**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 76118 of 2019**

(Arising out of Order-in-Original No. KOL/CUS/COMM/05/SIB/2019 dated 31.01.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

**M/s. Honey Vanijya Private Limited** **: Appellant**
P.O.: Begri, P.O.: Domjur,
Howrah, West Bengal – 711 411

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**AND**

**Customs Appeal No. 76119 of 2019**

(Arising out of Order-in-Original No. KOL/CUS/COMM/05/SIB/2019 dated 31.01.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Shri Rushab Thakker, Director,** **: Appellant**
**M/s. Honey Vanijya Private Limited**
P.O.: Begri, P.O.: Domjur,
Howrah, West Bengal – 711 411

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**APPEARANCE:**

Shri Aditya Dutta, Advocate for the Appellant(s)

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 75728-75729 / 2025**

DATE OF HEARING:07.03.2025

DATE OF DECISION: 20.03.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

M/s. Honey Vanijya Pvt. Ltd. (hereinafter referred to as the "appellant") are engaged in the business of import of plastic material under the category of 'Polystyrene GPPS 1450', from Singapore. Out of such imported materials they manufacture excisable goods namely, GPPS Sheets in their factory at Domjur, Howrah, for subsequent sale in the market.

1.1. The appellant has filed the Bill of Entry No. 4199210 dated 29.11.2017 by declaring the description of the goods imported as ''Polystyrene GPPS 1450" in powder form and classified the said goods under CTH 39031990, as mentioned in the Country Of Origin Certificate (COO) issued by the exporting country namely, Singapore. The appellant claimed exemption form BCD under Notification No. 10/2008-CUS dated 15.01.2008, as amended by Notification No. 53/2015-CUS dated 23.11.2015. The department was of the view that the goods imported by the appellant are Polystyrene in '**granular** form' which is liable to be classified under the CTH 39031990 attracting BCD @ 4.45%. Accordingly, the Customs Officers drawn samples and sent the same for testing to Central Institute of Plastics Engineering & Technology, Haldia. As per the test report received, the imported goods were Polystyrene in 'granular form'.

1.2. On the basis of the test report received in respect of the goods imported vide Bill of Entry No. 4199210 dated 29.11.2017, the Department extended the investigation to all seventeen previous imports made by the appellant. The Department considered that the Polystyrene materials imported by the appellant through the seventeen previous imports were also wrongly classified by the appellant under the CTH 39031910 to claim the exemption form BCD under Notification No. 10/2008-CUS dated 15.01.2008, as amended by Notification No. 53/2015-CUS. dated 23.11.2015.

1.3. On completion of the investigation, a Show Cause Notice dated 05.07.2018 was issued to the appellant proposing to reclassify the goods imported by the appellant vide the said 17 previous Bills of Entry as Polystyrene in '**granular** form' under the CTH 39031990 attracting BCD @4.45%. Accordingly, differential customs duty of Rs. 73,77,740/- was sought to be recovered from the appellant along with interest. Proposal has also been made for imposition of penalty under Section 114A of Customs Act,1962. The notice also proposed confiscation of goods under section 111(m), (o) of the Customs Act, 1962. Imposition of penalty on Shri Rishab Thakker, Director of the company under Sections 112(a)(ii) and 114AA ibid. was also proposed.

1.4. The said notice was adjudicated by the Commissioner of Customs (Port) vide his Order-in-Original No. Kol/CUS/Comm/05/SIB/2019 dated 31.01.2019, wherein the Ld. Commissioner has passed the following orders:

(a) The benefit of Notification No. 10/2008-Cus dated 15.01.2008, as amended, was denied for all the 18 Bills of entry, as detailed under Table IV of the Show Cause Notice.

(b) The goods detailed under Table IV of the Show Cause Notice were confiscated under Section 111(m), (o) of the Customs Act, 1962.

For the goods imported under B/E No. 4199210 dated 29.11.2017 redemption fine of Rs. 5,00,000/- in lieu of confiscation was charged.

