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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 06.12.2019

\+ **W.P.(C) 10450/2018**

POLYGLASS ACRYLIC MFG. PVT. LTD. ..... Petitioner

Through Mr.Varun Sharma, Adv.

Versus

THE ASSISTANT COMMISSIONER OF CUSTOMS (REFUND) ICD TUGHLAKABAD, IMPORT, NEW DELHI. ..... Respondent

Through Mr.Pratap Singh, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice *(Oral)*

1. The present writ petition has been preferred for getting a refund claim of Rs.42,23,111/- which this petitioner has deposited with the respondent.

2. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that the goods in question are polyester cloths. According to the respondent, this case is about the classification of the goods. The petitioner had deposited a duty of Rs.5,34,521.13 on the basis of the valuation of Rs.27,22,160/- whereas as per respondent the duty leviable on this petitioner comes to Rs.47,57,416/-. The calculation details have been mentioned by the respondent in the Order in Original dated 28.12.2012 (annexure A-3 to the memo of this petition) and in the Order-in-Appeal dated 23.10.2013

(annexure A-1 to the memo of this petition). Looking to paragraph 7 of the Order-in-Appeal dated 23.10.2013, the same reads as under:-

> *"7. It is true that CRCL is not the Authority for deciding the classification of goods; however, in the instant case, the CRCL had only provided the nature of the product and thereafter, the issue of classification was decided by the Assessing Authority. The reasons for seeking retest as enumerated in the grounds of appeal are also worth considering as the CRCL is the Competent Authority to provide the nature of the goods based on a scientific testing of the admitted samples. It is also observed that the appellant was provided fair opportunity of representation in accordance with the Orders of the Hon'ble High Court, yet the appellant admittedly failed to avail such opportunity. Hence, it cannot be argued that principles of natural justice were violated. No doubt, absence of Shri Kapil Dev Aggarwal during investigations would not be a limiting factor for classification; however, the appellant on the other hand did not submit their contentions before the Learned Adjudicating Authority appropriately inspite of provision of fair opportunity of representation. Presently, based on samples drawn in the presence of CHA representing the importer, a categorical report has been provided by the Independent Competent Authority i.e. the CRCL. Hence, the competency cannot be questioned. However, in the light of 2009 (241) ELT 390 ,and 2009 (236) ELT 83, there is no harm or restriction in allowing re-test, especially, when the disputed issue is involving the technicalities of the impugned goods. The Customs Manual Chapter 3, Para 15 also provides for re-test as contended by the appellant. Since the Department is quite sanguine about test results, why fight shy of second test,*

which is permissible, under the law. Hence it is so directed and appeal is technically disposed off accordingly. The original authorities are directed to look into the matter afresh as per results of the re-test.

Accordingly, the appeal is disposed off with due directions.”

3. In view of the aforesaid Order-in-Appeal passed by the Commissioner of Customs (Appeals) dated 23.10.2013, a fresh sample drawn by the respondent is to be re-tested. Thus, fresh Order-in-Original will have to be passed by the respondent and therefore till then no refund can be granted to this petitioner. As the respondent has yet to pass an order on the basis of the re-testing, as directed by the Commissioner of Customs (Appeals), we are not going much into the details of the case. Suffice it to say that the dispute in question is still alive and pending with the respondent for its final order.

4. In view of the above, there is no substance in this writ petition at this stage and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

DECEMBER 06, 2019
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