 further reiterated their stand. In spite of both the reports being available with the Original Authority the impugned goods were reclassified under CTH 3904 1090 and the benefit contained under Notification No. 46/2011-Cus was denied. Further before the Ld. Commissioner (Appeals), it was submitted that the said authority in the case of M/s. Lila Polymers Pvt. Ltd. vide Order in Appeal C. Cus. II No. 3 and 4 of 2015 dated 19.1.2015 considered the classification of similar goods i.e. 'PVC Resin Suspension Grade SP 660' and had held that the goods are classifiable under CTH 3904 2110 and granted the benefit of Notification No. 46/2011-Cus dated 1.6.2011. However, in their case, the Ld. Commissioner Appeals chose to distinguish the order and rejected their appeal. The Ld. Counsel stated that an identical issue had been examined and decided on merits in the appellants favour in Ram Nath Co. Pvt Ltd Vs Commissioner of Customs, by this Bench vide Final Order No. 40748/2025 dated 21.07.2025. He prayed that their appeal may be allowed and thus render justice.*

**3.2** *The Ld. AR, has reiterated the findings in the impugned order. She prayed that the appeal may be rejected.*

**4.** *We have carefully gone through the appeal and the submissions made by the contesting parties. We note that this issue was previously addressed by this Bench in Ramnath & Co. (supra), the company whose test report was also made applicable to the present case. The CIPET clarification dated*

25.02.2015, relied on in Ramnath & Co., is the same one relied upon here. The relevant portion of the order is as follows:-

"4. We have heard the contesting parties and have carefully gone through the appeals and submissions made. The dispute pertains to the classification of 'PVC Resin SP 660 Suspension Grade', under CTH 3904 2110 - Poly (vinyl Chloride) resins, [appellant] or CTH 3904 1090 - Poly (vinyl Chloride), not mixed with any other substances: Other [revenue].

5. Under the Customs Tariff Act, 1975, imported goods are classified based on tariff headings/ sub-headings, section and chapter notes, and the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 (GRI). Rule 1 of the GRI provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. If the goods cannot be classified solely on the basis of GRI 1, Rules 2 to 6 provide further classification guidance in sequential order. Rule 3(a) of GRI also provides that the heading which provides the more specific description shall be preferred to headings providing a more general description. Hence if the goods to be classified are covered by the description in a heading and the Section and Chapter Notes do not exclude classification in that heading, the heading applies.

5.1 Hence a commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense [see Akbar Badrudin Vs Collector of Customs, 1990 (2) SCC 203 / 1990 (47) E.L.T. 161 (S.C.); Commissioner of Customs Vs G.C. Jain, 2011 (12) SCC 713 / 2011 (269) E.L.T. 307 (S.C.)].

5.2 The relevant portion of the Schedule to the Customs Act 1975, useful for understanding the classification of the impugned goods is discussed in the judgment of the Commissioner Appeals Dated 19.01.2015, extracted at para 8 below and is hence not being reproduced separately.

5.3 With this understanding of the legal provisions, we can examine the issue at hand.

6. The impugned goods were tested by CIPET. The test report dated 25.11.2014 described the goods as under;

"Comments:- Based on the above test results and the visual appearance, the submitted sample may be considered as Polyvinyl Chloride (PVC) resin which is single thermoplastic material in powder form. The submitted sample may be considered as prime material and it may not be considered as compound,

*since it is not mixed with any other substance.”  
(emphasis added)*

*CIPET vide its further letter dated 25.02.2015 made the following observation’ “with reference to your above cited letter, we have thoroughly verified the supplied sample of PVC resin SP660 bearing the BE No. 6884672 dated 25.9.2014 and confirmed that the sample is PVC resin and not a compound. Though the sample is containing volatile matter, in the range of 0.23 to 0.24%, it may not considered as compound because of the additive added therein. The volatile loss permissible in PVC resin is referred as per IS 4669.*