(c) Differential Customs duty of Rs. 73,77,740/- was confirmed in respect of all 17 previous Bills of Entry mentioned at Sl. No. 01 to 17; Bill of Entry No. 4199210 dated 29.11.2017 (SL. No. 18 of Table-IV) was finally assessed by classifying the goods under CTH 39031990 without extending the benefit of Notification No. 10/2008-CUS. dated 15.01.2008, as amended.

(d) Recovery of interest at the applicable rate under Section 28AA of the Customs Act,1962 on the confirmed customs duty amount.

(e) Penalty of Rs. 73,77,740/- was imposed under Section 114A of the Customs Act, 1962 on M/s. Honey Vanijya Pvt. Ltd.

(f) Penalty of Rs. 10,00,000/- was imposed under Section 1114AA of the Customs Act, 1962 on Shri Rushab Thakker, Director of the Company.

1.5. Aggrieved against the confirmation of the demands of customs duty along with interest and imposition of penalty against them, the appellant-company has filed an appeal before this Tribunal. Shri Rushab Thakker, Director of the appellant-company, has also filed a separate appeal against the imposition of penalty on him. As both these appeals emanate from the same order, both are taken up together for decision by a common order.

2. It is the submission of the Ld. Counsel appearing on behalf of both the appellants that the appellant-company have imported all the material in respect of the 17 previous Bills of Entry from Singapore and the same were submitted before the customs authorities along with COO Certificate (AIFTA Certificate) as issued by the Designated Authority of the Country of Export i.e. Singapore; they have classified the goods on the basis of classification done by the Designated Authority of Singapore being the country of origin as they only knew the description of the goods in their physical form. Thus, the appellant submits that there is no wilful misstatement or suppression of facts with an intention to evade customs duty established in this case, in respect of all the 17 past imports. Hence, the appellant contends that there is no justification for the invocation of extended period as provided under Section 28(4) of the Customs Act, 1962. As the demand in respect of all the 17 Bills of Entry has been made by invoking the extended period of limitation, it is the contention of the appellant-company that the demands confirmed by invoking the extended period of limitation is not sustainable.

2.1. It is the appellant's further submission that a mandatory pre-notice consultation under Proviso to Section 28(1)(a) of the Customs Act, 1962 was required to be done before issuance of the instant SCN, but no such step was taken by the Department before issuance of the instant SCN, which amounts to the instant SCN being invalid and the consequential proceedings being liable to be dropped. The appellant submitted that this view has been supported by the judgment of the Hon'ble Delhi High Court in the case of *Victory Electric Vehicles International Pvt. Ltd. v Union of India [(2022) 1 Centax 29(Del.)]*.

2.3. The appellant further submits that the SCN in this case was issued on **05.07.2018** whereas the notice was adjudicated on 31.01.2019 and dispatched on **04.02.2019.** It is their submission that as there is no suppression of facts established in this case, the notice was to be adjudicated within 6 months from the date of issue of the notice i.e., on or before 05.01.2019, but as the impugned order was issued on 04.02.2019, which is beyond the statutory period of time of six months, in absence of any suppression, the impugned order has become a nullity, as per Section 28(9)(a) of Customs Act, 1962, as amended w.e.f. 28.03.2018 . In support of this claim, the appellant relied on the decision of the Tribunal, New Delhi in the case of *M/s. Kopertek Metals Pvt. Ltd. &ors. v. Commissioner of CGST (West), New Delhi [Final Order No. 59511-59720 of 2024 dated 25.11.2024– CESTAT, New Delhi]*,

