

**2013 (288) E.L.T. 374 (Guj.)**

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
Akil Kureshi and Harsha Devani, JJ.

**VAZIR POLYMERS LTD.**

*Versus*

**COMMISSIONER OF CUSTOMS, KANDLA**

*Tax Appeal Nos. 803-811 of 2006, decided on 30/31-8-2012*

**EXIM - Plastic waste/scrap - Import by Export Oriented Units (EOU) and Export Processing Zones (EPZ) units - DGFT Public Notice No. 392 (PN)/92-97, dated 1-1-1997 requiring import licence, with various conditions - HELD : Public Notice was not applicable - It was issued under Para 27(2) of Handbook of Procedures, which does not pertain to EOU and EPZ, for whom entirely different procedure in Chapter IX of Handbook of Procedures - Letter of permission issued to EOU/EPZ units did not prescribe obtaining of such licences - Also, Paragraph 10(3) of the Public Notice specified that imports of plastic wastes and scrap by EOUs and EPZ units were governed by Para 94 of Export and Import Policy of 1992-97 - Para 24, Chapter V of Handbook of Procedures - Para 93, Chapter IX of Export and Import Policy of 1992-97. [paras 18, 19, 20, 21, 22]**

**EXIM - EOU and EPZ units - For their import, entirely different procedure has been laid in Chapter IX of Handbook of Procedures. [para 17]**

***Appeals allowed***

**DEPARTMENTAL CLARIFICATION CITED**

D.G.F.T. Public Notice No. 392 (PN)/92-97, dated 1-1-1997 [paras 2, 5, 7, 8, 9, 10, 11, 12, 13, 18, 20, 21]

REPRESENTED BY : Shri Paresh M. Dave, Advocate, for the Appellant.  
Ms. Ameer Yajnik, Advocate, for the Respondent.

**[Judgment per : Akil Kureshi, J. (Oral Common)].** - These appeals arise out of common factual background calling in question a common judgment of the Customs, Excise & Service Tax Appellate Tribunal ("the Tribunal" for short) dated 26-9-2005 [2006 (197) E.L.T. 402 (Tribunal)]. They have, therefore, been heard together and are being disposed of by this common judgment.

2. At the time of admission of the appeals, this Court had framed following two substantial questions of law :

- "(1) Whether the Appellate Tribunal was right in upholding analysis of samples of imported goods by Custom House Laboratory in view of Public Notice No. 392(PN)/92-97, dated 1-1-1997?
- (2) Whether the appellant-company having a manufacturing unit in Kandla Free Trade Zone/Kandla Special Economic Zone required any licence for import of raw materials and whether it was required to pay any Custom duties on such raw materials?

3. Such questions arise in following factual background. The appellant No.1, is a Company registered under the Companies Act, 1956 (hereinafter to be referred to as "the Company") and is engaged in the business of manufacture of plastic products like re-processed plastic granules, agglomerates, etc. The Company established its manufacturing unit in Kandla Free Trade Zone ("KAFTZ" for short). The Ministry of Commerce, Government of India issued a Letter of Permission ("LoP" for short) dated 27-12-1996 to the Company for setting up a new industrial unit in KAFTZ for manufacturing of plastic granules, shredding, grinding, pieces etc. subject to certain conditions. The items of manufacture were specified in the LoP. Such items were to be manufactured from waste/scrap/discarded/ obsolete plastic items. The annual capacity of production year-wise for five years was also specified. One of the conditions was that the unit had to export 100% of its production to General Currency Area countries. Condition No. 4 of the LoP which is the center of the controversy between the parties read as under :

"(4) Import of plastic scrap/waste shall be strictly in accordance with the Export and Import Policy and Procedure thereof, as applicable at the time of import of such items."

5. The customs authorities issued a public notice dated 1-1-1997 laying down various conditions for import of plastic waste/scrap. We would take note of detailed conditions stated therein at a later stage. Suffice to note at this stage that according to the appellants, such public notice did not include any 100% EOU or those located in Export Processing Zones ("EPZ" for short). On the other hand, the Department contends that in terms of the above noted condition No. 4 of LoP, the appellants were required to fulfill all the requirements of imports at the time of actual import since the public notice laid down necessary requirements of importing plastic scrap/waste, such conditions would apply to all importers including the units situated in SEZ, such as the appellants. This is a central controversy between the parties.

6. The appellants imported nine consignments of plastic scrap in the year 1999. The revenue authorities having a doubt about the nature of such imports, collected samples from the imported consignments and had the same tested in the customs laboratories. At the insistence of the appellants, such samples were also sent to Central Institute of Plastics Engineering & Technology ("CIPET" for short) and obtained a report from such institution also.

