In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066
Appeal No.C/58199-58202,58221/2013(DB)

(Arising out of Order-in-Original No.04/Commr/Cus/Indo2013 dated 19.03.2013 passed by Commissioner of Central Excise, Customs & ST, Indore)

M/s DP Plastics …Appellant
M/s DP Wires (P) Ltd

Vs

CCE Indore …Respondent

Appearance:

Present for the Appellant : Sh Manish Saharan, Advocate
Present for the Respondent : Sh Govind Dixit, DR

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 08.08.2017
Date of decision: 18.08.2017

Final Order No.55987-55991/2017

Per V. Padmanabhan,

All these five appeals are filed against various Orders-in-Original, but deal with similar issues and hence are being disposed-of through common order. The appellants imported mix plastic material (plant sweeping HDPE). Department was of the view that these goods will be classifiable under CTH 3915 and will require import licence in terms of the Public Notice No.392(PN) 92-97 which was not produced by importer. Further the goods also will not be entitled to the benefit of notification No.12/2012 Cus. dated 17.03.2012.

2. Accordingly, in the impugned orders, the goods were ordered for confiscation and allowed for redemption on payment of fine and penalty. Differential duty was also demanded.

3. With the above background, heard Shri Manish Saharan, ld Advocate and Sh Govind Dixit, DR.

4. The ld Counsel for the appellant submitted that the imported goods were polymers of ethylene in primary form and hence, merits classification under CTH 39 01 10 94 and entitled to concessional duty @ 5% in terms of notification 12/2012-Cus dated 17.03.2012 (SN 237). He further submitted that the test report from CIPET Bhopal indicates that the imported goods are a mix of thermo plastic material in primary form and hence cannot be considered as waste. Accordingly, he submitted that the confiscation of goods ordered by the adjudicating authority was required to be set-aside.

5. The ld DR justified the impugned order. He submitted that the test report clearly indicates that the imported goods are nothing but waste of plastics which require import licence in terms of the public notice dated 01.01.1997 issued by the licensing authority.

6. Heard both sides and perused the records. The samples have been drawn from the various import consignments and sent to CIPET, Bhopal. The test report was as follows:

'The sample is found to be granules of HDPE and PP natural white transparent and translucent granules in irregular shape and size in primary form. The sample may be considered as waste/scrap free from any kind of toxic/non-toxic contaminations, substantial residue content or smell, colour not changes when washed with water as per notification no.392 (PN) 92-97 dated 01.01.1997.'

7. Public Notice No.392(PN) 92-97 dated 01.01.97 governed the import of all types of plastic wastes/scrap. In the said public notice, it is clarified that (i) import of plastic waste/scrap (except PET bottle waste/scrap) shall be permitted only against a licence. The description/definition of the Plastic waste/scrap for this purpose would be:-

> "Plastic scrap/waste constitute those fractions generated by various plastic processing operations or those fractions generated in the production process of plastics in a plant, which have not been put any use whatsoever and as such can be termed as virgin or new material which can be recycled into viable commercial products using standard plastic processing techniques but without involving any process of cleaning, whereby effluents are generated."

(ii) Such virgin/new plastic scrap/waste shall be permitted for import in the following forms i.e. compressed, films in cut condition, but tape soft waste, flakes, powders, pieces of irregular shape (not exceeding t he size of 3"x3").

iii) Any other category of plastic scrap/wastes which are not covered by the description/definition as given in sub-para (i) & (ii) above shall not ordinarily be permitted.

8. On careful consideration of the test report vis-à-vis the Public Notice, it is evident that the imported material is plastic, waste and scrap and would be covered by the above public notice. This has been confirmed by way of test report of CIPET, Bhopal. Hence, the imported goods require an import licence which was not produced by the appellant. Consequently, the goods are liable for confiscation in terms of Section 111(d) of the Customs Act, 1962.

9. It is further seen that the appellants have also mis-declared the value of the imported goods resulting in liability for confiscation in terms of Section 111 (m). Waste and scrap of plastics are appropriately classifiable under CTH 3915 and not under 3901 as claimed by the appellant. Goods also will not be entitled to concessional duty under Notification No.12/2012 dated 17.03.2012.

10. In view of above, we find no infirmities in the impugned orders which are upheld, consequently the appeals are dismissed.

(Pronounced in the Court on 18.08.2017).

(Justice (Dr) Satish Chandra) President	(V.Padmanabhan) Member (Technical)

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