Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 11936 of 2018

[Arising out of OIO-MUN-CUSTM-000-COM-001-18-19 passed by Commissioner of CUSTOMS-MUNDRA]

Shree Tushar Tilak Raj **........Appellant**
D/1649, Ansal Sushant City,
Panipat,Haryana-132103.

VERSUS

C.C. Mundra **.......Respondent**
Office of the Principle Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra,Kutch,Gujarat-370421

WITH

(i) Customs Appeal No. 11937 of 2018 (Aditya Loomtex)
(ii) Customs Appeal No. 11938 of 2018 (Shri Mohit Soin)
(iii) Customs Appeal No. 11939 of 2018 (Jmd Trading Co)
(iv) Customs Appeal No. 11940 of 2018 (Shri Tushar Gupta)
(v) Customs Appeal No. 11941 of 2018 (Shri Satish Kumar Jindal)
(vi) Customs Appeal No. 11942 of 2018 (Dev Textile)
(vii) Customs Appeal No. 11943 of 2018 (Ram Prakash)
(viii) Customs Appeal No. 11944 of 2018 (Jai Durga Impex)
(ix) Customs Appeal No. 11945 of 2018 (Alishan Impex)
(x) Customs Appeal No. 11946 of 2018 (Sunrise Traders)
(xi) Customs Appeal No. 11947 of 2018 (Pankaj Kumar Kataria)
(xii) Customs Appeal No. 11948 of 2018 (Pankaj Kumar Huf)
(xiii) Customs Appeal No. 11949 of 2018 (Ajay Hiralal Vij)
(xiv) Customs Appeal No. 11950 of 2018 (Jai Hanuman Overseas)
(xv) Customs Appeal No. 11951 of 2018 (Shree Shyam International)
(xvi) Customs Appeal No. 12898 of 2018 (Utkarsh Chemicals)
(xvii) Customs Appeal No. 13063 of 2018 (Mukesh Kumar Garg)

[Arising out of OIO-MUN-CUSTM-000-COM-001-18-19 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-04-18-19passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-03-18-19passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-024-025-17-18 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-008-18-19 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-022-17-18 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-05-18-19 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-023-17-18passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-023-17-18 passed by Commissioner of CUSTOMS-MUNDRA]
[Arising out of OIO-MUN-CUSTM-000-COM-012-18-19 passed by Commissioner of CUSTOMS-MUNDRA]

APPEARANCE:

Sh. Priyadarshi Manish with Prem Ranjan Kumar, Advocates for the Appellant
Sh. T. G. Rathod, Authorised Representative for the respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 11086-11103 /2019

DATE OF HEARING: 14.03.2019
DATE OF DECISION: 11.07.2019

RAMESH NAIR

The common issue involved in the present case is that the goods imported by the appellants declaring the same as Polyester Bed Cover are whether Polyester bed cover or polyester fabric and whether the same is classifiable under Custom Tariff Heading 6304 1930 as declared by the appellant or under Custom Tariff Heading 5407 5490 as claimed by the Revenue.

2. Sh. Priyadarshi Manish, Ld. Counsel with Sh. Prem Ranjan Kumar, Advocate appeared on behalf of the appellants. Sh. Manish submits that there is no mis-declaration on the part of the appellants as the goods imported by the appellant is bed cover which is closed from three sides and open from one side. He submits that the adjudicating authority decided the entire issue keeping in mind the nature and quality of the stitching of the bed cover. He submits that irrespective of nature of stitching the classification needs to be decided as per the statutory provision i.e. on the basis of the Chapter Notes of HSN in respect of the goods imported. He submits that the adjudicating authority without considering the statutory definition of made-up mentioned in Chapter Note 7 of Section XI of CTH come to the conclusion that the impugned product is woven fabric. He also submits that the adjudicating authority has fully ignored the statutory definition mentioned in Chapter Note 7 (f) and only taken some words from Note 7 (a) (b) (c) & (d) and completely relied on the test report/ expert opinion which is not impartial as well as non-reliable material. Accordingly, the adjudicating authority has totally ignored the statutory definition and fully relied on the general understanding and meaning of the so called expert who has given their opinion on punchnama. He submits that when there is a statutory provision under chapter Notes of Section XI then general meaning should not be resorted to for classification of the goods. The adjudicating authority

has decided the entire case on his own understanding, therefore, the order passed by the adjudicating authority is devoid of statutory provision and merits. He also relied upon the decision in the case of Commissioner of Central Excise, New Delhi vs Connaught Plaza Restaurant (P) Ltd. 2012 9286) ELT 321 (SC) and TPI India ltd. vs CCE Mumbai II 2005 (189) ELT 311. He also filed detailed written submission subsequent to the hearing which is taken on record.

3. On the other hand, Sh. T.G. Rathod, Ld. Joint Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the Ld. Counsel has raised very important preliminary issue that the adjudicating authority instead of deciding the matter on general meaning of made ups and fabric should have decided on the basis of statutory provision as provided under Chapter Notes of Section XI of Customs Tariff as well as on the HSN Notes. In these facts, we are of the view that the matter needs to be reconsidered by the adjudicating authority. All the issues are kept open. Since in these matters, this Tribunal had allowed the early hearing application and the matter appears to be of urgent nature, the adjudicating authority should pass a de novo adjudication order preferably within a period of 3 months from the date of this order. Needless to say that the appellant should be given sufficient opportunity of personal hearing and making their submission, if any, required. Accordingly, we set aside the impugned order and allow all the appeals by way of remand to the adjudicating authority for passing a fresh order.

(Order pronounced in the open court on 11.07.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Neha