

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.20421 of 2018

(Arising out of Order-in-Appeal No.1032/2017 dated 26.12.2017
passed by the Commissioner of Customs (Appeals), Bangalore.)

Gokaldas Intimatewear Pvt Ltd.

No.7 & 12, Industrial Suburb,
IInd Stage, Yeshwanthapura,
Bangalore – 560 022.

Appellant(s)

VERSUS

The Commissioner of Customs

Air Cargo Complex,
Bangalore – 560 300.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri K. A. Jathin, Deputy Commissioner (Authorised Representative)
for the Respondent.

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20503 / 2025

DATE OF HEARING: 18.12.2024

DATE OF DECISION: 17.04.2025

PER : R. BHAGYA DEVI

The Appellant is engaged in manufacture of ladies intimate-wear like swimsuits, swimwear, nightwear, brassieres, lingerie, etc. The *lis* in this appeal pertains to the period from March 2010 to July 2010 wherein the Appellant had imported bra-cups/molded cups and filed Bills of Entry claiming classification under Customs Tariff Subheading 3926 2099 and paid appropriate duties of customs. Both the items imported

were “incorporated” into manufacture of swimwear/swimsuits and brassieres. On investigation, it appeared that the appellant had wrongly classified the impugned goods under Customs Tariff Heading [CTH] 3926 instead of CTH 6212, hence, the Assistant Commissioner of Customs, SIIB, Bangalore issued a show cause notice dated 12.08.2010 proposing to classify the impugned goods under CTH 6212 and demanding differential customs duty of Rs.46,94,715/- with interest. The Original Authority vide OIO No.47/2011 dated 1.3.2011 confirmed demand of differential duty of Rs.46,94,715/- with interest by re-classifying the goods (bra/molded cups) under CTH 6212. On appeal, the Commissioner (Appeals) dismissed the appeal for non-compliance, against which an appeal was filed before the Tribunal. The Tribunal vide Final Order No.252/2012 dated 17.04.2012 remanded the issue to Commissioner (Appeals) and based on this remand order, the Commissioner (Appeals) vide Order-in-Appeal No.141/2012-Cus. (B) dated 31.07.2012 upheld the demand confirmed by the original authority. Again the appellant preferred an appeal before CESTAT, Bangalore and the Tribunal vide Final Order No.767/2012 dated 27.12.2012 remanded the case back to the adjudicating authority to decide the issue afresh in accordance with the law and the principles of natural justice. Consequently, the Commissioner (Appeals) passed the present impugned Order-in-Appeal No.1032/2017 dated 26.12.2017 observing that Section 28 is squarely applicable and upheld the classification under CTH 6212 demanding differential duty along with applicable interest in terms of Section 28 read with Section 28AB of the Customs Act, 1962. Aggrieved by this order, the appellant is in appeal before us.

2. The Learned Counsel submits that the both the lower authorities have not appreciated the goods in dispute in perspective and impugned order runs contrary to the scope of relevant Tariff entries read with Section and Chapter Notes

including HSN Explanatory notes as pleaded in these submissions, *infra*. The goods in question viz., bra/molded cup (in pairs) cannot be classified under CTSH 6212 at all for the following reasons, -

- Bra/molded cup is made of polyurethane foam and polyester. The goods in question is not exclusively or used only in brassieres.
- Bra/molded cups are used to adorn swimwear/swimsuits, nightwear and brassieres.
- Bra/molded cups cannot be construed as “parts”, but mainly used for “adornment” and it is only “clothing accessory”.

2.1 It is submitted that Revenue has adopted ambivalent stand inasmuch as the classification of bra-wires under CTSH 8308 is accepted by the department and it is not disputed at all. In terms of usage of the goods, both bra/molded cup and bra-wire have the same usage/purpose and both are “clothing accessory”. Thus, when the revenue has accepted the classification of bra-wire under CTSH 8308, then the impugned order is untenable in re-classifying only bra/molded cups under CTSH 6212. The impugned order is therefore not tenable. It is submitted that in terms of Rule 1 of the General Rules for the Interpretation of Schedule (GIR) the classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. It is submitted that both the lower authorities have not appreciated the text and tenor of Chapter Note 1 of Chapter 62 and have classified the impugned order which is made out of polyurethane and polyester as an article of textile. The impugned order is not tenable in re-classifying bra/molded cup under CTSH 6212 since it is contrary to Chapter Note 1 to Chapter 62 read with HSN Explanatory Notes, for the following reasons, -

Chapter Note 1 to Chapter 62 reads thus – “1. This Chapter applies **only to made up articles of any textile fabric** other

than wadding, excluding knitted or crocheted (other than those of heading 6212)".

