CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 224 of 2012-DB

[Arising out of Order-in-Original/Appeal No 64-2012-CUS-COMMR-A--KDL dated 11.08.2012 passed by Commissioner of CUSTOMS-KANDLA]

PSL Limited **.... Appellant**
Plot No. 04 & 05, Sector 12/b, Post Box No. 113,
Kandla Road, Gandhidham, KUTCH, GUJARAT

VERSUS

Commissioner of Customs, Kandla **.... Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE :

Shri Manish Jain, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

ORDER NO. A/11133 / 2022

DATE OF HEARING/ DECISION : 13.09.2022

RAMESH NAIR :

In this case, the case of the department is that the HDPE compounded with 2% carbon black is not eligible for exemption under Serial No. 477 of Notification No. 21/2002-Cus.

2. Shri Manish Jain, learned Counsel appearing on behalf of the appellant submits that in the identical facts, the issue is decided in favour of the appellant reported at *PSL Limited vs. Commissioner of Customs, Kandla – 2018 (12) TMI 1046 – CESTAT AHMEDABAD*.

3. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record we find that the facts in the case cited by the appellant and in the present case are absolutely identical inasmuch as in the present case also the HDPE contains 2% Carbon Black. The department has

denied the exemption on the ground that exemption is available only to the HDPE and not for the HDPE compound whereas in the present case the HDPE is compounded with 2% Carbon. On the identical facts, this Tribunal in the above cited judgment passed the following judgment:-

5. We have carefully considered the submissions made by both the sides and perused the record. We find that the question of law involved in the present case does not remain in dispute in view of the following judgments passed by this Tribunal:-

(a) Ratnamani Metal & Tubes Limited vs. CC, Kandla – 2013 (291) ELT 369 (Tri. Ahmd.)

"8. After hearing both the parties in great details, we find that the ld. Commissioner has taken a view that adding a carbon black results in chemically modifying the HDPE. It is not the case of the appellant that addition of carbon black does not result in any chemical modification. The carbon black is added for the purpose of colour and strength. The appellant also submits that only chemically modified polymers are different and otherwise, they are to be treated as HDPE. Further, they also submitted that the test certificate given by the supplier clearly indicate that the goods are not chemically modified HDPE. In our opinion, the lower authorities have not been fair. On the one hand, they relied upon the test certificate of the supplier to hold that addition of carbon black results in chemical modification, ignoring the specific statement of the supplier that there is no chemical modification. Having relied upon the test certificate for coming to one conclusion, the whole test certificate should have been taken into consideration. Moreover, no technical literature or opinion has been produced either by the appellant or by the Revenue in support of their case. The Revenue has not got even the test certificate from the Government laboratory which was essential in this case. Whether the product is a chemically modified HDPE or not and whether it is known as HDPE in the market, has not been considered at all. In the absence of test conducted by the Government controlled laboratory, if the test report of the supplier is relied upon, it has to be fully considered. The Revenue has not applied even the trade parlance test.

9. At this stage, it may be worthwhile to note that in the case of M/s. Plastic Colour Corporation, the assessee was engaged in making shipping compounds by adding 2.5% carbon black HDPE granules. This activity was finally held to be not amounting to manufacture and the matter has reached finality by Hon'ble Supreme Court which held it so.

10. In the absence of any support for the conclusion that the product imported by the appellant has been chemically modified or it is not known as HDPE in the market, the benefit of exemption under Sr. No. 477 has to be extended to the appellant.

11. In the result, the appeal is allowed with consequential relief, if any, to the appellant."

(b) PSL Limited vs. CC – 2013 (9) TMI 548 CESTAT-MUMBAI.

"6. We have carefully considered the submissions and perused the records. The appellants imported Black Compounded High Density Polyethylene and claimed classification under subheading 39012000 at the rate of BCD at 5% in terms of Notification NO. 21/2002-Cus dated 01.3.2002. The department accepted the classification. However, denied the benefit of Notification on the ground that the notification grants exemption to HDPE whereas the goods are Black Compounded High Density Polyethylene. Undisputedly, the goods imported contained 2.5% carbon black. The impugned goods are in the form of granules is also not disputed. It is a settled principle of law that Customs Tariff is based on HSN and in

case of doubt HSN is a safeguide for ascertaining the meaning of any expression used in the Act. We find that the co-ordinate Bench of this Tribunal in the case of Ratnamani Metal and Tubes Ltd. supra held as under:

"8. After hearing both the parties in great details, we find that the Id. commissioner has taken a view that adding a carbon black results in chemically modifying the HDPE. It is not the case of the appellant that addition of carbon black does not result in any chemical modification. The carbon black is added for the purpose of colour and strength. The appellant also submits that only chemically modified polymers are different and otherwise, they are to be treated as HDPE. Further, they also submitted that the test certificate given by the supplier clearly indicate that the goods are not chemically modified HDPE. In our opinion, the lower authorities have not been fair. On the one hand, they relied upon the test certificate of the supplier to hold that addition of carbon black results in chemical modification, ignoring the specific statement of the supplier that there is no chemical modification. Having relied upon the test certificate for coming to one conclusion, the whole test certificate should have been taken into consideration. Moreover, no technical literature or opinion has been produced either by the appellant or by the revenue in support of their case. The Revenue has not got even the test certificate from the government laboratory, which was essential in this case. Whether the product is a chemically modified HOPE or not and whether it is known as HDPE in the market, has not been considered at all. In the absence of test conducted by the Government controlled laboratory, if the test report of the supplier is relied upon, it has to be fully considered. The Revenue has not applied even after the trade parlance test.

9. At this stage, it may be worthwhile to note that in the case of M/s. Plastic Colour Corporation, the assessee was engaged in making shipping compounds by adding 2 5% carbon black HDPE granules. This activity was finally held to be not amounting to manufacture and the matter has reached finding like Hon'ble Supreme Court which held it so."

7. We find that the aforesaid decision is squarely applicable to the instant case and the department has not challenged the same. Therefore, it has reached the finality. Further, so far as, contentions of the department on the issue are concerned, it is pertinent to mention here that in the case of Ambica Prasad V. State of U.P. AIR 1980 SC 1762 Krishna Iyer J. has pointed out that-

"Every new discovery or new argumentative novelty cannot undo or compel re-consideration of a binding precedent. In this view, other submissions sparking with creative ingenuity and presented with high pressure advocacy cannot persuade us to reopen what was laid down for the guidance of the nation as a solemn proposition by the epic fundamental rights case."

8. In these circumstances, the impugned Order-in-Appeal is not sustainable and the same is set aside. The appeal is allowed with consequential relief, if any."

6. From the above two judgments of this Tribunal it can be seen that very identical issue of the present case has been decided in favour of the assessee.

These judgments have been accepted by the Revenue. Moreover, the Ld. Commissioner for the subsequent cases, dropped the demands in the case of Welspun Corpn. Limited and Man Industries (India) Limited and no appeal has been filed by the revenue. Therefore, the issue is no longer res-integra. Accordingly, following the ratio of decision of this Tribunal and the settled position of law, we set-aside the impugned order and allow the appeal."

5. Considering the above decision of this Tribunal, we are of the view that impugned order is not sustainable. Accordingly, the impugned order is set-aside, the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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