

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, CHENNAI**

**TABLE 1**

<b>S.No.</b>	<b>Appeal No.</b>	<b>Appellant</b>	<b>Respondent</b>
<b>1</b>	<b>C/41501/2014</b>	<b>SHYAM TEXTILES LTD</b>	<b>COMMISSIONER OF CUSTOMS CHENNAI (PORT IMPORT)</b>
<b>2</b>	<b>C/41502/2014</b>	<b>Tarajyoth Polymers Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>3</b>	<b>C/41503/2014</b>	<b>Tarajyoth Polymers Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>4</b>	<b>C/41505/2014</b>	<b>Pradeep Industrial Packers Pvt Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>5</b>	<b>C/41508/2014</b>	<b>Kamdhenu Polymers Pvt. Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>6</b>	<b>C/41509/2014</b>	<b>Kamdhenu Polymers Pvt. Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>

**TABLE 2**

<b>S.No.</b>	<b>Appeal No.</b>	<b>Appellant</b>	<b>Respondent</b>
<b>1</b>	<b>C/41500/2014</b>	<b>Alto Polymers Pvt Ltd</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>2</b>	<b>C/41504/2014</b>	<b>Tarajyot Polymers Ltd</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
<b>3</b>	<b>C/41506/2014</b>	<b>Bishen Saroop Ram Kishan Agro (P) Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>

<b>4</b>	<b>C/41507/2014</b>	<b>Kamadhenu Polymers Pvt. Ltd.</b>	<b>C.C.,CHENNAI( PORT IMPORT)</b>
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**Date of Hearing: 11.03.2019**

**Date of Decision: 11.03.2019**

**Appellant Rep by: Shri B N Gururaj, Adv.**

**Respondent Rep by: Ms T Usha Devi, DC AR**

**CORAM: Madhu Mohan Damodhar, Member (T)  
P Dinesha, Member (J)**

**Cus - Issue relates to import of plastic granules of various grades under Transferred Duty Free Import Authorization (DFIA) Scheme read with Customs Notfn 40/2006-Cus.; that imports were cleared prior to 19.02.2009 - Assessee submits that Notfn 17/2009-Cus. amended condition No.(iii) of earlier notification and introduced condition No.(iii) (a) and (iii) (b) - Further by Section 93 (1) of FA, 2009, the said amendment was given retrospective effect w.e.f. 1.5.2006 - The assessee had challenged the validity of retrospective amendment by filing writ petitions before the High Court of Madras, who vide their judgement dt. 01.11.2017 held that condition No. (iii) (a) was impossible for compliance for the period prior to issue of Notfn 19.02.2009 - Discernably, the periods of dispute in appeals are clearly before the amendment caused w.e.f. 19.02.2009 vide Notfn 17/2009-Cus. - The retrospective application of that amendment, sought to be brought about by the Government by Section 93 (1) of FA, 2009 w.e.f. 1.5.2006 has been set aside by High Court - In the circumstances, notwithstanding the protestations of revenue, judicial discipline requires to follow the ratio laid down by the High Court especially, it being the jurisdictional High Court for this Tribunal - There is also nothing brought forth by Revenue that said High Court decision has been stayed or set aside by the Apex Court -**

**The dispute subsequent to the cut off date of 19.02.2009 will have to be necessarily debated by both sides on merits since same will not be covered by the High Court decision: CESTAT**

**Appeals partly allowed**

**FINAL ORDER NOS. 40481-40486/2019**

**Per: Madhu Mohan Damodhar:**

**Ld. Advocate submits that the issue relates to import of plastic granules of various grades under Transferred Duty Free Import Authorization (DFIA) Scheme read with Customs Notification No.40/2006-Cus. dt. 1.5.2006; that imports were cleared prior to 19.02.2009. Ld. Advocate submits that Notification No.17/2009-Cus. dt.1.9.2009 amended condition No.(iii) of the earlier notification and introduced condition No.(iii) (a) and (iii) (b). Further by Section 93 (1) of the Finance Act, 2009, the said amendment was given retrospective effect w.e.f. 1.5.2006. The appellant had challenged the validity of the retrospective amendment by filing writ petitions before the Hon'ble High Court of Madras, who vide their judgement dt. 01.11.2017 held that condition No. (iii) (a) was impossible for compliance for the period prior to issue of Notification No.19.02.2009 and allowed the writ petitions. Ld. Advocate submits that out of these appeals, the following appeals squarely fall before the cut off date of 19.02.2009 :**

**TABLE 1**

<b>S.No.</b>	<b>Appeal No.</b>	<b>Appellant</b>
<b>1</b>	<b>C/41501/2014</b>	<b>Shyam Textiles Ltd.</b>
<b>2</b>	<b>C/41502/2014</b>	<b>Tarajyoth Polymers Ltd.</b>
<b>3</b>	<b>C/41503/2014</b>	<b>Tarajyoth Polymers Ltd.</b>
<b>4</b>	<b>C/41505/2014</b>	<b>Pradeep Industrial Packers Pvt</b>

		<b>Ltd.</b>
<b>5</b>	<b>C/41508/2014</b>	<b>Kamdhenu Polymers Pvt. Ltd.</b>
<b>6</b>	<b>C/41509/2014</b>	<b>Kamdhenu Polymers Pvt. Ltd.</b>

He submits that these appeals may be allowed since the demand therein cannot survive in view of Madras High Court decision dt. 01.11.2017 referred to by him. Ld. Advocate submits that in respect of the following appeals, the period involved is either partly or wholly after the cut off date of 19.02.2009.