2.4. It is also submitted by the appellant that they had enjoyed BCD exemption on the imported goods Polystyrene GPPS 1450 in view of Notification No. 10/2008-Cus dated 15.01.2008 as amended and the Certificate of Origin issued by the designated authority of the Country of export i.e. Singapore in respect of the earlier 17 Bills of Entry; however, in respect of the last B/E 4199210 dated 29.11.2017, the sample was tested and found to be in 'Granular Form' and accordingly, the Department alleged that all previous imports were also 'Polystyrene in granular form', classifiable under CTH 39031990 and not under 39031910 which relates to 'Polystyrene GPPS 1450' in powder from. In this regard, the appellant points out that after the receipt of the test report, as per the insistence of the Department, they paid the customs duty without the benefit of exemption provided under Notification No. 10/2008-Cus dated 15.01.2008. The appellant submits that such findings to the effect that the imported materials as per the said B/E 4199210 dated 29.11.2017, were in granular form, cannot be the basis for raising demand in respect of the imported materials covered under the 17 other Bills of Entry, in which cases no samples were drawn for chemical test; however, the Department has charged Customs duty along with other consequential effects on all the 18 Bills of Entry, which is legally not sustainable. They submit that the test report received in respect of the goods imported vided B/E 4199210 dated 29.11.2017 is applicable only for that Bill of Entry and the same cannot be applied to all previous imports. In support of their stand, the appellant places reliance on the decision rendered by this Tribunal in the case of *Shalimar Paints Ltd. v CCE, Calcutta [2001(134) E.L.T. 285 (Tri.-Kolkata)]*, which has been subsequently upheld by the Hon'ble Supreme Court *[2002(145) ELT A 242 (SC)]* .

2.5. Accordingly, the appellant-company prayed for setting aside the impugned order and allowing their appeal.

2.6. Regarding the penalty of Rs. 10,00,000/- imposed on Shri Rushab Thakker, Director of the appellant-company under Section 114AA of the Act, the Ld. Counsel for the appellants submits that he had declared the same description in the Bills of Entry as mentioned by the exporter in the Country of Origin Certificate and thus, he has not committed any offence warranting imposition of penalty on him.

Accordingly, he prayed for setting aside the penalty imposed on the Director of the appellant-company, as being unsustainable.

3. The Ld. Authorized Representative appearing on behalf of Revenue submits that the test report received categorically indicated that the imported goods were Polystyrene in '**granular** form' classifiable under the CTH 39031990 attracting BCD @4.45% and the benefit of exemption as provided under Notification No. 10/2008-Cus dated 15.01.2008 is not available to the said goods. He contends that as the appellant has imported the goods from the same importer for the earlier 17 imports, the same test report has been applied to all the past 17 imports. Accordingly, he supported the impugned order.

4. Heard both sides and perused the appeal records.

5. We observe that in the present case, the appellant has questioned the legality of the impugned Order in Original and hence we are of the view that this is required to be taken up first, before going into the aspect of merits or time-bar.

5.1. In this case, it has been contended by the appellant that the Show Cause Notice was issued on 05.07.2018 whereas the said notice was adjudicated on 31.01.2019 and dispatched on 04.02.2019.Since there is no suppression of facts established in this case, the appellant claims that the notice was required to be adjudicated within 6 months from the date of issue of the notice i.e., on or before 05.01.2019, but the impugned order has been issued on 04.02.2019, which is beyond the statutory period of six months. Therefore, it is their contention that, in absence of any suppression, the impugned order has become a nullity, as per Section 28(9)(a) of Customs Act, 1962, as amended w.e.f. 28.03.2018.

5.2. For the sake of ready reference, Section 28(9) of the Customs Act, 1962, as it existed during the relevant period, is reproduced below:

> ***"Section 28 (9):****The proper officer shall determine the amount of duty or interest under sub-section (8),—*
>
> > *(a) within six months from the date of notice, where it is possible to do so in respect of cases falling under clause (a) of sub- section (1);*
> >
> > *(b) within one year from the date of notice, where it is possible to do so in respect of cases falling under sub-section (4)."*

