



ALO Law Office- IDT Tax / Arbitration / Litigation

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CESTAT Kolkata Upholds Correct Classification of PVC Resin

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Kolkata, has set aside the customs duty demand, penalties, and confiscation order passed by the Commissioner of Customs (Port), Kolkata. The dispute pertained to the classification of imported goods—Poly Vinyl Chloride (PVC) Resins (Suspension Grade)—under the Customs Tariff Act.

Background of the Case

M/s. Surabhi Enterprises Pvt. Ltd., Kolkata, imported PVC Resin (Suspension Grade) and classified it under CTH 3904 21 10, claiming a concessional rate of Basic Customs Duty under Sr. No. 459(I) of Notification No. 46/2011-Cus., dated 01.06.2011. The company also submitted a valid Country of Origin (COO) certificate supporting the classification.

However, the Customs Department contested the classification and issued a Show Cause Notice alleging misdeclaration. The classification was changed to CTH 3904 10 90 (residuary entry), and a differential duty of ₹13,09,717 was demanded. Goods were ordered to be confiscated under Section 111(m) and penalties were imposed under Sections 112(a) and 114AA of the Customs Act, 1962.

Appellant's Arguments

The appellant asserted that:

- Tariff Item 3904 21 10 specifically covered 'PVC resin (Suspension Grade)' during the relevant period.
- The CIPET test reports confirmed the goods were indeed PVC Suspension Grade, which was not disputed in the Show Cause Notice or adjudication order.

- Classification under a general entry (3904 10 90) was unwarranted since the specific entry prevailed under Rule 3(a) of the General Rules for Interpretation.
- The amendment shifting the specific entry to 3904 10 via Finance Act 2017 was prospective and not applicable to past imports.
- The CIPET report did not test whether the goods were plasticised or not and hence could not justify reclassification.

CESTAT's Observations and Ruling

The Tribunal observed:

- **Specific vs. General Entry:** Tariff Item 3904 21 10 was a specific heading for PVC Suspension Resin during the period of import. Under Rule 3(a), a specific heading prevails over a general one.
- **Test Report Inconclusive:** The CIPET report merely described the goods as “uncompounded PVC Suspension Resin” but did not establish the goods as “pure” or “non-plasticised.” There was no evidence disproving the presence of impurities.
- **No Misdeclaration:** The Tribunal held there was no willful misstatement or suppression, and thus, provisions for confiscation and penalty under Sections 111(m), 112(a), and 114AA were not attracted.

Final Verdict

- Demand of differential duty and interest set aside
- Confiscation and redemption fine of ₹20,00,000 quashed
- Penalties under Sections 112(a) and 114AA revoked
- Appeal allowed with consequential relief

Legal Implications

This decision reinforces the principle that specific tariff entries must be preferred over residuary classifications, especially when supported by valid import documentation and test reports. It also reiterates that classification disputes without proof of willful misstatement cannot justify penal action or confiscation under Customs law.

Importers are encouraged to carefully align their declarations with test reports and tariff descriptions and ensure reliance on settled legal interpretation rules to contest erroneous classifications by customs authorities.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75453 of 2019

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/78/2018 dated 22.11.2018 passed by the Commissioner of Customs(Port) Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Surabhi Enterprises Pvt. Ltd.

4/1, Camac Street, Ground Floor,
Kolkata-700 016

: Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

Customs House, 15/1, Strand Road,
Kolkata-700 001

: Respondent

APPEARANCE:

Shri Akhilesh Kangsia, Advocate

Shri Apoorva Parihar, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76858/2025

DATE OF HEARING: 03.07.2025

DATE OF PRONOUNCEMENT: 08.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Briefly stated facts of the case are that M/s. Surabhi Enterprises Pvt. Ltd (hereinafter referred as the Appellants) have imported the goods namely Poly Vinyl Chloride Resins (Suspension grade) and declared classification of the said goods under the CTH 3904 21 10 and claimed concessional rate of basic custom duty in terms of Sr. No. 459(I) of Notification No. 46/2011-Cus., dated 01.06.2011, as

amended. In support for claiming the exemption, the Appellants submitted original and genuine "certificate of origin" issued by the government issuing authority of the exporting country.

1.1. However, the declared classification was disputed by the Customs department and assessments were made provisional in terms of Section 18 of the Customs Act, 1962. The Department drew samples and sent them for testing to "Central Institute of Plastic Engineering & Technology", Haldia ('CIPET').

1.2. CIPET issued test reports dated 19.11.2015, 11.02.2016, 09.05.2016, and 24.05.2016 which stated as under:

'Based on above test results (Filter Content & K-Value) and the visual appearance, it is to mention that the sample is uncompounded Poly Vinyl Chloride (PVC) Suspension Resin'(Grade PM 66R).

