IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40921 of 2017

(Arising out of Order-in-Appeal C.Cus. II No. 175/2017 dated 08.03.2017 passed by Commissioner of Customs (Appeals-II), No. 60 Rajaji Salai, Custom House, Chennai – 600 001)

M/s. PP Products P. Ltd. **...Appellant**
Archana Complex,
No. 37/12-1, 4th Cross,
Lalbagh Road,
Bangalore – 560 027.

Versus

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

APPEARANCE:

For the Appellant : Ms. Suja AL, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorized Representative

CORAM:

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

DATE OF HEARING : 07.08.2026
DATE OF DECISION : 08.09.2026

FINAL ORDER No. 41013 / 2026

Order:-

This appeal is directed against Order-in-Appeal No. C.Cus-II No.175/2017 dated 08.03.2017 passed by the Commissioner of Customs (Appeals-II), Chennai in the de-novo proceedings. The dispute relates to refund of 4% Special Additional Duty of Customs (SAD) amounting to Rs.5,02,579/-

claimed under Notification No.102/2007-Cus. dated 14.09.2007, as amended.

2. The facts briefly stated are that the appellant, a trader in plastic granules, filed a refund claim dated 18.11.2009 for four Bills of Entry covering imports made in March 2009. The original authority, after examining the relevant documents, sanctioned refund of Rs.5,02,579/- *vide* Order-in-Original No. 11318/2010 dated 10.03.2010. The Department's appeal was initially rejected by the Commissioner (Appeals), but this Tribunal remanded the matter *vide* Final Order No.42055/2016 dated 28.10.2016 for de novo consideration. Pursuant thereto, the Commissioner (Appeals) set aside the refund sanction and directed recovery, principally on the grounds of mismatch between the descriptions in the sale invoices and Bills of Entry and sales through consignment agents. Aggrieved by the said order, the appellant is before the Tribunal.

3.1 The Ld. Advocate Ms. Suja AL for the appellant, submitted that the original authority had examined the relevant documents and had specifically recorded satisfaction regarding payment of SAD, the sale of the imported goods, payment of CST/VAT and correlation certified by the Chartered Accountant. The subsequent rejection was founded essentially on the use of the generic expression "plastic granules" in the sale invoices instead of reproducing the particular grade appearing in the Bills of Entry. It was submitted that HDPE, LDPE and LLDPE are different grades/types falling within the general description of plastic granules and that the generic description in the sale invoices did not establish that different goods had been sold. The appellant relied particularly upon the judgment of the Hon'ble Madras High Court in *P.P. Products Ltd. v. Commissioner of Customs, 2019 (367) E.L.T. 707 (Mad.),* as well as Kamadhenu Polymers Pvt. Ltd. v. Commissioner of Customs (Seaport), Chennai, and the other decisions in the written submissions/Appeal.

3.2 It was further submitted that the appellant had produced the statutory Chartered Accountant's certificate and reconciliation statement correlating the imported goods, subsequent sales and VAT/CST payments. In respect of sales through consignment agents, the appellant submitted that the relevant VAT/CST payments and their correlation with the imported goods were certified by the Chartered Accountant in accordance with CBEC Circular No.16/2008-Cus. dated

13.10.2008. The appellant also challenged the Department's plea regarding limitation, contending that the appeal had been numbered in 2012 only because the original appeal filed in 2010 had been placed in the call book and subsequently recalled.

4. The Ld. Authorized Representative Shri N. Satyanarayana for the Revenue, supported the impugned order and submitted that the conditions of Notification No.102/2007-Cus. required clear correlation between the imported goods and the goods subsequently sold. He submitted that while the Bills of Entry mentioned specific grades such as HDPE, HDPI, HDPEHD and LDPE PETLIN, the sale invoices merely described the goods as "plastic granules". He further relied upon the sales through consignment agents and contended that the arrangement was not adequately established. The Commissioner (Appeals) had therefore rightly held that the conditions of the Notification were not satisfactorily fulfilled. The Revenue also submitted that its appeal before the Commissioner (Appeals) was filed within the prescribed period and that its subsequent numbering in 2012 resulted from recall of the appeal from the call book.

5. I have carefully considered the records, the rival submissions, the Order-in-Original, the impugned Order-in-Appeal, the remand proceedings and the authorities relied upon by the appellant. The following two questions arise for determination: -

i. Whether the Department's appeal against the Order-in-Original was barred by limitation or otherwise not maintainable?
ii. Whether the appellant satisfied the substantive requirements of Notification No.102/2007-Cus. for refund of Rs.5,02,579/-, notwithstanding the generic description of the goods in the sale invoices and the sales effected through consignment agents?

6. I now proceed to examine the above issues.

Issue No. (i): Limitation: (i) Whether the Department's appeal against the Order-in-Original was barred by limitation or otherwise not maintainable?

