IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal No.75322/14

(Arising out of Order-in-Original No.Kol/Cus/Port/31/2013 dt.20.12.2013 passed by Commissioner of Customs (Port), Kolkata)

M/s K. T. Pyrochem

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

Respondent (s)

Appearance:

Shri Sukhendu Bhattacharya, Adv. and Shri R.N.Bandapadhyay, Consultant for the Appellant (s)
Shri S. Guha, Asstt. Commr. (AR) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 14.05.2018
Date of Decision : 14.05.2018

ORDER NO. FO/A/76094/2018

Per Shri Bijay Kumar :

The appellant has filed the present appeal against the Order-in-Original No.Kol/Cus/Port/31/2013 dt.20.12.2013 passed by Commissioner of Customs (Port), Kolkata.

2. Briefly stated the facts of the case are that the appellant has imported goods, namely, "LDPE Granules Off Grade", quantity of 13.04 MTs. at the declared assessable value of Rs.5,62,520.95 and the declared unit price at US$ 690 per M.T. CIF. The declared item was of non-standard grade (off grade). The subject Bill of Entry was taken

for re-assessment. After rejecting the declared value under Rule 12 (Explanation I) of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 and value was subsequently enhanced to US$ 1115 per M.T. in terms of PLATT price. The goods were re-examined and found to contain the description, quantity and weight as per Table :

Goods	**Qty.**	**Approx.Wt.**
Plastic granules	10 pallet	3.62
Plastic dust	23 pallet	8.34
Plastic block	01 pallet	0.36
Silica Gel (in Pouch)	02 pallet	0.72
Total	36 pallet	13.04

The Deputy Commissioner and also Additional Commissioner along with CHA inspected the samples and also opinion was that the aforesaid goods are nothing but plastic scrap.

3. The ld.Counsel appearing on behalf of the appellant, has raised the issue that as per DGFT Policy Circular No.20/2002-2007 dated 12.03.2003 read with Public Notice No.392(PN)/92-97 dated 01.11.1997, the import of plastic waste/scrap (except PET Bottle Waste/Scrap) is not permitted, but at the strength of license. The assessee could not produce the license and therefore, the goods were confiscated under Section 111 (d) of the Customs Act, 1962 and

penalty was imposed on the appellant under the provisions of Section 112 (a) of the Customs Act, 1962 for mis-declaration.

4. The ld.Counsel further submits that they asked for re-export of the consignment at the strength of letter dated 01.10.2013 from the supplier, who has informed the appellant that wrong goods have been sent to them, which was meant for order from Hong Kong buyers.

5. Based on the above, at the time of personal hearing before the adjudicating authority, they have asked for the permission to the re-export the consignment purported to be wrongly sent to them by the supplier. However, the adjudicating authority has enhanced the value of the goods to the extent of Rs.9,09,002/- from the declared value and also permitted to re-export of the goods on payment of penalty of Rs.2,50,000/- as the importer failed to submit import license. This penalty has not been paid by the importers and the consignment of imported scrap is still not re-exported.

6. The ld.Counsel also takes us to Para 27 (2) of the Handbook of Procedures (Vol.1), 1992-97 (Revised Edition : March, 1996), wherein it is stated as under :

> *(i) Import of plastic wastes/scrap (except PET bottle waste/scrap) shall be permitted only against a license. The description/definition of the plastic waste/scrap for this purpose would be "Plastic scrap/waste constitute those fractions of plastics generated by various plastic processing operations or those fractions generated in the production process of plastics in a plant, which have not been put to 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 clearing, 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, cut tape soft waste, flakes, powders, pieces of irregular shape (not exceeding the size of 3" X 3").

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(vii) Before the clearance of the plastic waste/scrap, all imported consignments of such plastic scrap/waste shall be subjected to scrutiny and testing of samples. Customs authorities shall for this purpose draw a sample and send the same to the nearest laboratory/office of the Central Institute of Plastic Engineering & Technology (CIPET) with a view to having the same analyzed and verified that such imported consignments are in conformity with the description/definition as given in sub-paragraphs (i) and (ii) above."

7. The ld.D.R. appearing for the Revenue, has reiterated the grounds contained in the impugned order and further submits that as the importer has agreed that the imported consignment is nothing but plastic scrap and therefore, the Department has not drawn the sample sent to CEPET for analysis.

8. We have considered the submissions made by both sides and also perused the case records. It is accepted fact that the imported consignments were declared to be other than waste and scrap of plastic for re-examination and test and samples were also drawn, but according to the Revenue, the samples were not sent for chemical testing for ascertaining the nature of imported consignments being plastic scrap, which is mandatory as per (vii) to Para 27 (2) of the

Handbook of Procedures (Vol.1), 1992-97 (Revised Edition : March, 1996), extracted above.

9. In view of the above, we are of the considered view that in absence of test report from the concerned authority regarding nature of the materials to be scrap, we are inclined to allow the appeal of the appellant.

10. In the result, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Operative part of the order was pronounced in the open Court.)

Sd/

(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

Sd/

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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