**TABLE 2**

<b>S.No.</b>	<b>Appeal No.</b>	<b>Appellant</b>
<b>1</b>	<b>C/41500/2014</b>	<b>Alto Polymers Pvt Ltd</b>
<b>2</b>	<b>C/41504/2014</b>	<b>Tarajyot Polymers Ltd</b>
<b>3</b>	<b>C/41506/2014</b>	<b>Bishen Saroop Ram Kishan Agro (P) Ltd.</b>
<b>4</b>	<b>C/41507/2014</b>	<b>Kamadhenu Polymers Pvt. Ltd.</b>

He requests for delinking of these four appeals from this batch and posting it to some other date on the ground that they pertain to partly or wholly subsequent to the cut off date of 19.02.2009 and that the order of the Hon'ble High Court of Madras pronounced on 1.11.2017 will have applicability only period of dispute before 19.02.2009.

2. On the other hand, Ld. A.R. Ms. T. Usha Devi opposes the appeals. She also opposes the prayer of the Ld. Advocate to get some of the cases delinked from this batch.

3. Heard both sides and have gone through the facts.

4. Discernably, the periods of dispute in the appeals are clearly before the amendment caused w.e.f. 19.02.2009 vide Notification No.17/2009-Cus. dt. 19.02.2009. The retrospective application of that amendment, sought to be brought about by the Government by Section 93 (1) of the

**Finance Act, 2009 w.e.f. 1.5.2006 has been set aside by the Hon'ble High Court. The relevant paragraphs of the High Court's order pronounced on 01.11.2017 are as under :**

***"24. Having considered the rival contentions carefully, we are of the view that the condition imposed vide the amending Notification is incapable of satisfaction retrospectively. The petitioner, by virtue of the burden imposed under the amendment is required to have furnished the details relating to avilment of duty by the transferor of the scrip at the original instance. Apart from being practically unworkable, the amendment imposes a condition that nullifies a right that vested in the petitioner and creates a burden that the petitioner would be incapable of discharging. While the satisfaction of the condition post date of Notification is mandatory and, accepted to be so by the petitioner, we agree that the retrospective application of the same is liable to be interfered with. In our view, condition (iii) (a) imposed in Notification 17 of 2009 must be read to have been enacted from and with effect from 19.2.2009 only.***

***25. We draw support from the ratio of the judgements extracted above wherein the Supreme Court has consistently upheld the position that any amendment should seek to correct an error that was contained in the original enactment. In the circumstances of the present case, the error can be corrected only prospectively and retrospective application of the amendment would not stand the test of law."***

**5. In the circumstances, notwithstanding the protestations of the Ld.A.R, judicial discipline requires us to follow the ratio laid down by the High Court especially, it being the jurisdictional High Court for this Tribunal. There is also nothing brought forth by Revenue that said High Court decision has been stayed or set aside by the Hon'ble Apex Court. We also find that the dispute subsequent to the cut**

**off date of 19.02.2009 will have to be necessarily debated by both sides on merits since same will not be covered by the High Court decision supra. In the circumstances, it is ordered as under :**

**(i) Impugned orders in respect of Appeal Nos.**

**C/41501/2014, C/41502/2014, C/41503/2014, C/41505/2014, C/41508/2014, C/41509/2014 are required to be set aside in view of the Hon'ble High Court orders pronounced on 01.11.2017 in the batch of writ petitions inter alia, filed by the appellants therein. Impugned orders in these appeals cannot then sustain and are therefore set aside. In consequence, Appeals C/41501/2014, C/41502/2014, C/41503/2014, C/41505/2014, C/41508/2014, C/41509/2014 are allowed with consequential benefits, if any, as per law.**

**(ii) Appeals C/41500/2014, C/41504/2014, C/41506/2014, C/41507/2014 where the impugned periods are partly or fully after the cut date of 19.02.2009 are adjourned to 19.02.2009 at the request of Ld. Advocate. These cases are adjourned to 24.05.2019.**

**To sum up**

**- Appeals C/41501/2014, C/41502/2014, C/41503/2014, C/41505/2014, C/41508/2014, C/41509/2014 are allowed with consequential relief, if any, as per law and**

**- Appeals C/41500/2014, C/41504/2014, C/41506/2014 and C/41507/2014 are adjourned to 24.05.2019.**