5.3. We observe that when suppression clause is invoked, the Show Cause Notice is to be adjudicated within a period of one year from the date of issue of the notice. In this case, the Notice was issued on 05.07.2018. It was adjudicated within one year. The submission of the appellant in this regard is that there is no suppression of fact established against them in this case and hence the notice should have been adjudicated within 6 months from the date of issue of the notice. We find that the said notice has been issued by invoking extended period of limitation. The ld. adjudicating authority has also held that suppression of fact is invokable in this case. Thus, one year's time is available to him for adjudication. Even if suppression of facts is ultimately not established, that would be known to the ld. adjudicating authority only after verification of the documents submitted by the appellant. Accordingly, we hold that the adjudicating authority cannot be faulted for taking the one-year time period available for adjudication of cases where extended period of limitation has been invoked. Accordingly, we hold that the ratio laid down by the Tribunal in the case of *M/s. Kopertek Metals Pvt. Ltd. &ors. v. Commissioner of CGST (West), New Delhi [Final Order No. 59511-59720 of 2024 dated 25.11.2024– CESTAT, New Delhi]*, is not applicable in this case. Hence, we proceed to decide the appeal based on the merits of the case.

6. We observe that the appellant had enjoyed BCD exemption provided under Notification No. 10/2008-Cus. dated 15.01.2008 on the imported goods, Polystyrene GPPS 1450, based on the Certificate of Origin issued by the designated authority of the Country of export i.e., Singapore in respect of the earlier 17 Bills of Entry. However, in respect of the last Bill of Entry No. 4199210 dated 29.11.2017, the sample was tested and found to be in 'Granular Form'. The Department was of the view that 'Polystyrene in Granular Form' is classifiable under CTH 39031990 and not under 39031910, which relates to 'Polystyrene Moulding Powder'. Thus, the Department alleged that the benefit of exemption provided under Notification No. 10/2008-Cus dated 15.01.2008 was not available to the appellant. It is also seen that after receipt of the test report, the appellant accepted the contention of the Department in respect of the Bill of Entry No. 4199210 dated 29.11.2017 and paid the Customs duty without availing the benefit of

exemption provided under Notification No. 10/2008-Cus dated 15.01.2008. We observe that such findings, to the effect that the imported materials as per the said Bill of Entry dated 29.11.2017 were in granular form, cannot be the basis for raising demands in respect of the imported materials covered under the 17 other Bills of Entry, for which no samples were drawn for chemical testing / analysis. However, the Department has applied the test report received in respect of the goods imported vide Bill of Entry No. 4199210 dated 29.11.2017 for all the previous imports and charged Customs duty on all the 18 Bills of Entry, which is legally not sustainable. We observe that the test report received in respect of the goods imported vide Bill of Entry No. 4199210 dated 29.11.2017 is applicable only for that Bill of Entry and the same cannot be applied to all previous imports. We find that this view is supported by the decision given by this Tribunal in the case of *Shalimar Paints Ltd. v Commissioner of Central Excise, Calcutta [2001(134) E.L.T. 285 (Tri.-Kolkata)]*, which has been subsequently upheld by the Hon'ble Supreme Court as reported in *2002(145) E.L.T. A242 (SC)*. The relevant part of the said decision is reproduced below:

> *"7. The first grievance of the appellant is that though the classification lists in question covered about 30 products, test reports relatable to only 4 products are available and there is absolutely no material against the appellant in so far as the remaining 26 products are concerned. He submits that presuming though denying that the test reports of CRCL are correct, the same can be made the basis for classifying only those products to which the test report relates. The same cannot be made*

> *applicable to the other items for which no samples were either drawn or if samples were drawn, there is no test report. For this proposition he relied upon the Tribunal's decision in the case of S.D. Kemexc Indus. v. CCE - 1995 (75) E.L.T. 377. In the said decision assessee was manufacturing 22 different types of chemicals. The Department drew samples only from two types of chemicals. It was held that test reports can be made applicable only for the two products for which the samples were drawn and not to the rest of the products. Following the ratio of the above decision we fully agree with the contention of the ld. adv. that the test reports, if at all could be made applicable only to the 4 items in question to which it belonged to. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their technical literature as well as the production records and for which the Revenue has not adduced any evidence to shift the classification to heading 32.10."*

