CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD
E-Hearing
REGIONAL BENCH - COURT NO.I

Customs Appeal No.70842 of 2024

(Arising out of Order-in-Original No.05/PC/NOIDA-CUS/2024-25 dated 09.08.2024 passed by Principal Commissioner Customs, Noida)

M/s K. K. Traders, ...**Appellant**
(5159/4, 2nd Floor, Krishna Nagar,
Karol Bagh, New Delhi-110005)

VERSUS

Pr. Commissioner of Customs, Noida ....**Respondent**
(ICD Dadri, Noida Customs)

APPEARANCE:

Shri H. K. Hirani, Consultant for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70306/2025

DATE OF HEARING : 20.02.2025
DATE OF DECISION : 20.02.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Original No.05/PC/NOIDA-CUS/2024-25 dated 09.08.2024 passed by Principal Commissioner Customs, Noida.

2. The facts of the case in brief are that on the basis of specific intelligence developed by the Directorate of Revenue Intelligence, Mumbai Zonal Unit[1] indicated that M/s K. K. Traders was evading payment of Anti-dumping duty applicable as per Notification No.14/2022-Customs (ADD) of imports of "PU Leather" from China by mis-declaring the same as "PVC Coated Fabric". Acting upon the said intelligence, two import consignments of the Appellant Container Nos. GCXU5635964 and FFAU3256180 (both 40 ft) covered under Bill of Entry No.6329542 dated 08.06.2023 and Bill of Entry No.6412506 dated 14.06.2023, respectively, were put on hold. Container No.FFAU3256180 covered under Bill of Entry No.6412506 dated

[1] DRI, MZU

14.06.2023 was examined under panchnama dated 19/20.06.2023 (**RUD-1**) at Star Track Terminals Pvt. Ltd., ICD Dadri. The relevant details of the container No.FFAU3256180 are as follows:-

Bill of Entry No./date	Name of the importer (IEC)	Name of the Shipper	Item Description	Quantity
6412506 dated 14.06.2023	K K Traders (IEC-AAJPK3080D)	Blue Union Textile Co Ltd., China	PVC Coated Fabric (Mixed Lot) Different Thickness and Different Widths	27780 Kg

The said Container No.FFAU3256180 was weighed at the weighment bridge inside the said CFS and a weighment slip was generated. The relevant details of the said weighment slip are as below:-

Ticket No.	Date	Container No.	(in Kg)		
			Gross Weight	Tare Weight	Net Weight
708627	19.06.2023	FFAU3256180	31380	3700	27680

During the examination it was found that the container was stuffed with rolls of fabric. On visual inspection it was found that on some of the rolls, stickers having description "Item Name: Knot TPU" were affixed. It was also seen that on the inside of some of the rolls inscription of "ABT PU Leather 100%" was found. Thereafter, representative samples from the different types of rolls of fabric in triplicate were collected. Container No.GCXU5635964 covered under Bill of Entry No.6329542 dated 08.06.2023 was examined under panchnama dated 20.06.2023 (**RUD-2**) at Star Track Terminals Pvt. Ltd., ICD Dadri. The relevant details of the Container No.GCXU5635964 are as follows:-

Bill of Entry No./date	Name of the importer (IEC)	Name of the Shipper	Declared Item Description	Quantity
6329542 dated 08.06.2023	K K Traders (IEC-AAJPK3080D)	Blue Union Textile Co Ltd., China	PVC Coated Fabric (Mixed Lot) Different Thickness and Different Widths	27760 Kg

The said container No.GCXU5635964 was weighed at the weighment bridge inside the said CFS and a weighment slip was generated. The relevant details of the said weighment slip are as below:-

Ticket No.	**Date**	**Container No.**	**(in Kg)**		
			Gross Weight	**Tare Weight**	**Net Weight**
708627	19.06.2023	GCXU5635964	31110	3700	27410

The facts of the case as recorded in the Order-in-Original are as under:-

> *"During the examination it was found that the container was stuffed with rolls of fabric. On visual inspection it was found that on some of the rolls stickers having description "PU Leather 100%" were affixed. It was also seen that on the inside of some of the rolls inscription of "Item Name: Knot TPU ABT PU" and "ABT PU Leather 100%" was found. Thereafter, representative samples from the different types of rolls of fabric in triplicate were collected. The registered premises of M/s KK Traders located at 2nd Floor, 5159/4, Krishna Nagar, Karol Bagh, Delhi-110005 was searched on 19.06.2023 under the provisions of Section 105 of the Customs Act, 1962 under Panchnama dated 19.06.2023 (RUD-3). During the search proceedings, Shri Muneesh Kohli, proprietor of M/s KK Traders informed that there was PU Coated Fabric and PVC Coated Fabric imported from China in the name of M/s KK Traders stored at the said premises. As per the stock status report maintained by M/s KK Traders, 56,791.35 Kg of goods described as "PVC Coated Fabric" having a value of Rs.28,37,103.17/- were present inside the premises. The said 56,791.35 Kg PVC Coated Fabric was detained under the provisions of the Customs Act, 1962 under the reasonable belief that the same have been imported from China by way of mis-declaration. The said goods were handed over to Shri Muneesh Kohli under supurdginama dated 19.06.2023. Further, relevant documents were also drawn during the said search proceedings under Panchnama dated*