1.3. In the light of the reports received from CIPET, the Customs department issued show cause notice dated 20.09.2016 *inter alia* proposing finalization of the assessment by re-classifying the imported goods under Tariff Item 3904 10 90 and demanded differential customs duty of Rs.13,09,717/- along with applicable interest. The goods were also proposed for confiscation on account of mis-declaration.

1.4. The said show cause notice was adjudicated vide the impugned Order dated 20.11.2018 by finalising the assessments as per the proposals in the SCN. Accordingly, differential customs duty of Rs.13,09,717/- along with applicable interest has been confirmed. The goods were confiscated under

section 111(m) of the Customs Act on account of misclassification and allowed to be redeemed on payment of redemption fine of Rs.20,00,000/- under section 125 of the Customs Act. Penalty of Rs.1,00,000/- has been imposed under section 112(a) of the Customs Act and penalty of Rs.2,00,000/- has been imposed under section 114AA of the Customs Act, 1962.

1.5. It is against this impugned Order dated 20.11.2018, the Appellants have filed the present appeal before this Tribunal.

2. The appellant submits that Tariff Item 3904 21 10 by name and description covers 'PVC resin' during relevant period. Hence in the light of specific description in Tariff Item 39042110, the impugned order is incorrect in reclassifying the said goods under a residuary entry i.e., Tariff Item 3904 10 90 which covers 'others'.

2.1. The Appellants submits that they have described goods as "PVC Resin suspension Grade" and the Customs department has not doubted the description of the goods imported. The CIPET, which has tested the representative samples have also confirmed that the imported goods are indeed "PVC resin of suspension grade" as described by the Appellants. This fact is not disputed either in the SCN or in the impugned Order. The only dispute is that the imported goods being '*uncompounded or pure PVC Resin*' are classifiable under Tariff Item 3904 10 90 within sub-Heading 3904.00, which covers '*Poly (vinyl chloride), not mixed with any other substances*', whereas, the Appellants have classified the goods under Tariff Item 3904 21 10 which covers '*Poly (vinyl chloride) resins*', within

sub-heading 3904.21 which covers '*other poly (vinyl chloride) non-plasticised*'.

2.2. From the Heading 39.04, it is evident that during the period in dispute, Tariff Item 3904 21 10 was specific entry for 'Poly (vinyl chloride) resin'. It is settled law that specific entry will prevail over general one. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule also provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. In the present case, Tariff Item 3904 21 10 is specific for Poly (vinyl chloride) resins', whereas Tariff Item 3904 10 90 covers 'Others' which is a residuary entry and the same cannot be preferred over a specific entry. The imported goods are 'PVC resin suspension grade' which is non-plasticised. Therefore, going by the same, sub-heading 3904 21 will be specific heading over Heading 3904 00. On this count too, the imported goods are correctly classifiable under sub-heading 3904.21 (Tariff Item 3902 21 10) by application Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule.

2.3. It is further submitted that the Country-of-Origin Certificate also describes the goods as 'PVC Suspension Resin Grade PM 66R' and mentions classification under Tariff Item 3904 21 10. The correctness of the certificate has not been contested by the customs department. Even otherwise, it is a settled law that Customs department cannot go beyond the COO. The exporting country's classification is final and binding. Therefore, the appellants submits that the imported goods are

correctly classifiable under Tariff Item 3904 21 10 during the relevant period.

2.4. It is a settled law that the amendment will always be prospective until and unless expressly made retrospective. During the relevant period, Tariff Item 3904 21 10 was specific entry for 'PVC resin'. This entry got deleted from sub-heading 3904 21 and shifted to sub-heading 3904.10 vide the Finance Act, 2017, and the disputed imports were effected prior to the above amendment.

2.5. The appellant further submits that the test report is inconclusive on the aspect of whether the goods imported are non-plasticised or not. Thus, the submission of the appellant is that on the basis of the Test Report, it cannot be concluded that the goods imported are 'pure' and hence classifiable under the CTH 3904 1090. The said goods contains many impurities as is evident from the other substances contained therein. In view of the above submissions, the appellant prays for classification of the imported goods under the CTH 3904 21 10 and set aside the demand of customs duties along with interest and penalties confirmed in the impugned order. They also prayed for setting aside the confiscation of the goods and the redemption fine imposed.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the Appellants have imported the goods namely Poly Vinyl Chloride Resins (Suspension grade) and declared classification of the said goods under the CTH 3904 21 10 and claimed concessional rate of basic custom duty in terms of

Sr. No. 459(I) of Notification No. 46/2011-Cus., dated 01.06.2011, as amended. On the basis of the Test Report received from CIPET, the department was of the view that the said goods imported by the appellant are more appropriately classifiable under the CTH 39041090.