6.1. Thus, by relying on the decision cited above, we hold that the test report in respect of the goods imported vide Bill of Entry 4199210 dated 29.11.2017 cannot be applied to the goods imported earlier under the 17 Bills of Entry, as no samples have been drawn in respect of the said Bills of Entry. In these circumstances, we hold that the demand of Customs duty confirmed in the impugned order in respect of the past imports vide 17 Bills of Entry is not sustainable. Accordingly, we set aside the same.

6.1.1. The demand of Customs duty in respect of the goods imported vide Bill of Entry 4199210 dated 29.11.2017 is upheld. We observe that the appellant has accepted this liability and paid the duty without availing the benefit of exemption as provided under Notification No. 10/2008-Cus. dated 15.01.2008. Thus, we hold that in respect the goods imported vide this Bill of Entry, mis-declaration is established. Accordingly, we do not see any reason to interfere with the order of confiscation and redemption fine imposed in respect of the Bill of Entry No. 4199210 dated 29.11.2017. Consequently, the order of confiscation and imposition of redemption fine in this regard is upheld.

6.2. Since the demand of Customs duty in respect of the 17 Bills of Entry pertaining to past imports is found to be not sustainable, the demand of interest and imposition of penalty on the differential duty confirmed on this count against the appellant-company is also not sustainable and accordingly, the same are set aside. Since, the mis declaration alleged in the previous 17 imports is not established, we also hold that the said goods imported vide those 17 Bills of Entry are not liable for confiscation.

6.3. Regarding the penalty of Rs. 10,00,000/- imposed on Shri Rushab Thakker, Director of the Appellant-Company, under Section 114AA of the Customs Act, 1962, we observe that it is his contention that he had declared the same description in the Bills of Entry as had been mentioned by the exporter in the Country of Origin Certificate. However, mis-declaration with intention to evade Customs duty has been established in this case in respect of the goods imported vide Bill of Entry No. 4199210 dated 29.11.2017. Hence, we are of the view that penalty under Section 114AA of the Act is liable to be imposed on the Director of the Appellant-Company, but the penalty imposed should commensurate with the duty involved in the said Bill of Entry. In these circumstances, the penalty imposed on Shri Rushab Thakker, Director of the Appellant-Company, under Section 114AA of the Act is reduced from Rs.10,00,000/- (Rupees Ten Lakhs only) to Rs.1,00,000/- (Rupees One Lakh only).

7. In view of the above findings, we pass the following order:

(i) The demand of Customs duty along with interest confirmed in the impugned order, in respect of the 17 bills of entry pertaining to the past imports is not sustainable and hence we set aside the same. Accordingly, the penalty equivalent to the differential duty imposed on the appellant-company is also set aside.

(ii) We uphold the demand of Customs duty on the goods imported vide Bill of Entry No. 4199210 dated 29.11.2017 without allowing the benefit of exemption provided under Notification No. 10/2008-Cus dated 15.01.2008. Since mis-declaration with intention to evade Customs duty has been established in respect of the goods imported vide Bill of

Entry No. 4199210 dated 29.11.2017, we do not interfere with the order of confiscation and imposition of redemption fine in this regard.

(iii) Since, the mis-declaration alleged in the previous 17 imports is not established, the said goods imported vide those 17 Bills of Entry are not liable for confiscation.

(iv) The penalty imposed on Shri Rushab Thakker, Director of the appellant-company under Section 114AA of the Customs Act, 1962 is reduced from Rs.10,00,000/- (Rupees Ten Lakhs only) to Rs.1,00,000/- (Rupees One Lakh only).

8. In these terms, the appeals are disposed of.

(Order pronounced in the open court on **20.03.2025**)

Sd/-

**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sdd