19.06.2023. Five representative samples of goods stored at the said premises and declared as "PVC Coated Fabric" as per the stock status report available at the said premises were drawn and sealed during the said panchnama proceedings. During the examination of import consignments of M/s KK Traders covered under Bills of Entry No.6329542 dated 08.06.2023 and 6412506 dated 14.06.2023 under panchnamas dated 20.06.2023 and 19/20.06.2023 respectively, the goods appeared to be Polyurethane leather instead of "PVC Coated Fabric(Mixed Lot)" as declared in the Bills of Entry. Further, Shri Muneesh Kohli, proprietor of M/s KK Traders, in his statement dated 20.06.2023 recorded under Section 108 of the Customs Act, 1962, admitted that the said goods were mis-declared as PVC coated fabric instead of Polyurethane Leather in order to evade anti-dumping duty imposed on the import of PU coated Fabric from China. Therefore, the said cargo imported under Bills of Entry No.6329542 dated 08.06.2023 and 6412506 dated 14.06.2023 having declared value of Rs.11,70,615/- and Rs.11,71,458/- respectively were seized under provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 30.06.2023(RUD-4)."

3. Show cause notice[2] dated 14.06.2024 was issued and reply dated 18.07.2024 was filed. The issue involved in the present appeal is as under:-

"9.7. The dispute relates to the description of goods declared i.e. PVC Coated Fabric vs. PVC Leather. The PVC Leather attracts ADD as per Notification No.14/2022-Cus. dated 20.05.2022.

9.8. During the investigations it was explained that in respect of past 11 consignments, 1 was Flock Fabric and 1 was Knitted fabric. It was also explained that the goods are sold in local market as PVC Coated Fabric as per invoices. The Duty of Rs.25.00 lakhs was deposited.

9.9. Total 24 RSS were drawn and sent for Test to the Textile Committee. Out of 29 sealed samples, the Test Report confirmed the description of goods as PVC Coated Fabric.

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[2] SCN

9.10. The goods were released on a provisional basis as per Section 110(2) of the Customs Act, 1962 against the duty deposit of Rs.47,51,000/-.
9.11. The issue of SCN was extended by the competent authority for further 6 months vide letter dated 15.12.2023.
9.12. The findings of the investigations are:-
(i) Mis-declaration of description and CTH.
(ii) Undervaluation.
9.13. The evidence cited in support of the allegations are
(I) Test Reports
(II) Mobile Chat
(III) Statement recorded u/s 108 of Customs Act, 1962."

4. It is the case of the Appellant that there is no evidence relating to the mis-declaration of past consignments except the statement of the Appellant. The mis-declaration has to be proved with evidence of invoice and its co-relation with goods imported. When the goods are not available for the past 11 consignments; how the conclusion can be drawn that the goods imported were mis-declared and are PU Coated Fabric. There is nothing like deemed/ presumption with regard to the declaration of the goods. Each and every consignment of fabric is cleared only after the Test Report by Textile Committee. There is no Test Report in respect of past 11 consignments to prove that the goods were PU Leather. Goods imported cleared under Section 17 or 18 attend finality. Bond BG submitted are cancelled and returned.

5. Further it is also submitted that for the purpose of issuance of SCN under Section 28(1) of Customs Act, 1962, it is mandatory to issue Consultative Notice as per Pre-Consultative Regulation 2018. Without the issue of CL; the SCN is invalid.

6. Learned Authorized Representative of the Department justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

7. Heard both the sides and perused the appeal records.

8. We find that the learned Commissioner (Appeals) vide the impugned Order-in-Appeal No.NOI-CUSTM-000-APP-66-2024-25 dated 21.05.2024 allowed the provisional clearance of goods against furnishing Bond with the BG of Rs.5.00 lakhs. The Respondent instead of implementing the said orders allowing provisional release of goods; issued SCN dated 14.06.2024 and subsequently passed the impugned order dated 09.08.2024 of

confiscation without following principles of natural justice (Ex-parte). Adjudication without first releasing the goods as per Order-in-Appeal is clear contempt of the judicial authority and mockery of the adjudication proceedings.

9. On facts as stated above and under the circumstances of the case, we find it appropriate to remand the matter to the learned Principal Commissioner Noida Customs Commissionerate to consider the issues raised by the Appellant vide their grounds of appeal before the Tribunal and pass a *de novo* order by observing the principles of natural justice.

10. The appeal filed by the Appellant is allowed by way of remand to the learned Adjudicating Authority.

(Operative part of the Order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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