

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH, COURT NO. II

CUSTOMS APPEAL NO. 51070 of 2022 (SM)

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Imp/TKD/1218/2020 dated 22/12/2020 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 037.]

M/s LDPE India

212, First Floor, Harsh Vihar,
Pitampura, New Delhi – 110 034.

Appellant

VERSUS

The Commissioner of Customs (Appeals),

New Custom House, Near IGI Airport,
New Delhi – 110 037.

Respondent

Appearance

Shri Anmol Arya, Advocate – for the appellant.

Shri Gopi Raman, Authorized Representative for the Department.

CORAM : **HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)**

FINAL ORDER NO. 50664/2023

DATE OF HEARING/DECISION : 27/04/2023.

ANIL CHOUDHARY :-

Heard the parties. The issue involved in the appeal is whether the appellant is liable to pay Anti Dumping Duty under serial number either 14 or 21 of Notification No. 21/2014-CUS (ADD) dated 13 June, 2014.

2. That in the normal course of trade the Appellant had imported four consignments of 1087 MT of "PVC Resin 565 [Homopolymer of Vinyl Chloride Monomer (Suspension Grade)];,

from China during the period July, 2018 to March, 2019, assessable value of the goods was Rs. 6.61 Crore. Upon arrival of the goods the Appellant had filed 4 separate Bills of entry for the clearance of the same. That the Appellant had classified the goods under CTH 3904 and paid ADD amounting to Rs. 84.84 lakhs (Sl. No. 14 @ Rs. 91.27 per M.T.), the details of which are as under :

| Sr. No. | B/E No. | B/E Date | Item description | Weight (KGS) | Assessable Value (INR) | ADD Paid (INR) | ADD payable (INR) | ADD Short Levied (INR) |
|---------|---------|--------------|--|--------------|------------------------|----------------|-------------------|------------------------|
| 1. | 7055188 | 03.07.2018 | PVS Resin SG5 [Homopolymer of Vinyl Chloride Monomer (Suspension Grade)] | 52 | 3175836 | 4429234 | 531650 | 104685 |
| 2. | 2087664 | 18.02.2019 | - do - | 520 | 30623428 | 4656894 | 5589633 | 1100633 |
| 3. | 2300305 | 05.03.2019 | - do - | 257.5 | 16157981 | 1692146 | 2743178 | 1240218 |
| 4. | 2300713 | 05.03.2019 | - do - | 257.5 | 16157981 | 1692146 | 2743178 | 1240218 |
| | | Total | | | | 8484120 | 11607639 | 3685754 |

3. That thereafter the audit scrutiny of the said bills of entry had been conducted by the Inspecting Officer (AP-2), office of the Director General of Audit (Central Receipts), Indraprastha Estate, New Delhi who had alleged that the supplier of the goods was M/s Vesak Singapore PTE Ltd., therefore, the goods were liable to Anti-Dumping duty @ 147.96 USD per MT (as per Sl. No. 21) of Notification No. 08/2016-Customs (ADD), which was levied @ 123.27/941.27 USD per MT. Therefore, due to incorrect

application of ADD rate resulted in short levy of duty amounting to Rs. 36,85,754/-.

4. That thereafter (after pre-notice consultation) the department had issued the demand cum Show Cause Notice dated 30.09.2019 (signed on 01.10.2019) to the Appellant and directed the Appellant to explain as to why the short levy of duty amounting to Rs. 36,85,754/- should not be recovered in terms of Section 28 (1) of the Customs Act, 1962 along with interest at the rate fixed by notification issued under Section 28AA of the Customs Act, 1962.

5. That the Learned Adjudicating Authority had thereafter passed the Adjudication Order dated 30.01.2020 under DIN – 20200174NE00005U548E, vide which he has confirmed the demand of duty short levied, amounting to Rs. 36,85,754/- against the goods imported vide bills of entry mentioned in the Table-A under Section 28(1) of the Customs Act, 1962 and ordered for recovery of interest, as applicable under Section 28AA of the Customs Act, 1962.

6. That being aggrieved by the aforementioned AO bearing No. 10/2020, the Appellant preferred an appeal before the Commissioner of Customs (Appeal), New Delhi.

7. That vide present impugned order dated 22.12.2020 Commissioner of Customs (Appeals) has dismissed the Appeal filed by the Appellant.

8. Being aggrieved by the impugned order-in-appeal appellant is before this Tribunal.

9. Learned Counsel for the appellant has taken me to the copies of documents namely Bill of entry, Bill of lading, commercial invoice, etc. I find from the documents particularly Bill of lading that the goods are being exported by the manufacturer namely M/s Xinjiang Zhongtai Chemical Co. Ltd., China and the goods have been consigned to LDPE India (appellant). The port of loading is Xinjiang Port, China and the port of discharge is in India, place of delivery being ICD, TKD, New Delhi. Thus, the goods have originated from China and have sailed from China to India. M/s Vesak Singapore PTE Ltd., party appears to be the indenting agent or broker in the transaction of import by the appellant from China. I find that court below have erred in holding that actual exporter is M/s Vesak Singapore and not the manufacturer exporter – M/s Xinjiang Zhongtai Chemical Co. Ltd., China. Accordingly, I hold that the appellant is rightly paid Anti Dumping duty under Sl. No. 14 of Notification No. 27/2014-CUS (ADD) – U.S. \$ 91.27. Accordingly, this appeal is allowed. The impugned order is set aside. The appellant is entitled for consequential benefit, if any.

(Order dictated and pronounced in open court.)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)