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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10334 of 2020 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-230-19-20 dated 10/01/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

J K INTERPRISES **........Appellant**
701, 7th floor, Trivadh Chamber,
Ring road, Surat
Gujarat

VERSUS

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

APPEARANCE:
Shri Sanjay Kalra, Advocate for the Appellant
Shri H P Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. 10163/2024

DATE OF HEARING: 10.10.2023
DATE OF DECISION: 16.01.2024

RAJU

This appeal has been filed by M/s. J K Enterprises against change of classification declared by the appellant, demand of Customs duty, interest and imposition of penalty.

2. Learned Counsel for the appellant submits that they were importing goods namely "100% Polyester Woven Gray Fabrics" classifiable under CTH 580 137 10. The revenue was of the opinion that the said goods are warp pile fabric (uncut) and classifiable under CTH 540 751 19.The goods were examined and representative samples were drawn and were sent to Textile Committee Mumbai to ascertain if the said samples are textured/Non-textured, dyed/non-dyed, Warp or weft Fabrics, pile fabrics or otherwise and the correct HSN Code.

2.1 The Textile Committee opined that the goods were undyed woven polyester woven fabrics classifiable under CTH 5407.61 and the said fabric contains non-textured yarn (warp) and textured yarn (weft) and not piled. It was notice that Notification No. 14/2006-Cus dated 01.03.2006 prescribed BCD on other than Upholstery fabric at the rate of 10% only whereas Upholstery fabric attracted BCD at the rate of 10% or Rs.150 per Kg whichever is higher. To clarify this aspect, that is if the goods were in the nature of Upholstery polyester woven fabric or other than Upholstery polyester woven fabric, a letter was written to Textile Committee again. The Textile Committee informed that 'it is not possible to ascertain this specific application of the sample as the textile product may have usages depending upon the user'. Since, Textile Committee failed to give clarification on this aspect another sample was drawn and was sent to Ahmedabad Textile Industries Research Association (ATIRA). The report of ATIRA was that the goods are undyed, uncut and contains flat i.e. non-textured filament yarn in warp and textured filament yarn in weft and most importantly "the fabrics is double fabric and is Upholstery fabrics".

2.2 In view of above report, the said goods imported by appellant were seized under a punchnama. It was alleged that the appellant had declared the goods as "100% Polyester Woven Gray Fabrics" under CTH 540 751 19 attracting BCD at the rate of Rs.11 per Seq. Meter, whereas as per the report of Textile Committee the goods are classifiable under CTH 5407.61 and are Upholstery fabric as reported by ATIRA. The impugned order, apart from demanding customs duty, interest and imposing penalties, also confiscates the goods and offer them on payment of redemption fine of Rs. 10 Lakh.

2.3 Aggrieved by the said order, the appellants are before the Tribunal. The Learned Counsel pointed out that they had contended before the Commissioner (Appeals) that the use of fabric as Upholstery or otherwise should be ascertained from the market. They relied on the decision of Hon'ble High Court of Punjab & Haryana in the case of Shakti Industries vs. Revisional Authority cum Deputy Excise and Taxation Commissioner 2016 (337) ELT 344 (P & H). It was argued that the impugned order simply relies on the observation of ATIRA by holding that Ahmedabad Textiles Industry Research Association (ATIRA) is an autonomous none profit association of textile research. Learned Counsel pointed out that simply because ATIRA is a recognized institution, its view do not become Sacrosanct. He pointed out that the textile committee had given clear observation that the nature of views of fabric cannot be determined, as the goods could have various market applications and multiple uses depending on the users.

2.4 Learned Counsel pointed out that when there are two possible interpretations that the interpretations that benefits the importer needs to be followed as held by Hon'ble High Court of Kolkata in the case of Sesa International Ltd 2016 (342) ELT 481 (Cal).

2.5 Learned counsel further pointed out that exemption under Notification 14/2006-Cus depends on the nature of the goods. He pointed out that the Upholstery fabric as defined in the Notification means "material used on furniture or used to cover walls, as curtains or wall hanging and includes coverings and treatments in automobiles, Airplanes and rail-roads passenger cars." He argued that the definition of Upholstery fabric in the Notification is very precise and the report of ATIRA does not examined any of these aspects. He pointed out that the Textile committee report states that there could be multiple uses of this product and in that background holding that the said product is Upholstery, only on the strength of an opinion of ATIRA, cannot be accepted.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered rival submissions.

4.1 We find that the entire case of Revenue is based on the report of Ahmedabad Research Industries Research Association, which reads as under :-

BE No. & Date 3497668 dt. 05.10.2017

Party Name: M/s. J. K. Enterprises

Date of receipt of Sample at ATIRA: 24/11/2017

***Description of Goods**: 100% Polyester Woven Fabrics.*

Test report

- *The fabric contains 100% polyester.*
- *The fabric contains flat i.e., non-texturised filament yarn in warp and texturised filament yarns in weft.*
- *The fabric or yarn is undyed.*
- *fabric is woven with warp and welt.*
- *Fabric is uncut.*
- *Fabric is double fabric and is upholstary fabric*

The submitted sample satisfies the description given.

4.2 The report of Textiles Committee, clearly observe as follow:-

"It is not possible to ascertain the specific application of the sample as the Textiles product may have multiple uses depending upon the user"

4.3 The entire dispute before us is if the product is entitled to benefit of Notification 14/2006-CUS as Upholstery fabric or as other than Upholstery fabric. The Notification defines Upholstery fabric to mean material used on furniture or used to cover walls, as curtains or wall hangings and used fabric coverings and treatments in Automobiles, Airplanes, Rail-Road passenger Cars.

4.4 We find that there is contradiction between the report of Textile committee and the report of ATIRA. The impugned order blindly follows the report of ATIRA without going into the definition of the term Upholstery fabric as given in Notification No. 14/2006-Cus. The definition given in the said Notification is restrictive definition and covers only certain uses of the fabric. In the instance case, while the textile committee has opined that the nature of fabric will depend on usage as it could have multiple uses. The report of ATIRA is absolute. However, without giving any reason as to why it has arrived at that finding.

4.5 In this background, we do not find any merit in the impugned order blindly relying on the report of ATIRA, especially in presence of an alternate report of an equally competent body namely textile committee which clearly doubts the actual use. In this respect, the appellant had submitted a report of MANTRA: MGP: HBT dated 14.11.2017, which indicated that the impugned goods can be used as Breast pad (Bra Cap) and it can be dyed/ processed for use in garments and ladies dress materials. The impugned order does not contain any reason to discard the said opinion of MANTRA. The appellant has also given the details of the use that the imported goods by M/s Shreyas Print Pvt. Ltd. which claim to have used the said material after dying and processing as dress material. The said evidence has also not been considered.

5. In this background, the impugned order cannot be sustained. The impugned order is set aside and matter remand to the original Adjudicating

Authority to give fresh findings, after considering all the evidences produced by the appellant and after examining the nature of goods vis-a-vis the definition is given in Notification 14/2006-Cus.

6. The appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on16.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha