

**Dcl Polyester Ltd. Vs. Collector of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-24-1999

**Reported in :** (2000)LC792Tri(Delhi)

**Appellant :** Dcl Polyester Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. The issue involved in this appeal filed by M/s. DCL Polyester Ltd. is whether the impugned goods cleared by them are Polyester Chips falling under Heading 39.07 of the Schedule to the Central Excise Tariff Act as decided by the Collector or are Polyester Chips Waste classifiable under sub-heading 3915.90 and eligible to benefit of Notification No. 53/88-C.E., dated 1-3-1988 and 14/92-C.E., dated 1-3-1992.

2. Briefly stated the facts are that the appellants manufacture Polyester Polymer Chips by the process of esterification of Purified Terephthalic Acid (PTA)s and Mono Ethylene Glycol (MEG). After the manufacture, the polyester chips from silo are fed Pneumatically to Chips Bagging silo where chips are bagged by semi-automatic bagging machine. There is some spillage during the bagging operation and these are collected as sweeping. Further, when the bagged polyester chips are fed into the filament yarn plant for manufacture of polyester filament yarn, some chips, not accepted by the hopper, are collected separately.

The Central Excise Officers visited the godown premises of the appellants on 5- 8- 1994 and seized such chips weighing 2460 kgs. valued at Rs. 1,23,000/- under the belief that these were not waste and chargeable to duty. A show cause notice dated 1-9-1994 was issued to them for clearing 1,24,628 kgs. of Polyester chips valued at Rs. 13,52,671.40 during the period from 25-7-1991 to 11-1-1994 without payment of duty and without following the Central Excise procedure. The Collector, Central Excise, in the impugned order demanded duty amounting to Rs. 4,41,352.29 imposed a penalty of Rs. 10,000/- on the appellants and confiscated 2460 kgs. polyester chips seized from go-down with an option to redeem the same on payment of fine of Rs. 30,000/-, holding that the polyester chips got segregated after the process of manufacture and as such were altogether different and distinct from the waste that arose during the course of manufacture (i.e. lumps, ribbons); that the impugned goods were not waste but only 'chips' and were cleared misdeclaring them as chips and this fact remained suppressed till the investigation was carried out; and that investigation had proved that these chips were usable and were being used for manufacture of polyester filament yarn (PFY).

3. Shri A.N. Haksar, learned Sr. Advocate along with Shri P.K. Ram, learned Advocate submitted that the chips collected from the floor which get spilled during the bagging operation, contains dust, dirt and foreign particles and the same are treated as sweeping waste; that chips stored in bags have small pieces/any powdery form or lump form which are removed by passing through a classifier and such unusable contents are collected as waste; that chips waste, being generated in the manufacture of chips or polyester filament yarn is classifiable under the heading of waste, pairing and scrap of plastic under 3915.90; that the classification lists filed by them had been approved by the Department. The learned Sr. Counsel, further, submitted that the representative sample in one bag was taken out from different bags of polyester chips; that one sample packet was also given to them; that as no test reports of the sample have been given to them, they got the sample, given to them by the Department, tested from Visvesvaraya Regional College of Engineering, Nagpur, after informing the Collector in their letter dated 23-9-1994; that in view of these facts, it cannot be said that there is no evidence to show that the samples were drawn from seized goods; that the test Report opined that the sample can be called only as polyester waste chips but not pure polyester

chips and such a material cannot be used for the manufacture of polyester filament yarn because it may create operational as well as quality control problems. The learned Sr. Counsel also mentioned that Collector has given his findings that the goods under seizure were examined before Panch witnesses and Sr. Manager (Sales & Excise) and on examination, the goods were ascertained to be polyester polymer chips; that it has been held in *Sharma Engines & Valve v. C.C.E. -1988 (37) E.L.T. 86 (T)* that the visual examination of the good by the authorities without any expert opinion is not determinative of the classification; that the Panch witnesses were not qualified persons as one was tractor driver and the other one was running a Tea Kiosk; that as these persons were not expert, the opinion given by scientific and technical expert has to be believed.

4. The learned Sr. Counsel also submitted that it is clear from the statement of Shri Purshotam Das Garg, Director of M/s. Sheelendra Textiles P. Ltd., Bombay that they had purchased polyester chips waste, waste pairing & scrap of plastics from the appellants and sold the entire quantity to M/s. Western India Silk Industries, Bombay; that Arvind Kumar Choudhary, partner of Western India Silk Industries, in his statement dated 23-8-1994 confirmed to have received the polyester chip waste from Sheelendra Textiles. He also stated that the entire consignment was sold to M/s. Indian Organic Chemicals Ltd., Bombay (IOCL). The learned Sr. Counsel mentioned that the statement of Dr.