7. The appellant contended that the Order-in-Original was received in the Review Cell on 12.03.2010 whereas the appeal was numbered in 2012 and therefore appeared to be barred by limitation. The impugned order, however, records that the jurisdictional Commissioner passed

the review order on 11.06.2010 and the Department filed the appeal on 23.06.2010. It further records that the appeal was originally numbered in 2010 and was subsequently placed in the call book and, upon recall in 2012, was assigned a fresh number. On the material available before me, therefore, the relevant date for determining limitation is the date of the original filing and not the date on which the appeal was renumbered after recall from the call book.

8. I therefore do not find sufficient basis to hold that the Department’s original appeal was filed beyond the period prescribed under Section 129D of the Customs Act, 1962. The subsequent renumbering of an appeal already filed in time cannot, by itself, convert a validly instituted appeal into a fresh appeal filed on the date of renumbering. I accordingly answer Question No.(i) against the appellant.

Question No. (ii): Entitlement to SAD refund

9. The substantive question is whether the difference between the specific grades mentioned in the Bills of Entry and the generic expression “plastic granules” appearing in the sale invoices is, by itself, sufficient to establish that the imported goods were not the goods

subsequently sold. I find that, on the facts and evidence available in the present case, it is not.

10. Notification No. 102/2007-Cus. contemplated refund subject to fulfilment of specified conditions, including payment of SAD at import, subsequent sale of the imported goods on payment of appropriate sales tax/VAT and production of the prescribed documentary evidence. The original adjudicating authority had examined the relevant documents and recorded findings that the appellant had submitted the original Bills of Entry, that payment of duties including 4% CVD/SAD had been verified, that the prescribed sale invoices had been produced and that CST/VAT payments had been correlated with the sales invoices by the Chartered Accountant. The very basis on which the refund was originally sanctioned was therefore after documentary verification and not merely acceptance of the appellant's assertion.

11. The impugned order has, however, treated the generic description "plastic granules" in the sale invoices as incapable of correlating the goods with the imported grades. This approach overlooks the other evidence forming part of the refund claim. The absence of the grade number in the

domestic sale invoice does not, without more, establish that the goods sold were different from those imported. There must be some positive material demonstrating such difference, particularly when the Bills of Entry, sale invoices, reconciliation statement and Chartered Accountant's certificate were before the original authority and the latter had accepted the correlation.

12. This issue is squarely covered by the judgment of the Hon'ble Madras High Court in *P.P. Products Ltd. v. Commissioner of Customs, 2019 (367) E.L.T. 707 (Mad.).* The case also concerned refund of SAD on imported HDPE/LDPE/LLDPE granules, where the grades appearing in the Bills of Entry were not reproduced in the subsequent sale invoices. The Hon'ble High Court held that the refund could not be rejected merely on that ground when the adjudicating authority had not found that the goods sold were different from the imported goods and there was no material to disbelieve the Chartered Accountant's certificate. The Court also noted that the substantive conditions of the notification had not been disputed.

13. The ratio is directly applicable to the present case. Here also, the Revenue has not produced independent evidence to establish that the goods sold were different from the goods imported. The objection is founded principally on differences in nomenclature, grade or technical description in the sale invoices. Such differences, in the absence of contrary evidence disproving the correlation between the imported and sold goods, cannot by themselves defeat the refund claim. The documentary correlation and Chartered Accountant’s certification therefore merit acceptance unless displaced by cogent evidence, which is absent in the present case.

14. The appellant also relied upon *Kamadhenu Polymers Pvt. Ltd. v. Commissioner of Customs (Exports), Chennai, Final Order No. 41112/2024 dated 22.08.2024*. In that case, the Tribunal held that refund of SAD could not be denied merely because the grade or code appearing in the Bills of Entry was not reproduced in the sale invoices, particularly when the imported and sold goods were otherwise correlatable and there was no material to disbelieve the Chartered Accountant’s certificate. The Tribunal further observed that the Department had not established that the goods sold were different from the imported goods. I find the principle applicable to the present case, where the Revenue's

objection similarly rests substantially on differences in the description or grade appearing in the import and sale documents.

15. I now turn to the objection relating to sales through consignment agents. Circular No. 16/2008-Cus. dated 13.10.2008 specifically recognises sales of imported goods through consignment agents/stockists and provides that refund of 4% CVD may be granted where the agent is authorised to sell the goods on behalf of the importer, the sale invoices so indicate, and the Chartered Accountant certifies payment/reimbursement of VAT/CST and its correlation with the 4% CVD paid on the imported goods.

16. In the present case, the original authority recorded that the appellant had produced the Bills of Entry, sale invoices, evidence of VAT/CST payment and the Chartered Accountant's certificate. It further recorded that the VAT/CST payments had been correlated with the sale invoices and that the quantity sold tallied with the quantity imported. The Department's objection is essentially that the sales were effected through consignment agents and that the required correlation was not established. However, no specific

transaction has been identified in which VAT/CST was not paid, the goods sold were different from the imported goods, or the Chartered Accountant's certificate was found to be incorrect or unreliable. The mere fact that sales were effected through consignment agents cannot, therefore, by itself justify denial of the refund.

