CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

CUSTOMS APPEAL NO: 87749 of 2014

[Arising out of Order-in- Original No: 36/2014/CAC/CC(I)/AB/Gr.Oil Unit dated 25th March 2014 passed by the Commissioner of Customs (Import), Mumbai.]

Panama Petrochem Limited … ***Appellant***
401 Aza House, 24 Turner Road, Bandra (W)
Mumbai – 400 050

versus

Commissioner of Customs (Import) ***…Respondent***
New Custom House, Ballard Estate, Mumbai - 400038

WITH

CUSTOMS APPEAL NO: 87750 of 2014

[Arising out of Order-in- Original No: 36/2014/CAC/CC(I)/AB/Gr.Oil Unit dated 25th March 2014 passed by the Commissioner of Customs (Import), Mumbai.]

Samir Akbarali Rayani … ***Appellant***
401 Aza House, 24 Turner Road, Bandra (W)
Mumbai – 400 050

versus

Commissioner of Customs (Import) ***…Respondent***
New Custom House, Ballard Estate, Mumbai - 400038

APPEARANCE:

Shri Prakash Shah with Shri Mihir Mehta, Advocates for the appellant

Shri AP Kothari, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86780-86781/2019

DATE OF HEARING:	13/05/2019
DATE OF DECISION:	13/05/2019

PER: C J MATHEW

These two appeals, of M/s Panama Petrochem Limited and Shri Samir Akbarali Rayani, originate from order-in-original no. 36/2014/CAC/CC(I)/AB/Gr.Oil Unit dated 25th March 2014 of Commissioner of Customs (Import), Mumbai which has held that the 'rubber process oil', imported *vide* warehousing bill of entry no. 4243573/02.08.2011, 4801954/ 30.09.2011, 6178264/05.03.2012, 8213732/15.10.2012 and 8321140/ 26.10.2012, were classifiable under heading no. 2707 99 00 of First Schedule to Central Excise Tariff Act, 1975 with the finding that aromatic constituents are more than the non-aromatic constituent while also directing that, upon redemption consequent to confiscation, the goods were to be re-exported and that differential duty of ₹ 58,35,246/- be paid besides being subject to other detriments.

2. Learned Counsel for appellant submits that the issue had since

been decided by the Tribunal in *order no. A/88202-88209/16/CB dated 27th June 2016* and which, upon challenge before the Hon'ble High Court of Bombay, was remanded back for a fresh decision and that the matter, re-heard and decided by the Tribunal in order pertaining to *Sah Petroleum Ltd & others v. Commissioner of Customs (Import), Nhava Sheva [2017 (5) TMI 1281 -CESTAT MUMBAI]*, was against Revenue. It is the submission of Learned Counsel that this was carried in appeal by Revenue to the Hon'ble Supreme Court which was dismissed.

3. Learned Counsel also submits that their matter, though disposed off in the first decision of the Tribunal, was left out in the second and that equity mandated that settled law should now be applicable to them.

4. We have heard Learned Authorised Representative.

5. The submission made by the Learned Counsel on the history of this dispute and the common disposal, arising from identical issue, in the first round mandates that the outcome on the other appeals should be equally apply in the lone matter that was left out during the *de novo* proceedings was verified.

6. We find this to be a correct statement of fact. In view of the similarity of the dispute with those heard by the Tribunal in *re Sah*

Petroleum Ltd & Others, we set aside the impugned orders and allow the appeals.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*