Wagle, General Manager of IOCL is confined to original invoices of M/s.

WISI Synthetics Pvt. Ltd. while Sheelendra Textiles had not sold appellants' waste to this party; that IOCL had clearly stated that they received Polyester chips (repacked) and Polyester chips waste (repacked), the fact remains that the goods received and used by IOCL, Madras did not at all belong to them; that according to IOCL the goods were used in manufacture of Polyester staple fibre and not polyester filament yarn, as mentioned in the impugned order. The learned Sr.

Counsel finally submitted that the impugned order proceeds on factually incorrect premises and is thus to be set aside.

5. Countering the arguments, Shri Sumit K. Das, learned D.R. submitted that the issue is whether chips cleared by them are chips or waste material; that the appellants are equating the chips with the lumps and ribbons which are generated during the process of manufacture of polyester chips; that the chips remain the chips and even if these cannot be used as primary quality chips for making polyester filament yarn these can be used for downward stream which is evident from the statements. He also mentioned that no doubt Panch witnesses were layman, but they saw the detained/seized goods in presence of Shri Lilapat, authorised signatory of the appellants and as per their observation the goods were polyester polymer chips. He also emphasised the fact that the impugned goods were sold at a price higher than the price at which waste was sold which goes to prove that the impugned goods were not waste. According to learned DR, the appellants are clearing inferior grade of chips and these chips are used only as chips. He gave the example of regenerated plastic which is used for manufacturing cheap goods. He finally submitted that there was no mention of inferior grade of chips in the classification list; these were mentioned as waste only and as such no investigation at that stage was called for.

6. In reply the learned Sr. Counsel emphasised that the Department should have got the samples tested. He queried as to why the samples were drawn if these were not to be tested. He finally mentioned that under Notification No. 14/92 (Serial. No. 7), the Chips were exempted from payment of duty if used for making polyester staple fibre and the considerable amount of duty will be reduced.

7. We have considered the submissions of both the sides. We observe that the admitted undisputed fact in the present matter is that the impugned goods were (1) collected from floor as the polyester polymer chips fell on floor at the time of bagging operation and (2) separated by passing chips through a classifier. As per the appellants themselves, the impugned goods were spilled chips containing dust, dirt and foreign particles. It is thus evident that the impugned goods are obtained after the process of manufacture of Polyester Polymer chips is over and these chips are being bagged or before they are fed into the system for manufacture of polyester filament yarn. The impugned goods are, therefore, chips though they may not be of prime quality. Such chips cannot be equated with lump

/ribbon generated during the process of manufacture. Even the report of Regional Engineering College referred to the goods as chips which are highly contaminated with lot of foreign materials and in their opinion it cannot be used for the manufacture of PFY. The opinion stops at this point and does not mention anywhere that the impugned goods cannot be used as chips. It is well known that goods can be of various qualities and purity; the goods may be sub-standard goods. But they do not cease to be same goods and considered as waste product. It was held by Delhi High Court in Indian Steel Corporation v. U.O.I., 1982 (10) E.L.T. 877 (Del.) that law only distinguishes between forms and shapes of the material defined with precision and detail and nowhere between defective and prime. Similar views were expressed by the Madhya Pradesh High Court in the case of Universal Cables Ltd. v. U.O.I., 1977 (1) E.L.T. (J 92) wherein it was held that "It is true that good quality properzi. rods and defectives are both taxable under Entry 27 of the first Schedule but their assessable value has to be determined under Section 4". The Collector has also mentioned in the impugned order that show cause notice never alleged that the goods in question were 'prime' quality chips; the show cause notice only alleged that the goods cleared were chips and not waste, pairings and scrap. In respect of suppression of fact, Collector has given his findings to the effect that none of the documents, namely, classification list, price list, purchase orders and correspondence with range officers, mentioned the fact that the goods cleared were polyester chips and as such the fact was suppressed from the Department. We agree with the findings of the Collector as the classification list was filed only in respect of 'waste' pairings and scrap of plastics without any mention of polyester waste chips.

Similarly the price list also referred to waste, pairings & scrap. The appellants have claimed benefit of Serial No. 7 of table annexed to Notification No. 14/92-C.E., dated 1-3-1992. This serial no. provides nil rate of duty in respect of polyester polymer chips if such chips is intended for the manufacture of polyester staple fibre and for including tops thereof. The appellants are at liberty to place material before the Commissioner, Central Excise within two months of receipt of this order to satisfy him that they fulfil the condition specified in Serial No. 7 of the table annexed to Notification No. 14/92. The Commissioner is directed to consider such submission, if submitted by the appellants within two months of receipt of order,

and take necessary action in accordance with law. With these directions, the appeal is rejected.

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