*However, it is evidently proved that the resin is dissolved completely without any insoluble matter in the solvent cyclohexanone which is correlated and confirmed by K-Value test result obtained.*

*In case if the material is added with any of the inorganic additive which will reflect in filler content test as residue. But the test result is showing nil. Furthermore the submitted sample of PVC resin (SP660) is white in colour and free flowing powder in nature and hence the sample is confirmed as PVC resin without any additives including plasticizers.*

*Hence we state that there is no change in our Test Report No. 45601 dated 25.11.2014.”*

*(emphasis added)*

*7. The Ld. Original Authority after examining both the reports came to a conclusion which he summarised at para 29 of the impugned order, as below;*

*“Thus combined reading of manufacturer’s product literature, clarification given by the manufacturer and the two reports given by CIPET, it is very clear that the PVC resin grade SP660 is a single thermoplastic material and it is not a compound since it is not mixed with any other substance like plasticizer or non-plasticizer and is rightly classifiable under sub-heading 390410 only. In view of the above discussion and findings, I pass the following order.”*

*8. When the matter was taken up before the Ld. Commissioner Appeals, his earlier order dated 19.01.2015 in the case of M/s Lila Polymers (supra) pertaining to the import of ‘PVC Resin Suspension Grade SP660’ was brought to his notice, where in it was stated;*

*The appellants have filed the self-assessed bills of entry classifying the goods under CTH 39042110. Whereas the department has changed the classification to CTH 39041090 in the reassessment. Sample was drawn from the consignment and sent to CIPET for test. The Test report has stated as follows:*

*Based on the above test results and visual appearance, the submitted samples may be considered as Poly Vinyl Chloride (PVC) which is single thermoplastic material in powder form. The submitted sample may be considered as prime material, and it is not containing any other substances like plasticizer.*

*From the above it can be seen that the test report states that the sample does not contain any other substance like plasticizer. It does not state that the sample does not contain any other substance altogether. This shows that the sample is PVC not containing only plasticizers. The test result does not rule out the presence of substances other than plasticizers along with the PVC. The relevant entries are reproduced below :*

*3904 00 - Poly (vinyl chloride) not mixed with any other substances*

*3904 1010 --- Binders for pigments*

*3904 10 90 --- Other*

*- Other poly (vinyl chloride)*

*3904 21 -- Non-plasticized*

*3904 21 10 --- Poly (vinyl chloride) resins*

*390421 90 --- Other*

*3904 22 -- Plasticized*

*39042210 ---Poly (vinyl chloride) (PVC) resins (emulsion grade*

*3904 22 10 --- Other*

*It can be seen that the entry at the six-digit level-single dash heading reads as "Poly (Vinyl chloride), not mixed with any other substances". This six-digit heading has two sub classifications directly at eight-digit level with triple dash. They are 39041010 -"Binders for pigments" and 39041090 - "other". After this there is again a single dash heading and the entry against that reads as "other poly (vinyl) chloride" which are sub classified by two double*

*dash headings at six digit level. They are 390421-Non plasticized and 390422 - Plasticized. These six digit double dash sub headings are sub classified into further triple dash headings which are as follows :*

*3904 21 - Non-plasticised*

*3904 2110 --- Poly (vinyl chloride) resins*

*3904 21 90 --- Other*

*3904 22 -- Plasticized*

*3904 22 10 --- Poly (vinyl chloride) (PVC) resins*

*390422 90 --- (emulsion grade) Other*

*Thus on a combined reading of eight digit triple dash heading 39042110 (Poly vinyl Chloride resins) with its immediately preceding six digit double dash heading 3904 21 (Non- plasticised) show that impugned goods (Poly Vinyl Chloride Resins without being plasticized) would fall under only CTH 39042110.*

