CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85236 OF 2023

[Arising out of Order-in-Original No: 64/2022-23/Commr/NS-I/CAC/JNCH dated 20th December 2022 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

KPL International Limited
C-206, 2nd Floor, Indra Prakash Building
21, Barakhamba Road, New Delhi – 110 001 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri T Vishwanathan, Shri Akhilesh Kangasia and Ms Apoorva Parihar, Advocates for the appellant

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86755/2025

DATE OF HEARING: 01/05/2025
DATE OF DECISION: 31/10/2025

PER: C J MATHEW

Though the impugned order[1] of Commissioner of Customs (NS-I),

[1] [order-in-original no. 64/2022-23/Commr/NS-I/CAC/JNCH dated 20th December 2022]

JNCH, Nhava Sheva did, by corrigendum[2], acknowledge discharge of anti-dumping duty to the extent of ₹ 3,31,698 and, thereby, adjusted recovery of confirmed duty liability under section 28(8) of Customs Act, 1962 to ₹ 34,25,436, the order pertaining to imposition of penalty under section 114A of Customs Act, 1962 was left untouched owing to which penalty to the full extent, barring ₹ 49,755 or reduced to 25% thereof, would not be consistent with law.

2. The issue in dispute, remaining after acknowledgement referred to *supra*, is the import of 'polyvinyl chloride', copolymer solvin 550GA (suspension polymerization)' from Belgium between June 2015 and March 2017 in 11 consignments that allegedly had not discharged 'anti-dumping duty (ADD)' levied under notification[3]. Proceedings were initiated for recovery of ₹ 55,93,194, on imports effected against nineteen bills of entry, even the liability on four were duly discharged on receipt of 'consultative letters' from the jurisdictional customs authorities and two has been premised, erroneously, on imports from Russia which were not subject to the levy.

3. It was the contention of the Learned Counsel for appellant that they had repeatedly argued before the lower authority that the goods imported by them were not 'homopolymer' but 'copolymer' which is not covered by the report of the competent authority as evident from

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[2] [dated 10th January 2023]
[3] [no. 70/2010-Customs ADD dated 25th June 2010]

> *'12.3 These commodities have been excluded from the levy of anti-dumping duty vide the Note to the Notification No. 26 of 2014. The Note reads as follows:*
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> *"The product under consideration Is homopolymer of vinyl chloride monomer (suspension grade) where various polymer chains are not linked to each other, which however, excludes the specialty poly vinyl chloride suspension resins such as cross linked poly vinyl chloride, chloride poly vinyl chloride (CPVC), vinyl chloride —acetate copolymer (VC-CAc),, poly vinyl chloride paste resin and poly vinyl chloride blending resin, "(Emphasis supplied).'*

in the impugned order and that the composition of the imported goods is in conformity with

> *'4. The expressions "copolymers" covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content…… .'*

in chapter 39 of First Schedule to Customs Tariff Act, 1975. It was pointed out that more than 5% of the imported goods comprised either 'monomer vinyl acetate' or 'vinyl chloride' owing to which 'co-polymers' and not 'homopolymers' would be the appropriate nomenclature. He relied upon the decision of the Tribunal in *Commissioner of Customs (Import), Nhava Sheva v. Henkel Teroson India Ltd [2012 (278) ELT 499 (Tri.-Mumbai)],* in *Midas Fertchem Impex Pvt Ltd v. Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi [2023 (1) TMI 998 – CESTAT, NEW DELHI]* and in *Prashant Trading Co v. Commissioner of Central*

Excise (Export-I), Mumbai [2021 (375) ELT 603 (Tri.-Mumbai)] and the decision of the Hon'ble Supreme Court in *Northern Plastic Ltd v. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]*.

4. We have heard Learned Authorized Representative.

5. It is surprising that, despite the submission on ‘co-polymer’ and ‘homopolymer’ as well as the chemical composition of the imported goods, the sole ground for confirmation of differential duty has been

> *‘21.2 The explanations given by the importer vide letter dated 24.06.2020 states that the goods are vinyl chloride and vinyl acetate copolymer. It is .also seen that in the final findings which was issued vide Notification No. 14/10I2/2G12-DGAD dated 04.04.2014 by the Department of Commerce, Directorate General of Anti-Dumping & Allied Duties for Anti-dumping investigation on import of PVC Suspension Resin from European Union (EU) and Mexico, in Para 4 page 8 clearly states that "The Product under consideration in the present investigation is homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904, known as PVC suspension resin. The product under consideration however, excludes the specialty 'PVC suspension resin such as cross-linked PVC', 'chlorinated PVC (CPVC), vinyl chloride - vinyl acetate copolymer (VC-VAc)', 'PVC paste resin and PVC blending resin". The fact which cannot be forsaken here is that the importer had imported blending resin in their past consignment, and thus, the same would have been declared by the importer as blending resin and copolymer of Vinyl Acetate contents specifically in the Bill of Entry at the time of filling B/E. However, the importer has not declared*

description of goods as blending resin or copolymer of Vinyl Acetate content specifically at the time of filing of Bill of entry in the EDI systems. With the introduction of self-assessment by amendments to Section 17, since 08,04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. As per Notification No, 26/2014-Customs (ADD) dated 13.06.2014, Anti-Dumping Duty applicable/ leviable on 'homopolymer of vinyl chloride monomer (suspension graded and the commodity imported vide bills of entry mentioned at sr. no, 7 to 19 squarely covered under the preview of the said ADD Notification, hence, I find that this commodity attracts ADD along with applicable interest in terms of Section 28AA of the Customs Act, 1962.'

Ex facie it would appear that the not only were the technical submissions not considered for appropriate disposal but that, other than a set of disjointed factual narration, the leviability of duty, notified under section 9A of Customs Tariff Act, 1975, on the impugned goods has not been addressed.

6. It does not suffice to rule upon the onus apparently established by amendment to section 17 of Customs Act, 1962; so-called 'self-assessment' is also assessment and, 'risk management system (RMS)' being an internal administrative convenience, does not neutralize the empowerment afforded by section 17(2), 17(3) and 17(4) of Customs Act, 1962. The obligation to re-assess does exist and, while self-declaration and automated acceptance thereof may be reason for

invoking the ingredients for extended period in section 28 of Customs Act, 1962 with penalties under section 114A of Customs Act, 1962, it does not establish a mechanism for implied levy of duties. The process of re-assessment, which is an extension of determination of rate of duty and value, must be validated by proper finding on either or both. The impugned order is deficient to that extent.

7. This is not a proper disposal of the proposal in the show cause notice and demonstrates non-application of mine. In the absence of any examination of the merits of the submissions, we are unable to form an opinion on the differential duty being legal and proper. It would, therefore, be appropriate for the impugned order to be set aside and the show cause notice restored before the original authority for a fresh decision bearing in mind that the 'speaking order' enjoined by section 17(5) of Customs Act, 1962 is equally a requirement in any order, under section 28 of Customs Act, 1962, confirming recovery of duty that had not been discharged at the time of assessment.

8. The appeal is disposed off by way of remand.

(Order pronounced in the open court on 31/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*