7. Several show cause notices came to be issued to the appellants essentially alleging that as per the departmental laboratories' conclusions, the samples did not conform to the requirements laid down in the conditions

contained in public notice dated 1-1-1997. It was the case of the Department that the imported plastic material was not waste or scrap; further that it did not conform to the size of lump of plastic not being greater than 3 x 3 inches and further that there was also declaration of the valuation of the imported goods. On such basis, the appellants were called upon to show cause why customs duty be not recovered with interest and penalties be not imposed. Further, why the goods be not confiscated.

8. The appellants opposed the show cause notice proceedings. Raised several contentions including that they are not governed by the public notice that they have not made any incorrect declaration. That the proceedings be, therefore, dropped.

9. The Commissioner of Customs passed an order dated 20-4-2001 primarily on the ground that the imported plastic items did not conform to the requirements of the public notice dated 1-1-1997. That duty demand with interest, confiscation were confirmed. The Commissioner passed the following order :

"(1) The total quantity of 63,180 MTs of usable rolls of plastic and plastic scrap declared value at Rs. 5,63,400/- which are put under seizure under panchnama dated 18-6-99 is confiscated under section 111(d) & (m) of the Customs Act, 1962 read with Foreign Trade Development & Regulation Act, 1992. However, since the goods have been provisionally released and they are not available for confiscation, I impose a fine of Rs. 4,50,000 (Rupees four lakhs fifty thousand only) in lieu of confiscation. I note that the goods have already been released provisionally on furnishing Bank Guarantee and P.D. Bond. The same is ordered to be appropriated from Bank Guarantee amount and remaining should be recovered by enforcing the provision of P.D. Bond under the relevant provision of the Customs Act, 1962 and Rules and Regulations as applicable.

(2) The classification of the goods in the B/E No. 375, dated 15-6-1999 for useable film rolls of plastic revised from CH 3915.90 to 3921.90 of the Customs Tariff Act, 1975 and duty at the appropriate rate is payable/recoverable.

(3) The value of confiscated plastic useable film rolls of plastic is enhanced to Rs. 13,17,303/-.

(4) The benefit of duty exemption Notification No. 133/94-Cus., dated 22-6-1994, as amended, is denied to the noticee.

(5) Penalty of Rs. 1,00,000/- (Rupees One Lakh only) is imposed on M/s. Vazir Polymers Ltd. under Section 112 (a) & (b) of the Customs Act, 1962.

(6) Penalty of Rs. 50,000/- (Rupees Fifty Thousand only) is imposed on Shri Amrit D. Jain, Director of the company under section 112(a) & (b) of the Customs Act, 1962.

(7) The interest as applicable under the Customs Act, 1962 is also recoverable from the noticee."

10. Against such order of the Commissioner, the appellants preferred an appeal before the Tribunal. The Tribunal by the impugned judgment, granted relief with respect to valuation of the goods, but rejected the rest of the contentions of the appellants. Essentially co-relating condition No. 4 of the LoP to the public notice dated 1-1-1997, the Tribunal examined whether the conditions contained in the public notice were satisfied or not. Finding that the imports made by the appellants and the declarations made did not conform to various conditions of the public notice, the case of the appellants was turned down.

11. Shri Dave for the appellants submitted that the departmental authorities ought to have sent the samples to the nearest CIPET laboratory and ought not to have undertaken the exercise in the customs laboratory. He submitted that there was variance between the opinion of the CIPET laboratory and the customs laboratory. In such case, opinion of the independent laboratory should prevail. Counsel submitted that even the public notice envisaged sending the samples to the CIPET laboratory.

12. With respect to question No. 2, counsel submitted that the public notice dated 1-1-1997 would not govern the imports that the appellants made. Such imports were made under the authorization granted under the LoP. There was no further requirement of obtaining any license. Conditions provided in the public notice would govern units other than EOU and those situated in EPZ.

13. On the other hand, learned counsel Ms. Yajnik for the Department relied on condition No. 4 of the LoP to contend that the appellants had to fulfill two requirements of imports at the time of actual imports. In this case, at the time of such imports, public notice dated 1-1-1997 was already issued which governed the imports to be made by all importers without any distinction.

14. To resolve this controversy, we may look at some of the provisions contained in the Import Export Policy. The Export and Import Policy of 1992-97 contained Chapter IX pertaining to Export Oriented Units and Units in Export Processing Zones. Paragraph 93 of Chapter IX pertains to eligibility for units to qualify for EOU or EPZ units. Paragraph 94 pertains to importability of goods and provided as under :

"94. An EOU/EPZ unit may import free of duty all types of goods, including capital goods, required by it for manufacture, production or processing provided they are not prohibited items in the Negative List of Imports. However, import of Basmati paddy/brown rice shall be prohibited."