As per HSN General Notes to Chapter 62, p.XI-62-3, Volume 3, 2017 6th Edn., which reads thus, -

*"This Chapter covers men's, women's or children's articles of apparel, clothing accessories and parts of apparel or of clothing accessories, made up of the fabrics (excluding wadding but including felt or non-wovens) of Chapters 50 to 56, 58 and 59. With the **exception** of the articles of heading 62.12, articles of apparel, clothing accessories and parts made of knitted or crocheted material are **excluded** from this Chapter".*

In addition, as per HSN General Notes to Chapter 62, p.XI-62-3, Volume 3, 2017 6th Edn., Chapter 62 **specifically excludes:**

"(a) Articles of apparel and clothing accessories of heading 39.26, 40.15, 42.03 or 68.12."

From the above, it is clear that the impugned order is wrong in re-classifying bra/molded cups under CESH 6212. Thus, the adjudication levies are not sustainable.

The expressions/words used in Chapter Note 1 of Chapter 62, which are of capital importance are – "only", "made-up articles", "of any textile fabric". Further, in order to invoke Chapter 62 for any goods in question – it must be of

"any textile fabric";

it must be made-up articles and

"it must not be knitted or crocheted" (only exception to this is goods falling under 6212) i.e. as regards goods falling under 6212 it can be knitted or crocheted as well.

Learned counsel submitted that goods in question do not satisfy any of the above ingredients and hence, the impugned order is erroneous as per law.

2.2 Further, as submitted above, as per Chapter Note 1 to Chapter 62 read with HSN Explanatory Notes, Chapter 62 is applicable **“only to made-up articles of any textile fabric”**. The expression “made-up” is defined in Section Note 7 of CTA, 1975 as also HSN, which is abstracted below for ready reference:

“7. For the purposes of this Section, the expression “made-up” means:

Cut otherwise than into squares or rectangles;

Produced in the finished state, ready for use (or merely needing separation by cutting, dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);

Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;

Cut to size and having undergone a process of drawn thread work;

Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end piece goods composed of two or more textiles assembled in layers, whether or not padded);

Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.”

From the above, it is clear that the goods in question viz., bra/molded cup is not “made-up” article of any textile material at all. Hence, the impugned order is contrary to Section Note 7 of Section XI r/w Chapter Note 1 of Chapter 62.

2.3 He also submitted that apart from the above, the impugned order is also opposed to Section Note 1(h) to Section XI (Textiles and Textile Articles covering Chapters 50 to 63), which reads as:

"1. This Section does not cover:

...

....

...

(h) woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;"

Hence, he submitted that the impugned order is also opposed to the above Section Note, apart from being contrary to Chapter Note as pleaded in the foregoing paragraphs. Thus, the impugned order is contrary to Rule 1 of GIR and hence cannot be sustained.

2.4 The learned counsel also submits that CTSN 3926 20 covers – Articles of apparel and clothing accessories (including gloves, mittens and mitts). **This Heading includes "Collar stays, patties, butterfly, shoulder-pads and other stays".** It is submitted that bra-cup made of polyurethane foam and polyester is "clothing accessories" and is akin to goods dealt by CTSN 3926 20. Thus, the goods in question are more specifically classifiable under CTSN 3926 as against CTSN 6212. Hence, the impugned order is bereft of substance.

2.5 Further, it is stated that without prejudice to the above grounds, even assuming without admitting that the re-classification resorted to by the department is correct as per law, even then the differential duty demanded by the authorities below is excessive and is not tenable in law. It is submitted that CTSN 6212 would attract basic customs duty at the rate of 10% *ad-valorem* or Rs.30/- per piece, whichever is higher and the unit is in 'Number'. It is submitted that the imported goods is bra/molded cup in "pairs" and the imported item is always sold and purchased in "pairs" and not in single-piece and the Appellant have paid price for the imported goods "per pair" only.