*Whereas the entry against CTH 39041090 which is a triple dash heading reads as "other". The other triple dash heading above viz. 39041010 reads as "Binders for pigments". The parent single dash six-digit level heading viz. 3904 00 reads as "Poly (vinyl chloride), not mixed with any other substance". A combined reading of triple dash eight-digit level heading along with Its immediately preceding single dash six-digit level heading indicates that CTH 39041090 covers Poly (vinyl chloride), not mixed with any other substance, that are other than binders for pigments. The test report has stated that the PVC does not contain any other substance like plasticizers which means that the presence of any substances other than plasticizers along with PVC is not ruled out. Therefore, the classification at the 6-digit level itself i.e. CTH 3904 00 gets ruled level i.e. 39041090 in which the department has classified the impugned goods is found not relevant to the Impugned goods.*

*Notwithstanding the above, on a comparison with eight digit and triple dash level between CTH 39041090 and CPH 39042110 shows that CTH 39042110 is the most appropriate for the impugned goods namely PVC resins without plasticizers. When an entry at eight digit level covers the goods specifically then it should be taken as the most appropriate heading. Further the CTH chosen by the department i.e. CTH 39041090 is a residual entry. Whereas the CTH 39042110 is specific. Rule 3 (a) of the General Rules for the Interpretation of Import Tariff has laid down that "the heading which provides the most specific description shall be preferred to headings providing*

*a more general description". Therefore, CTH 39041090 being a residual entry at eight digit level gets ruled out.*

*Further, there are two separate headings succeeding CTH 3904 00 to cover separately Non plasticized PVC Resins (CTH 390421) and plasticized PVC Resin (CTH 3904 22). The very fact that there are separate sub headings to specifically cover plasticized PVC resin (3904 22) and non-plasticized PVC resin (390421) implies that CTH 390400 would not cover non plasticized PVC resin.*

*Further, the appellants have stated that all along they have been classifying the said goods under CTH 39042110 and paying Anti Dumping Duty. The assessing authority is now seeking to reclassify the goods under CTH 39041090. If this CTH is correct then the all the ADD paid by the appellants to the tune of Rs. 65.28 crores during the period from November 2013 to January 2014 will be rendered refundable to them. The Assessing Officer in his misplaced enthusiasm for maximizing revenue may in fact end up harming the interests of revenue. This is the precise reason as to why Board In its wisdom had issued Circular No. 41/98 dated 11.6.1998 wherein it has been clarified that a settled position of classification should not be disturbed without the approval of the Commissioner.*

*In line with the above discussions, the impugned goods have to be compulsorily classified under CTH 39042110 only.*

*It is seen that there has been a delay in the reassessment of the goods resulting in unnecessary expenditure to the appellants towards detention / demurrage charges. Also, no speaking order was issued to the appellants in terms of Section 17 (5) of the Customs Act, 1962.*

*In view of the above discussions, it is held that CTH 39042110 would be the appropriate heading for the impugned goods. Accordingly, the assessment is set aside."*

*(emphasis added )*

*8.1 However the Ld. Commissioner Appeals in the impugned order differentiated his earlier order dated 19.01.2015, in the following manner;*

*The appellant has drawn reference to the Order No. C Cus. 3 & 4/2015 dated 19.1.2015 passed by this authority in the appeals filed by M/s. Lila Polymers P Limited holding that the goods viz. PVC resin Suspension Grade are to be classified under CTH 39042110. Such a decision was taken based on the test report which certified that the sample does not contain substance like plasticizer and that it did not*

*state that the sample does not contain any other substance altogether. whereas in the present case, the Test Report and the clarification have stated that the sample may be considered as a prime material and that it may not be considered as compound since it is not mixed with any other substance. Thus the facts of the case are different." (emphasis added)*

*He went on to render the following findings;*

*"The appellants have imported PVC Resin. Sample was drawn from consignments covered by one of the bills of entry referred in the impugned order in original and sent to CIPET for testing. The Test report in the column "Comments has stated as follows::*

*"the sample may be considered as polyvinyl chloride (pvc) resin, which is a single thermoplastic material in powder form, it may be considered as prime material and it may not be considered as compound since it is not mixed with any other substances"."*

