CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40336 of 2016

(Arising out of Order-in-Appeal C.Cus. II No.1131/2015 dated 11.12.2015 passed by Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001.)

M/s.Krishna Marketing **.... Appellant**
No.148, Chellappa Mudali Street,
Otteri,
Chennai 600 012.

VERSUS

The Commissioner of Customs **... Respondent**
Chennai II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Ajay Kumar Gupta, Advocate for the Appellant
Ms. Rajni Menon, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40253/2026

DATE OF HEARING : 09.09.2025
DATE OF DECISION :19.02.2026

Per: Shri P. Dinesha

This Appeal is filed by the Importer who is the Appellant herein and the issue relates to the classification of 'Polyvinyl Chloride (PVC) Suspension Resin SP 660', imported by the Appellant from Thailand, which was classified under CTH 39042110/39042190 as 'Other Poly (Vinyl Chloride); Non-Plasticised: Poly (Vinyl Chloride) Resins'. Accordingly, the Appellant had cleared the same after availing concessional rate of Basic Customs Duty (BCD) at 2% under ASEAN-India Free Trade Area Preferential Trade Agreement under Notification No.046/2011-Customs dated 01.06.2011 (Sl.No.459); and thereby paid BCD @ 2%, CVD @ 12%, E.Cess @ 3% and SAD @ 4% at the time of clearance of the goods.

2. The Revenue appeared to have relied on a test report issued by Central Institute of Plastics Engineering & Technology (CIPET) in respect of some other Importer, accordingly proposed reclassification of the goods in question based on the above CIPET report and issued Show Cause Notice; and vide the Order-in-Original No.40930/2015 dated 26.08.2015 the Adjudicating Authority confirmed the

reclassification under CTH 39041090 and denied the benefit of Notification No.046/2011 (*supra*) thereby confirming the demand of duty. It appears that aggrieved by the above demand, the Importer/Appellant filed a first Appeal before the Commissioner (Appeals) *inter alia* on the ground that the sole reliance on test report having not been furnished to them for their effective rebuttal, the reclassification confirmed in the Order-in-Original was highly improper and based on other pleadings, the Appellant sought for setting aside the demand confirmed in the Order-in-Original. The Commissioner (Appeals) vide impugned Order-in-Appeal No.1131/2015 dated 11.12.2015, however, has observed that the relevant portion of the CIPET report having been reproduced in the Show Cause Notice was itself sufficient and the plea of the Appellant for non-providing of the same was not a handicap. The First Appellate Authority has finally upheld the demand of duty confirmed in the Order-in-Original. This Order-in-Appeal has led to the present Appeal.

3. At the threshold, we find that the above observation is opposed to the principles of natural justice and unexpected from a quasi-judicial authority of the rank of a Commissioner. It has been held repeatedly by the constitutional courts that the natural justice based on

administration of justice, which is not in any watertight classification, is to be secured by ensuring that no person is condemned unheard. Mere formality or post-decisional justification cannot substitute the requirement of natural justice. The principles of natural justice was in fact the minimum protection of the rights of the individual against the arbitrary procedure that are adopted by a quasi-judicial authority. There is no doubt that the rules of natural justice are not always expressly stated in a statute or in rules framed thereunder, they are implied from the nature of the duty to be performed under a statute and the framework thereof. It is therefore of utmost importance that a person, who has been put to notice, has to be given a fair opportunity to reply and put up his case in the proceedings against him. That having not been followed, the impugned order is flawed and deserves to be set aside.

4. Heard Shri Ajay Kumar Gupta, Ld. Advocate for the Appellant and Ms. Rajni Menon, Ld. Deputy Commissioner for the Revenue.

5. After hearing both sides, we find that the only issue involved in this Appeal is, 'whether the classification adopted by Appellant [under CTH 39042110/39042190] is correct ?'

OR 'the reclassification attempted by the Revenue [under CTH 39041090] is correct ?'

6. We find that more or less a similar issue involving identical set of facts wherein also the Adjudicating Authority relying on the test report of CIPET in respect of another Importer attempted reclassification, was decided by this Bench in the case of **Arun Industries Vs Commissioner of Customs** [Final Order No.41486/2025 dt. 16.12.2025 in Appeal No.C/42428/2016] wherein, this Bench has set aside the reclassification and the demand raised therein by the Department. The relevant portion of the above Final Order reads as under :

> "7. In this case, Revenue has classified the goods under CTH 39041090 by placing reliance on the test report and clarification dated 25.02.2015 given by CIPET in respect of goods imported by another importer, *viz*. Ramnath & Co. Identical issue came up for consideration before this Tribunal in the case of M/s. Arun Polymers wherein Revenue had similarly relied on exactly the same test report and clarification dated 25.02.2015 given by CIPET but in its Final Order No. 49467/2025 dated 29.07.2025, this Tribunal followed its own decision in the case of *Ram Nath Co. Pvt. Ltd. Vs. Commissioner of Customs (Final Order No. 40478/2025 dated 21.07.2025)* where it was held that the imported goods are correctly classifiable under sub-heading 3904.21 (Tariff Item 3902 21 10). The relevant portions of the said decision in Final Order No. 49467/2025 dated 29.07.2025 in the case of M/s. Arun Polymers read as under: -

... .

....

13. We are fortified in our views by the order of a coordinate Bench of this Tribunal at Kolkata in the case of M/s Surabhi Enterprises (supra) cited by revenue. In that case the only dispute as stated by revenue was 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'. However, this change in CTH pertained to the period after 31.03.2017 when 'Poly (vinyl chloride) resin' falling under the heading 3904 2110 was deleted and shifted to 3904 10, as per the Finance Act, 2017. The period in this case is prior to the change made in the heading when 'Poly (Viny Chloride) resin' was covered under a specific tariff heading. The Tribunal at para 5.3 held;

> *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 2110 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 subheading 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."

(emphasis added)

... ...

10. In view of identical issue involved in this appeal and the facts being the same, the issue is no longer *res integra*. Hence the impugned Order-in-Appeal C.Cus.II.No. 863/2016 dated 14.09.2016 is set aside and the appeal is allowed with consequential relief as per the law."

7. Following the ratio in the above cases, we find that the impugned order is not sustainable primarily, the same is passed by violating the principles of natural justice. Even on merit, the impugned order deserves to be set aside as the demand of duty upheld therein lack merit.

8. Resultantly, the impugned order is set aside, Appeal thus stands allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 19.02.2026)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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