CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

(VIRTUAL HEARING)

Customs Appeal No. 20126 of 2022

Customs Addl. Evidence Application No. 20024 of 2024
Customs Addl. Evidence Application No. 20167 of 2024
Customs Miscellaneous Application No. 20168 of 2024
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(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-103/2021-21 dated 10.11.2020 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Sai Interiors
1st Floor, 18 & 20 Paras Tierea,
Sector 137, Noida,
Uttar Pradesh– 201 301. **....Appellant**

VERSUS

Commissioner of Customs
Customs House, Willingdon Island,
Cochin,
Kerala – 682 009. **.....Respondent**

Appearance:

Mr. Vipin P. Varghese, Advocate for the Appellant
Mr. Maneesh Akhoury, Authorised Representative (AR) for the Respondent

CORAM:
Hon'ble Mr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member(Technical)

<u>Final Order No. 22139 /2025</u>

Date of Hearing: 17.04.2025
Date of Decision: 16.10.2025

Per: Pullela Nageswara Rao

This appeal was filed against Order-in-Appeal No. 103/2020 dated 10.11.2020 passed by the Commissioner of Customs (Appeals), Cochin.

2. The brief facts are the importer, M/s. Sai Interiors, filed 2 (two) Bills of Entry for clearance of goods declared as "Polyester Roller Window Blinds Fabric ready for use (bill of entry No. 109823 dated 04.10.2019) and claimed duty exemption at Sl. No. 304 of Notification. No. 82/2017 dated 27.10.2017 and "Polyester Fabric for Ready Goods 118" (bill of entry No. 109443 dated 04.09.2019) and claimed duty exemption at Sl. No. 494 of Notification. No. 152/2009 dated 31.12.2009 and self-assessed under Customs Tariff Heading (CTH) 6303 9200. The goods were examined on first check and samples were drawn and sent to the Textile Committee. The Customs authorities, relying on test reports from the Textile Committee, proposed reclassification of the goods under Customs Tariff Heading (CTH) 5903.90 (fabrics impregnated with plastics), the appellant contested the proposal, thereafter the remnant samples were sent to Custom House Chemical Laboratory (CRCL), Cochin. Based on the test reports of Textile Committee and CRCL a show cause notice (SCN) was issued proposing classification of the goods under Customs Tariff Heading (CTH) 5903.90 and proposal for confiscation of goods under Section 111(m) and penalties under Section 112(a) of the Customs Act, 1962. On adjudication goods were reclassified under Customs Tariff Heading (CTH) 5903.90 (fabrics impregnated with plastics) disallowing the benefit at Sl. No. 304 of Notification No. 82/2017-Cus dated 27.10.2017 and the demand of differential duty amounting to Rs. 5265/- in the case of bill of entry no. 109823 dated 04.10.2019 and Rs. 9946/- in the other bill of entry no. 109443 dated 04.09.2019 was confirmed. Further Redemption Fine of Rs. 10,000/- under section 125 and penalty of Rs. 5000/- under section 112 (a) of the Customs Act, 1962 were also imposed. Aggrieved by the order of the adjudicating authority the appellant filed an appeal before Commissioner (Appeals), who rejected the appeal. Aggrieved by the impugned Order-in-Appeal dated 10.11.2020 the appellant filed this appeal before the Tribunal.

3. The learned counsel for the appellant during the hearing submits that; the Appellant self-assessed these goods under Customs Tariff Heading (CTH) 6303 9200, which covers "Curtains (including drapes) and interior blinds; curtain or bed valances-of synthetic fibres-Other." claiming the benefit of Notification No. 82/2017-Cus at Sl. No. 304; on first check examination, samples were drawn and the goods were subjected to testing by the Textile Committee, Kochi; Textile Committee vide their Report No. 332/2019-2020 dated 22.10.2019 described the goods as "woven fabrics made of Polyester yarn impregnated with Polymer-based material and Polyester yarn" and certified as falling under HS Code 5903.90. Similarly, for the second Bill of Entry, the Textile Committee vide their Report No. 300 to 306/2019-2020 dated 24.09.2019 provided the same description and HS classification; the Appellant contested the Textile Committee's findings and requested retest, citing that they have been importing the same goods through other ports under Customs Tariff Heading (CTH) 6303 9200. Consequently, remnant samples were sent to CRCL, Customs House, Cochin for retest. CRCL vide their test report no CHLK/T-156 to 163 dated 20.01.2020 reported that the samples were woven fabrics composed of Polyester filament impregnated with Polymeric material; based on the test reports from both the Textile Committee and Customs House Laboratory, the Asst. Commissioner of Customs vide Order No. 115/2019-20 dated 05.03.2020 held that the goods imported were mis-declared under Customs Tariff Heading (CTH) 6303 9200 and are correctly classifiable under CTH 5903.90 and that the declaration of the goods was in violation of provisions of Section 46(4) of the Customs Act, 1962, rendering them liable for confiscation.