*It could be seen that the test report has stated that the sample may be considered as a prime material and cannot be considered as a compound as it is not mixed with any other substance. The testing Lab has given clarification which is as follows ::*

*"With reference to your above cited letter we have thoroughly verified the supplied sample of PVC resin SP 660 bearing B.E No. 6884672 dated 25.9,2014 and confirmed that the sample is PVC resin and not a compound. Though the sample is containing volatile matter, in the range of 0.23% to 0.24% it may not be considered as compound because of the additive added therein. The volatile loss permissible in PVC resin is referred as per IS: 4669."*

*In the clarification, the LAA has reaffirmed that the sample cannot be considered as a compound inspite of the presence of volatile material.*

*Thus, it turns out that the impugned items are PVC resin without any other substance mixed in it. Therefore, classification has to be made based on the test report read with clarification from the CIPET. The entry against CTH 390410 - a single dash heading - reads Poly (Vinyl Chloride), not mixed with any other substances: The impugned item is PVC not mixed with any other substance. Therefore, CTH 390410 is appropriate to the impugned goods. CTH 390410 has got two triple dash eight digit sub classifications. One is CTH 39041010 covering Binders for pigments and the other is CTH 39041090 covering those*

*PVC that are other than binders for pigments. The impugned goods are not binders for pigments. Hence, CTH Ch39041090 is appropriate to the impugned goods.*

*It is the plea of the appellants that PVC resin means only pure resin whereas PVC would denote PVC having other additives like plasticizers, stabilizers, lubricant, pigment, etc. The appellant has not substantiated his plea with any technical / expert evidence. The Tariff entries are totally opposite to what the appellant has pleaded. The entry against CTH 390410 reads as Poly (Vinyl Chloride), "not mixed with any other substances". The succeeding single dash reads "other poly (Vinyl Chloride) which means that it covers PVC other than not mixed with any other substance. Thus, it emerges that only those PVC mixed with any other substance can fall under the scope of CTH 390421. Whereas the impugned PVC is not mixed with any other substance, therefore, they cannot fall under the heading 390421.*

*(emphasis added)*

*9. We find that as per the HSN when the imported goods are falling under a specific heading of the Customs Tariff, the goods must be classified under that heading only. This first principle of classification as also stated by the Hon'ble Supreme Court in several judgments, some referred to above, has also been stated by the Commissioner Appeals himself in his order dated 19.01.2015 in the case of M/s Lila Polymers (supra). However, in the appellant case the goods 'PVC resin grade SP660' imported by them was differentiated from the 'PVC Resin Suspension Grade SP660' imported by M/s Lila Polymers in the impugned order.*

*10. We find that the Ld. Commissioner Appeals in M/s Lila Polymers (supra), had classified the goods under CTH 39042110 on two grounds;*

*(i) The test report states that the submitted sample may be considered as prime material, and it is not containing any other substances like plasticizer.*

*(ii) Notwithstanding the above position, he went on to hold that, on a comparison with eight digit and triple dash level between CTH 39041090 and CPH 39042110 shows that CTH 39042110 is the most appropriate for the impugned goods namely PVC resins without plasticizers.*

*10.1 We find that in the case of the appellant's case too no plasticizer was found, as per the test report. It stated that the submitted sample may be considered as prime material and it may not be considered as compound, since it is not mixed with any other substance. It appears that the*

*phrase "it may not be considered as compound" as in test report of the appellants goods, instead of "and it is not containing any other substances like plasticizer" in M/s Lila Polymers, appears to have made him change his opinion. In fact in M/s Lila Polymers he reasoned that the report does not state that the sample does not contain any other substance altogether and perhaps presumed that it could be a compound. He however went one step further to classify the goods without taking aid of the test report, based on classification principles itself. That second step, he failed to perform in the appellants case which led him to err in his conclusion.*

