**(2015) 01 CESTAT CK 0008**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Appeal No. 188 Of 2008

M/s. Multiwal Duplex Pvt. Ltd. APPELLANT

Vs

C.C.E., Meerut-II RESPONDENT

**Date of Decision :** 21-01-2015

**Acts Referred:**

Customs Act, 1962 — Section 110(I), 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 119

**Citation :** (2015) 01 CESTAT CK 0008

**Hon'ble Judges :** G. Raghuram, J;R. K. Singh, Technical Member

**Bench :** Division Bench

**Advocate :** Amresh Jain

**Final Decision :** Dismissed

## Judgement

1. The substantive appeal has been filed against Order-in-Appeal No.19-CUS/MRT-II/2007, dated 10.12.2007, which upheld the primary order dated

11.05.2007. The appellants had imported goods vide Bill of Entry No.587/06, dated 16.06.2006 for clearance of 98.848 M.T. of mixed paper waste.

Examination of goods, undertaken in the presence of authorised representative of the Customs House Agent, revealed the net weight to be 96.65 M.T.

out of which 19.83 M.T. was used plastic waste and the rest 76.82 M.T. was used paper collected as road sweepings. The plastic content in the

paper waste was neither declared by the appellant in the Bill of Entry, nor they submitted any licence issued by the office of DGFT for import of

plastic waste. Representative sample of plastic contents was drawn in the presence of the authorised representative of the CHA and sent to the

Central Institute of Plastic Engineering & Technology, Lucknow (hereinafter called â??CIPETâ??) for test. The goods were seized vide order dated

12.09.2006 issued under section 110(I) of the Customs Act, 1962, on the reasonable belief that the goods were liable for confiscation as the import of

waste of plastic of the kind was regulated in the manner provided in the Public Notice No. 392 (PN)92-97 dated 01.01.1997 issued by DGFT and the

appellant could not produce any evidence documentary or otherwise to show the import of the said goods was in accordance with the said Public

Notice. The CIPET, Lucknow vide their Test Certificate dated 20.09.2006 declared the goods as Polyethylene Terephthalate and toxic. The appellant

was informed by letter dated 17.10.2006 of the aforesaid test certificate dated 20.09.2006 of CIPET. The appellant vide letter dated Nil (submitted to

the Customs, Moradabad on 23.10.2006) requested for re-testing of sample. The CIPET, Lucknow vide their Test Certificate No.821, dated

12.12.2006 declared the goods as â??Polyethylene Terephthalate, Non-food gradeâ?. Accordingly, the used plastic waste was confiscated and used

paper collected as road sweepings though confiscated was allowed to redeem on payment of fine of Rs.4 lakhs and penalty of Rs.6 lakhs was also

imposed. The confiscation of used plastic waste was under subsections (d), (e), (f), (i), (l) and (m) of Section 111 of the Customs Act, 1962 and

confiscation of â??used paper collected as road sweepingsâ?? under subsection (m) of section 111 read with section 119 ibid.

2. No one appeared for the appellant and no request for any adjournment has been received. Accordingly, in terms of the decision of the Honâ??ble

Supreme Court in the case of Balaji Steel Re-rolling Mills Vs. CCE, [2014 (310) ELT 209 (SC)], inter alia stating that CESTAT ought to decide

appeal on merits even if appellant or its counsel is not present, we proceed to decide the appeal on merits.

3. In this case we find that the appellant had waived the Show Cause Notice and thus obviously and voluntarily they agreed to abrogate their right for

natural justice to an extent. There is no contention on the part of the appellants that the plastic waste is not restricted for import. Therefore, the same

is clearly liable for confiscation as they do not fulfil the condition for the import thereof. Also as a consequence, the used paper collected as road

sweepings is liable to confiscate under section 119 ibid as the goods used for concealing the smuggled goods, namely, the used plastic waste. Clause 7

of their contract with the suppliers provided for final load port quality inspection on sellerâ??s account by surveyor mutually agreed upon. It is obvious that they had stipulated pre- shipment inspection that the goods imported were as per declaration in the Bill of Entry. Thus, the appellants

cannot fully absolve themselves of the responsibility to ensure that the goods imported were as per their declaration in the Bill of Entry.

4. In the light of the foregoing factual matrix, we do not find any infirmity in the impugned order and therefore the appeal is rejected.

 