IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. C/196 to 206/2012

(Arising out of Order-in-Appeal No. 674 to 684 (IID)/2011 JNCH-IMP 588 to 598 dated 30.11.2011 passed by Commissioner of Customs (Appeals), Mumbai II)

Max Flex & Imaging Systems Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs (Import) Mumbai II **Respondent**

Appearance:

Shri T. Vishwanathan, Advocate for appellant
Ms. P. Vinita Sekhar, Jt. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing / Decision: 29.01.2019

FINAL ORDER NO. **A/85311-85321/2019**

Per: S.K. Mohanty

These appeals are directed against the impugned order dated 30.11.2011 passed by the Commissioner of Customs (Appeals), Mumbai II.

2. Brief facts of the case are that the appellant is engaged in import and re-sale of Self Adhesive Vinyl (SAV), PVC sheets, PVC Flex Film, Mesh Banner, Mesh with Liner etc. The appellant had

imported the said goods from various suppliers based in China. The said goods are classified under Tariff Item 39199090 of the Customs Tariff Act, 1975. Vide Notification No. 79/2010-Cus., dated 30.07.2010, the Central Government had imposed anti-dumping duty on PVC Flex Films on importation into India from the countries specified therein. At the time of assessment of the bills of entry, the Customs authorities formed the view that anti-dumping duty is leviable under Notification No. 79/2010-Cus., in respect of self adhesive vinyl imported by the appellant. The appellant contended that the self adhesive vinyl imported by it is a different product than the PVC Flex Film and as such not covered under the purview of anti-dumping duty. However, the department did not agree with the submissions made by the appellant and for clearing the imported consignment, the appellant had paid the duty under protest. Aggrieved with the assessment made in the bills of entry, the appellant had filed appeals before the Commissioner (Appeals), which were disposed of vide the impugned order dated 30.11.2011, upholding the assessment of the bills of entry.

3. Heard both sides and perused the records.

4. In respect of levy of anti-dumping duty on PVC Flex Films originating in, or exported from China, the designated authority in its preliminary findings dated 22.06.2010 had recommended

imposition of provisional anti-dumping duty. On the basis of the findings of the designated authority, the Central Govt. had imposed provisional anti-dumping duty on PVC flex films vide Notification No. 79/2010-Cus., dated 30.07.2010. Upon further investigation into the matter, the designated authority vide its final findings dated 29.07.2011 had recommended for imposition of anti-dumping duty on import of the subject goods. Pursuant to such recommendation of the designated authority, the Central Govt. had imposed final anti-dumping duty vide Notification No. 82/2011-Cus., dated 25.08.2011. In the said Notification, vide paragraph 3, it has been clarified that nothing contained in this notification shall apply to Self-Adhesive Vinyl. On perusal of both the above Notifications dated 30.07.2010 and 25.08.2011, it reveals that the goods imported by the appellant namely, self adhesive vinyl was never subjected to payment of anti-dumping duty inasmuch as the said product was different from the PVC Flex Films, on which anti-dumping duty was imposed. The said fact is evident from the Notification dated 25.08.2011, which excludes self-adhesive vinyl for consideration of PVC Flex Film for the purpose of levy of anti-dumping duty. Thus, we are of the considered view that the subject goods imported by the appellant will not be subjected to levy of anti-dumping duty. We find that the learned Commissioner (Appeals) has not extended the benefit of notification dated 25.08.2011 on the ground that no sample of the disputed goods was drawn for test and the same had not cleared on payment of anti-dumping duty. It is an admitted fact on record that classification of the subject goods has never been questioned or objected to by the Customs Officers at the time of assessment. Thus, there was no requirement of drawal of any samples for the purpose of test, to ascertain the type of goods imported by the appellant. Since the Central Government vide Notification dated 25.08.2011 had specifically clarified that the said Notification shall not applicable to self-adhesive vinyl, we do not find any justifiable reason to agree with the findings of the Commissioner (Appeals) with regard to imposition of anti-dumping duty.

5. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Order dictated in Court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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