However, while reclassifying the goods under CTH 6212, the department has calculated differential customs duty by adopting Rs.30/- per piece i.e. Rs.60/- per pair. This is not justified. At the most the Department should have calculated Rs.30/- per pair and not Rs.30/- for single bra-cup. For example, if one imports socks which is sold always in pairs and nobody sells single socks for one leg, then each pair is one number/set. The impugned order is therefore illegal and excessive. The question of levy of interest does not arise as there is no liability to duty.

3. The learned Authorized Representative on behalf of the Revenue submitted that the classification and valuation issue stands settled by this Tribunal in the case of **Lovable Lingerie Ltd. Versus Commissioner of Customs (Appeals), Bangalore 2024 (387) E.L.T. 678 (Tri. - Bang.) dated 10-1-2024.**

4. Heard both sides. This is the third round of litigation before this Tribunal by the appellants. The appellant's claim is that the impugned goods are classifiable as polyurethane foam under CTH 3926. It is not in dispute that the product imported by the appellant is nothing but "Bra-Cups" which are used as part of brassieres or swimsuits and the description in the invoice is moulded cups, which in other words, refers to the cut-to-shape to fit into a brassieres or swimsuits. The Original Authority taking Note of Chapter Note 2(p) of Chapter 39 of Customs Tariff Act, 1975 which reads as 'this Chapter does not cover goods of Section XII (Textile and Textile Articles)', held that these products are specifically excluded from CTH 39. On the other hand, CTH 6212 includes Brassieres and parts thereof, therefore, since the impugned products are declared as Bra-Cups/Molded Cups, the question of classifying the same as polythene sheet under CTH 3926 does not arise but rightly classifiable under CTH 6212.

5. The Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Aurangabad vs. Videocon Industries Ltd.: 2023 (384) ELT 628 (SC)** dated 29.3.2023 in deciding the classification held as follows:

"25. The difficulty in accepting the revenue's argument, in this case, is that it jumps over interpretive instructions. One, General Note (1) states that classification has to be in consonance with terms and headings in chapter notes. Two, Rule 3(a) categorically enjoins that in regard to classification, the heading providing for a "more" specific description prevails over the general one. Three, Note 1(m) - in Chapter 85 excludes the application of articles falling in Chapter 90. In this Court's opinion, this note, along with the General Note 3(a) [of the General Rules of Interpretation] that headings that are specifically provided, should be preferred over the general ones, is decisive. Thus, the revenue's contention that by virtue of Note 2(b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1(m), which excludes Chapter 90 goods (which includes LCD panels). More importantly, Note 2 opens with the expression "subject to Note 1". This subordinates the entire subject matter in Note 2; it is only where the article is a "part" which acts as an accessory, that the enumerated portions of Chapter 85 come into play. Such an interpretation is plainly untenable. In *Commissioner of Central Excise, Delhi-III v. UNI Products India Ltd.* [[2020] 13 S.C.R. 295; 2020 (19) SCC 742 = 2020 (372) E.L.T. 465 (S.C.) = [2020] 116 taxmann.com 401 (SC)] this Court had to consider whether "car matting" fell within Chapter 57 of the I Schedule to the CET Act per heading "Carpets and Other Textile Floor Coverings" or were to be classified under Chapter 87, as "vehicles other than railway or tramway rolling-stock and parts and accessories thereof. The court held that the item fell within the description "car matting":

"25. We do not find any error in such reasoning Chapter 87 of the Central Excise Tariff of India does not contain car mats as an independent tariff entry. We have reproduced earlier the various parts and accessories listed against tariff entry 8708. All of them are mechanical components, and revenue want car mats to be included under the residuary sub-head "other" in the same list. The HSN Explanatory Notes dealing with interpretation of the Rules specifically exclude "tufted textile carpets, identifiable for use in motor cars from