15. The Government of India also to implement such Import Export Policy, published Handbook of Procedures, Chapter V thereof pertains to imports. Paragraph 24 contained in such chapter provided that where an import license or customs clearance permit is required under the Policy, the procedure contained therein shall apply. Paragraph 27 thereof pertains to import of second-hand goods. Sub-para (2) thereof reads as under :

"27(2) The import of acrylic fibre waste; acrylic tow waste; acrylic top waste and all types of plastics wastes (except PET bottle waste) shall not, however, be permitted, except against a license."

16. Chapter IX of such Handbook pertains to Export Oriented Units and Units in Export Processing Zones. Such chapter provided detailed procedure to be followed for accepting applications for intending units to set up EOU units or units that may be situated in EPZ, for issuance of Letter of Permission and Letter of Intent etc. Paragraph 164 permitted the units located in EPZ to import capital goods in accordance with the List attached by the Development Commissioner. Paragraph 165 provided *inter alia* that an EOU/EPZ unit may import free of duty, the following goods required by it for production, provided they are not prohibited items in the Negative List of Imports. Item No. 3 therein contained raw materials, components, consumables, intermediates, spares and packing materials.

17. It can, thus, be seen that the Export Import Policy provided the entirely different procedure for imports to be

made by EOU/EPZ units. Essentially, such units would make imports for production of export goods.

18. With this background, we may have a look at the provisions contained in the public notice dated 1-1-1997. Such public notice is issued in reference to paragraph 27(2) of the Hand Book of Procedures. It provided that the matter relating to grant of licenses for import of plastic waste has been examined and it has been decided to prescribe the guidelines and conditions for consideration of application for import of plastic waste/scrap. It is further provided that the applicants who wish to submit the applications to the authorities for grant of licenses for import of plastic waste or scrap are required to strictly complied with these guidelines and conditions.

19. It is also provided that all imported consignments of such plastic scrap/waste shall be subject to scrutiny and testing of samples. The customs authorities shall for this purpose draw sample and send the same to the nearest laboratory/office of the CIPET with a view to having the same analyzed.

20. Such conditions and in particular the requirement of obtaining a license read with the very beginning of the notice in which reference is made to paragraph 27(2) of the Handbook which pertains to procedure for industries which are not EOU/EPZ units, would show that such public notice pertain to units other than EOU/EPZ units. We are informed that for importing raw materials as per the permission granted for LoP, as per the procedure prescribed by the Government of India at the relevant time, no licenses were required to be obtained. We may also notice that in paragraph 10 of the notice while specifying that the import license issued in accordance with the public notice shall be subject to actual user condition and other such condition as may be imposed by the Special Licensing Committee, it is further provided as under :

"(3) While imports of plastic wastes and scrap by 100% EOUs and unit in EPZ shall continue to be governed by the provisions of para 94 of the Export and Import Policy, the parameters for import of plastic wastes/scrap as specified.

This Public Notice shall, however, be kept in view by the Board of Approval concerned while approving such units under the Scheme."

21. This would, thus, reveal that the requirements of license under the public notice was not made applicable to imports of plastic waste and scrap by 100% EOU and units situated in EPZ, and they were continued to be governed by the provisions contained in paragraph 94 of the Export Import Policy. It is, however, true that such paragraph also provided with parameters for import of such plastic waste and scrap as specified in the public notice shall be kept in view of the Board of Approval while approving such units under the relevant scheme. Thus, the specific units of 100% EOU and those located in EPZ continued to get the benefits of the approval granted under the relevant scheme. It was, of course, open for the Government to impose additional conditions in tune with the public notice.

22. Under the circumstances, we are of the opinion that the Tribunal committed error in holding that the appellants breached the conditions of the public notice. We have come to such a conclusion in peculiar facts of the case where we are informed that at the relevant time, the units located in EPZ did not require license for import of raw materials as permitted under the approval of LoP. In the present case, approval was for plastic waste. We have also taken into consideration the language used in the specific LoP granted to the appellants, the conditions of such license, as also the language used in the public notice in question. If by virtue of some other policy declared by the Government of India from time to time, any additional requirements or restrictions were imposed on the industries even located in the EPZ, the same obviously would be governed by such policy pronouncements.

23. Subject to above, common judgment of the Tribunal dated 26-9-2005 is set aside. We answer question No. 2 in favour of the appellants. In view of such answer, we need not go into the question No. 1. All appeals are allowed and are disposed of accordingly.