5.1. For ready reference, the relevant portion of Heading 39.04 as it stood, pre and post 31.03.2017 made vide the Finance Act, 2017 effective from 31.03.2027 is extracted below:

Pre 2017:

Tariff Item	Description of goods
3904	POLYMERS OF VINYL CHLORIDE OR OF OTHER HALOGENATED OLEFINS, IN PRIMARY FORMS
3904 00	- Poly (vinyl chloride), not mixed with any other substances:
3904 10 10	--- Binder for pigments
3904 10 90	--- Other
	- Other poly (vinyl chloride)
3904 21	-- Non-plasticized

3904 21 10	--- Poly (vinyl chloride) resins
3904 21 90	--- Other

Post 2017:

Tariff Item	Description of goods
3904	POLYMERS OF VINYL CHLORIDE OR OF OTHER HALOGENATED OLEFINS, IN PRIMARY FORMS
3904 10	- Poly (vinyl chloride), not mixed with any other substances:
3904 10 10	--- Emulsion grade PVC resin / PVC Paste resin/ PVC dispersion resin
3904 10 20	--- Suspension grade PVC resin
3904 10 90	--- Other
	- Other poly (vinyl chloride)
3904 21 00	-- Non-plasticized

5.2. During the relevant period, we find that Tariff Item 3904 21 10 was specific entry for 'PVC resin'. This entry got deleted from sub-heading 3904 21 and shifted to sub-heading 3904.10 vide the Finance Act, 2017. We find that the disputed imports were effected prior to the above amendment. Thus, we observe that the Tariff entries modified after 2017 has no relevance for the present proceedings.

5.3. From the Heading 39.04, it is evident that during the period in dispute, Tariff Item 3904 21 10 was specific entry for 'Poly (vinyl chloride) resin'. It is settled law that specific entry will prevail over general one. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule also provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. In the present case, Tariff Item 3904 21 10 is specific for Poly (vinyl chloride) resins', whereas Tariff Item 3904 10 90 covers 'Others' which is a residuary entry and the same cannot be preferred over a specific entry. The imported goods are 'PVC resin suspension grade' which is non-plasticised. Therefore, going by the General Rules for Interpretation, we find that sub-heading 3904 21 is a specific heading, which is to be preferred over the general Heading 3904 00. Thus, we observe that the imported goods are correctly classifiable under sub-heading 3904.21 (Tariff Item 3902 21 10) by application Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule.

5.4. We observe the department has re-classified the goods imported under the CTH 39041090 on the basis of the Test Report dated 19.11.2015 received

from CIPET. For ready reference, the said report is reproduced below:

'Based on above test results (Filter Content & K-Value) and the visual appearance, it is to mention that the sample is uncompounded Poly Vinyl Chloride (PVC) Suspension Resin'(Grade PM 66R).

5.5. From the Test Report reproduced above, we observe that the report is inconclusive on the aspect of whether the goods are non-plasticised or not. It is a fact on record that the test has not been conducted to ascertain whether the goods are plasticized or not. Thus, we observe that on the basis of the Test Report, it cannot be concluded that the goods imported are 'pure' or not. The appellant submits that the said goods contains many impurities and submitted the other substances contained therein. We find that the department has not brought in any evidence to dispute the claim made by the appellant that the goods contained many impurities. Thus, we hold that on the basis of the contention that the goods are 'pure', the goods cannot be classified under the CTH 39041090, as the goods have not been tested for that purpose.

5.6. It is a settled law that specific entry will prevail over general one. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule also provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. In the present case, we find that Tariff Item 3904 21 10 is specific for Poly (vinyl chloride) resins', whereas Tariff Item 3904 10 90 covers 'Others' which is a residuary entry and hence we hold that the same cannot be preferred over a specific entry. The imported goods

are 'PVC resin suspension grade' which is non-plasticised. Therefore, going by Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule, we hold that the imported goods are appropriately classifiable under the sub-heading 3904 21, which is a specific heading. In view of the above findings, we uphold the classification of the imported goods under the CTH 3904 21 10 as claimed by the appellant and reject the reclassification of the goods under the CTH 3904 1090 in the impugned order. Accordingly, we hold that the demand of customs duties along with interest confirmed in the impugned order is not sustainable and hence we set aside the same.

5.7. As the allegation of mis-declaration is not sustained, we hold that the goods are not liable for confiscation under section 111(m) of the Customs Act on account of misclassification. Accordingly, the order for confiscation of the goods is set aside. Consequently, the redemption fine of Rs.20,00,000/- imposed under section 125 of the Customs Act is also set aside. As the allegation of mis-declaration is not sustained, no Penalty imposable on the appellant and hence, all the penalties imposed in the impugned order are set aside.

6. In view of the above findings, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 08.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)