17. Circular No. 16/2008-Cus. does not make consignment sale an independent ground for rejection of refund; it prescribes the manner in which such sales are to be established. In the present case, the original authority examined the relevant documents and was satisfied regarding the sale of the imported goods and payment of VAT/CST. In the absence of contrary evidence sufficient to displace those findings, I find no justification to deny the refund merely because the sales were effected through consignment agents.

18. The Ld. Counsel further relied upon Hemraj *Gordhandas v. H.H. Dave, 1978 (2) E.L.T. J350 (S.C.),* and submitted that the benefit of a notification has to be determined with reference to its express conditions and cannot be denied by importing requirements not contained therein. It was submitted that Notification No. 102/2007-Cus.

did not require the sale invoices to reproduce verbatim every grade or specification mentioned in the Bills of Entry. The appellant contended that the substantive requirements of the notification stood satisfied, as the imported goods were subsequently sold and the applicable VAT/CST was paid, as recorded by the original authority.

19. The appellant also relied upon *Punjab Con Cast Steel Ltd. v. Collector, 1999 (107) E.L.T. 574 (Tri.)*, in support of the proposition that the actual specifications and contemporaneous documents are relevant in determining the identity and description of goods. The appellant further relied upon *Ponds India Ltd. v. Commissioner of Trade Tax, Lucknow, 2008 (227) E.L.T. 497 (S.C.),* regarding the limited evidentiary value of Wikipedia. The Hon'ble Supreme Court observed that Wikipedia is not an authentic source of authority and, though it may be consulted for gathering information, it cannot ordinarily be relied upon for interpreting a taxing statute or classifying a product. In the present case, the Commissioner (Appeals) relied upon Wikipedia to distinguish the characteristics of different grades of polyethylene. I find that such material, by itself, cannot displace the contemporaneous Bills of Entry, sale invoices and the Chartered Accountant's certificate available on record. The

issue has to be determined on the basis of the statutory requirements and the documentary evidence relating to the actual goods and their subsequent sale.

20. The appellant also relied upon the recent decision of this Tribunal in M*/s. Supertron Electronics Pvt. Ltd. v. Commissioner of Customs, Chennai, Final Order No. 40703/2026 dated 02.06.2026, 2026 (6) TMI 187 (CESTAT-Chennai),* though arising on somewhat different facts. The Tribunal held that, where payment of SAD at the time of import, subsequent sale on payment of VAT/CST and non-availment or non-passing of the SAD benefit were established through the available records and certificates, procedural deficiencies such as non-availability of original documents or absence of invoice endorsements could not, by themselves, defeat the refund. The appellant relied upon this decision in support of the proposition that procedural or document-format deficiencies should not defeat a SAD refund where the substantive requirements are otherwise established.

21. I am also conscious of the earlier remand in the appellant's own case. The Tribunal, vide Final Order No. 42055/2016 dated 28.10.2016, remanded the Department's

appeal to the Commissioner (Appeals) for de novo consideration. The remand order records that the Commissioner (Appeals) had not considered the grounds raised by the Department and had rejected the appeal on the issues relating to the signed copy and date of the Order-in-Original. The Tribunal, therefore, directed reconsideration of the matter by the appellate authority.

22. On an overall appreciation, I find that the original adjudicating authority had examined the relevant documents and had recorded satisfaction regarding the substantive conditions of Notification No.102/2007-Cus. The impugned order does not identify any concrete evidence establishing that the appellant sold goods other than those imported, that VAT/CST was not paid on the subsequent sales, that the Chartered Accountant's certificate was incorrect, or that the appellant obtained an impermissible double benefit. The rejection is essentially founded on nomenclature and on an insufficiently established objection concerning consignment sales. Such reasoning cannot prevail against the documentary evidence and the binding decision of the Hon'ble Madras High Court in the appellant's own case.

23. I therefore hold that the appellant had substantively complied with the requirements of Notification No. 102/2007-Cus. and was entitled to refund of Rs.5,02,579/-. The difference between the specific grade appearing in the Bills of Entry and the generic expression “plastic granules” in the sale invoices does not establish non-correlation, the Chartered Accountant’s certificate and reconciliation, coupled with the sale and VAT/CST documents, constitute sufficient evidence in the facts of the present case. I accordingly answer Question No.(ii) in favour of the appellant.

24. In view of the foregoing, I hold that although the Department’s original appeal before the Commissioner (Appeals) cannot be held barred by limitation on the material available, the Department has failed on merits to establish that the refund of Rs.5,02,579/- sanctioned under Notification No.102/2007-Cus. was erroneous. The impugned Order-in-Appeal No.C.Cus-II No.175/2017 dated 08.03.2017 is therefore set aside.

25. The Order-in-Original No.11318/2010 dated 10.03.2010 sanctioning refund of Rs.5,02,579/- to M/s. P.P.

Products Pvt. Ltd. is restored. Any recovery initiated solely pursuant to the impugned Order-in-Appeal shall consequently stand set aside. The appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 08.09.2026)

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

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