87.08 and place them under heading 57.03 Revenue's argument is that the Explanatory Notes have persuasive value only. But the level or quality of such persuasive value is very strong, as observed in the judgments of this Court to which we have already referred. Moreover, the Commissioner himself has referred to the Explanatory Notes in the order-in-original while dealing with the Respondent's stand. Thus, we see no reason as to why we should make a departure from the general trend of taking assistance of these Explanatory Notes to resolve entry related dispute. Now, on referring to these Explanatory Notes, we find that one category of carpets [Textile carpets (Chapter 57)] has been excluded specifically from parts and accessories. In our opinion, the subject-item does not satisfy the third condition specified in Section XVII of the Explanatory Notes in relation to "III-Parts and Accessories" A plain reading of clause (C) thereof, which we have quoted above, excludes "textile carpets" (Chapter 57).

26. The main argument of the Appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the "common parlance" test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries."

6. In view of the above, since CTH 6212 specifically includes brassieres and their parts and in view of Rule 3(a) of the Interpretative Rules, the specific description is preferred to the general description as ‘polythene sheet’ under CTH 3926. Moreover, the item imported is cut-to-shape and it is categorically declared as bra-cup or a molded cup which can only be used as part of brassieres / swimsuits which is not in dispute. It is also clearly admitted that the imported goods is bra/molded cup in “pairs” and the imported item is always sold and purchased in “pairs” and not in single-piece and the Appellant have paid price for the imported goods “per pair” only. Therefore, the products are rightly classifiable under CTH 6212 which has already been settled by this Tribunal in the case of **Lovable Lingerie Ltd. Versus Commissioner of Customs (Appeals), Bangalore 2024 (387) E.L.T. 678 (Tri. - Bang.) dated 10-1-2024** while deciding the classification and valuation of bra cups held as follows:

“6. The second issue is regarding classification of the imported goods. Let’s examine the relevant entries which reads as:

CHAPTER 39 Plastics and articles thereof

3926	- Other Articles of Plastics and Articles of Other Materials of Headings 3901-3914
	--- Collar stays, patties, butterfly, shoulder-pads and other stays :
3926 20 41	---- Of polyurethane foam
3926 20 49	---- Other
3926 20 91	---- Of polyurethane foam

The HSN Notes reads as

This heading covers articles, Note 1 to the Chapter) or elsewhere specified or included, of plastics (as defined in of other materials of headings 39.01 to 39.14

They include:

- (1) Articles of apparel and clothing accessories (other than toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong.*
- (2) Fittings for furniture, coachwork or the like*
- (3) Statuettes and other ornamental articles.*
- (4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.*
- (5) Paperweights, paper-knives, blotting-pads, pen-rests, bookmarks, etc.*
- (6) Screws, bolts, washers and similar fittings of general use.*
- (7) Transmission, conveyor or elevator belts, endless, or cut to length and joined end to end, or fitted with fasteners. belts or belting of any kind, presented with the machines or Transmission, conveyor or elevator belts apparatus for which they are designed, whether or not actually mounted, are classified with that machine or or apparatus (eg. conveyor belts Section XVI). In addition, this heading does not cover transmission or or belting, of textile material, impregnated, coated, covered or laminated with plastics (Section XI, cg, heading 59.10).*
- (8) Ion-exchange columns filled with polymers of heading 39.14.*
- (9) Plastic containers filled with carboxymethylcellulose (used as ice-bags).*
- (10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02)*
- (11) Pacifiers (or "baby's dummies"); ice-bags; douche bags, enema bags, and fittings therefore, invalid and similar nursing cushions; pessaries, sheath contraceptives (prophylactics), bulbs for syringes.*

(12) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.,) beads, watch "glasses", figures and letters, luggage label-holders.

(13) Artificial fingernails.

The heading excludes household articles such as dustbins and mobile garbage bins (including those for outside use).

As seen from the above description of the articles the question of classifying the bra cups under Chapter 39 is ruled-out. Moreover, the appellant themselves are not clear as to where to classify them and accordingly claim classification under 3 different Headings 39262041 or 39262049 or 39262099.

CHAPTER 62 Articles of apparel and clothing accessories, not knitted or crocheted

1. This Chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted (other than those of heading 6212).

2. This Chapter does not cover :

- (a) worn clothing or other worn articles of heading 6309; or
- (b) orthopaedic appliances, surgical belts, trusses or the like (heading 9021).