*10.2 A Co-ordinate Bench of this Tribunal at Chennai, (speaking through the Member (Technical), Mr. M Ajit Kumar), in M/s. Flextronics Technologies Pvt. Ltd. Vs Commissioner of Customs, [Final Order Nos. 40203-40208/2024, Dated: 28.02.2024] stated;*

*"9.13 . . . Language is an imperfect vehicle of thought and the ability of written language to precisely convey technical information and description of products as done by mathematical symbols and formula, especially in the case of legal matters, enactment or notifications, may not at all times be achieved. This inexactitude of words at times makes it necessary as discussed above, to understand the legislative intent in issuing these notifications by looking at the subject of legislation and object of the law, when an ambiguity exists."*

*10.3 We find that the Ld. Commissioner Appeals had in his alternate finding freed himself from the restricting boundaries of the test report in the classification of similar goods in M/s Lila Polymers (supra). He opined that when an entry at eight-digit level covers the goods specifically then it should be taken as the most appropriate heading. Further the CTH chosen by the department i.e. CTH 39041090 is a residual entry. Whereas the CTH 39042110 is specific. Rule 3 (a) of the General Rules for the Interpretation of Import Tariff has laid down that "the heading which provides the most specific description shall be preferred to headings providing a more general description". Therefore, CTH 39041090 being a residual entry at eight-digit level gets ruled out.*

*11. Based on the discussions we feel that the Ld. Commissioner Appeals had correctly interpreted the test reports and the law in M/s Lila Polymers (supra) and should not have allowed a change in semantics to have altered his opinion so drastically and to speak in two voices on the same issue.*

12. We are hence of the opinion that the impugned order merits to be set aside and the appropriate Customs tariff heading for the impugned goods held to be 39042110.

13. We are fortified in our views by the order of a coordinate Bench of this Tribunal at Kolkata in the case of *M/s Surabhi Enterprises (supra)* cited by revenue. In that case the only dispute as stated by revenue was that the imported goods being 'uncompounded or pure PVC Resin' are classifiable under Tariff Item 3904 10 90 within sub-Heading 3904.00, which covers 'Poly (vinyl chloride), not mixed with any other substances', whereas, the Appellants have classified the goods under Tariff Item 3904 21 10 which covers 'Poly (vinyl chloride) resins', within sub-heading 3904.21 which covers 'other poly (vinyl chloride) non-plasticised'. However, this change in CTH pertained to the period after 31.03.2017 when 'Poly (vinyl chloride) resin' falling under the heading 3904 2110 was deleted and shifted to 3904 10, as per the Finance Act, 2017. The period in this case is prior to the change made in the heading when 'Poly (Viny Chloride) resin' was covered under a specific tariff heading. The Tribunal at para 5.3 held;

5.3. From the Heading 39.04, it is evident that during the period in dispute, Tariff Item 3904 21 10 was specific entry for 'Poly (vinyl chloride) resin'. It is settled law that specific entry will prevail over general one. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule also provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. In the present case, Tariff Item 3904 2110 is specific for Poly (vinyl chloride) resins', whereas Tariff Item 3904 10 90 covers 'Others' which is a residuary entry and the same cannot be preferred over a specific entry. The imported goods are 'PVC resin suspension grade' which is non-plasticised. Therefore, going by the General Rules for Interpretation, we find that subheading 3904 21 is a specific heading, which is to be preferred over the general Heading 3904 00. Thus, we observe that the imported goods are correctly classifiable under sub-heading 3904.21 (Tariff Item 3902 21 10) by application Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule."

(emphasis added)

5. We find that the facts and law involved in the above case are similar to the issue here. We hence follow our own order as extracted above and set aside the impugned order. The appeal is

*allowed. Appellant is eligible for consequential relief, if any, as per law."*

10. In view of identical issue involved in this appeal and the facts being the same, the issue is no longer *res integra*. Hence the impugned Order-in-Appeal C.Cus.II.No. 863/2016 dated 14.09.2016 is set aside and the appeal is allowed with consequential relief as per the law.

(Order pronounced in open court on 16.12.2025)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

MK