15. Subject to Note 1 of Section XI, textiles, garments and other textile articles, incorporating chemical, mechanical or electronic components for additional functionality, whether incorporated as built-in components or within the fibre or fabric, are classified in their respective headings in Section XI provided that they retain the essential character of the goods of this section.

(h) woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated,

62.12- Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted.

6212.10 Bras

6212.20 Girdles and panty-girdles

6212.30 Corsets

6212.90 Other

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

The heading includes, inter alia:

- (1) Brassieres of all kinds.
- (2) Girdles and panty-girdles.
- (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
- (4) Corsets and corset-belts. These are usually reinforced with flexible metallic or plastic stays, and are generally fastened by lacing or by hooks.
- (5) Suspender-belts, hygienic belts, suspensory bandages, suspender jock-straps, braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
- (6) Body belts for men (including those combined with underpants).
- (7) Maternity, post-pregnancy or similar supporting or corrective belts, not being orthopedic appliances of heading 90.21 (see Explanatory Note to that heading).

All the above articles may be furnished with trimmings of various kinds (ribbons, lace, etc.), and may incorporate fittings and accessories of non-textile materials (e.g., metal, rubber, plastics or leather).

The heading also includes knitted or crocheted articles and parts thereof obtained by manufacture directly to shape by increasing or decreasing the number or size of the stitches and designed to be used for the manufacture of articles of this heading, even when presented in the form of a number of items in the length. The heading does not include corsets and belts made wholly of rubber (heading 40.15).

As seen above from the HSN notes, it is absolutely clear that the bra cups are to be classified under 6212. The only contention of the appellant is that since the chapter notes excludes woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, as per clause (h) it should be classified under Chapter 39. This exclusion cannot be read in isolation without all other factors that describe the article. As seen from the General Interpretative Rules (reproduced below), the goods are to be classified as per the terms of the section notes and the Chapter notes. In this case, the Chapter 6212 clearly includes Brassier and when there is a specific

description, the goods cannot be classified based on the content of the material used to manufacture the same. The Interpretative Rules reproduced below as seen under clause 2(a) the essential character of the product decides the classification and here the bra cups undoubtedly are used as part of a Brassier and the impugned products are more akin to the description given under 6212 and therefore rightly classifiable under 6212 90 as per clause 4 of the Interpretative Rules.

The General Rules for the Interpretation of Import Tariff

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

7. Regarding the benefit of the Notification, since it was not claimed at the time of import and the conditions therein were not satisfied the question of extending the benefit does not arise.

8. On the question of duty proposed to be charged, it is submitted that duty is to be charged on the value of the pair and not on single piece. The packing list placed before us clearly shows the items were imported in pairs and it is also a fact that a pair of bra cups are used for one brassier. The invoice also shows that the unit price shown is per pair and accordingly the total value is calculated. Therefore, the unit price for the pair should be taken as per unit price (set of 2 pieces) rather than artificially splitting the

price for per piece. Section 19 of the Customs Act takes cognisance of articles imported in sets and therefore we find the said goods which are in pairs should be considered as a unit and the rate of duty to be calculated accordingly.

9. In view of the above, we uphold the classification of the imported goods under CTH 6212 and consequently, impugned order is upheld as far as classification is concerned and appeal is remanded to the adjudicating authority to recalculate the duty taking into consideration the unit price for pairs as a single unit price.”

7. Based on the above discussions we hold that the goods are rightly classifiable under CTH 6212. Appellant’s contention that these products are in pairs and these products are always sold and purchased in “pairs” and not in single-piece and the Appellant have paid price for the imported goods “per pair” only is accepted and accordingly, the declared unit price for pairs is to be considered as price for two-pieces (pairs) and not for as a single piece. Hence, the claim of the appellant with regard to valuation is accepted.

8. In view of the above, Appeal is partially allowed and the appeal is remanded to the adjudicating authority only for the purpose of re-determining the duty taking into consideration the unit price for pairs as a single unit price.

(Order was pronounced in Open Court on 17.04.2025.)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)