4. The learned counsel submits that the Textile Committee Report is non-binding in nature; Sections 4(2)(i) and 11(3) of the Textiles Committee Act, 1963 provides that the function of the Committee is to "advise on all matters relating to the

development of textile industry and the production of textile machinery" and that "on receipt of the report referred to in sub-section (1), the Committee may tender such advice, as it may deem fit, to the manufacturer of textiles, the manufacturer of textile machinery and the applicant". The provisions clearly state that the report of the Committee is non-binding as it is advisory in nature; the Textile Committee Report fails to access the required parameters as given in Annexure 2 of the Revised test charges of Laboratories of Textiles Committee with effect from February-2018; the Report only examines limited parameters: fiber identification (confirming Polyester content), fiber blend composition (showing 93.2% Polyester and 6.8% dipped material described as "Polymer Based Material"), and mass per square meter. The remainder of the report focuses solely on testing for prohibited dyes and harmful amines, which are regulatory compliance tests rather than classification-determinative tests; the report fails to assess multiple mandatory parameters outlined in Annexure-2 for impregnated textiles, including: whether the fabric is woven/knitted/non-woven, whether it is unbleached / bleached /dyed / printed, whether made of staple spun yarn / filament yarn, the specific nature and visibility of the woven / knitted / non-woven, whether it qualifies as coating / lamination / impregnation, upholstery / non-upholstery, and whether it contains PVC / PU/ other coating. Most significantly, the report contains no assessment of the crucial parameters required by Note 2(a) of Chapter 59 that would determine classification under heading 5903, such as whether the impregnation is visible to the naked eye; mere presence of 6.8% "polymer based material" without proper characterization of its nature, distribution, visibility, and effect on the fabric's physical properties is wholly insufficient to justify classification under heading 5903. This superficial testing fails to meet Committee's own standards and renders its classification recommendation procedurally and substantively deficient.

5. The learned counsel submits that; the Textile Committee Report was inconclusive. The Textile Committee, Mumbai, when queried under the Right to Information Act, regarding its ability to perform chemical tests to ascertain whether the yarn is texturized or non-texturized, replied vide letter dated 24.08.2018 to the Appellant, that it lacks the capacity to conduct such chemical tests. Despite this, the Committee has identified the goods as falling under Customs Tariff Heading (CTH) 5903.90 relying solely on the nature of the product i.e.,, woven fabrics made of Polyester yarn impregnated with Polymer based material and Polyester yarn. This classification of the Committee is inconclusive as they neither disclosed the method used to determine "impregnation" nor explained the basis for its conclusion and has itself admitted its inability to perform chemical testing; the Textile Committee Report suffers from severe methodological deficiencies and it conducts no comparative analysis with the standard reference samples as the report does not have any mention about whether or not the goods falls under Note 2(a) of Chapter 59 of the Customs Tariff Act, 1975-First Schedule (as amended), which reads as under;

"2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of plastic material (compact or cellular), other than:

*(**1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour.***

(2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 150C and 300C (usually Chapter 39);

(3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39);

(4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);

(5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39); or

(6) Textile products of heading 5811;"

6. The learned counsel submits that in view of the above Chapter note 2(a) even if we assume that the material contains some degree of Polymer impregnation, classification under Chapter 59 would only be justified if the specific threshold requirements established in Note 2(a) of Chapter 59 are satisfied.

7. The learned counsel submits that; selective and inadequate Testing Methodology of the Textile Committee undermines the cited precedent; the Appellant's reliance on Commissioner of Customs (Import)(ICD TKD) New Delhi Vs. Shri Dinesh Lohia, [2019(370)E.L.T.366(Tri-Del)] is fundamentally flawed due to critical differences in the testing methodology. In the Dinesh Lohia case, the Hon'ble CESTAT's decision was substantially predicated on the Textile Committee's

comprehensive GSM analysis, where the Court held that *"The test report also confirmed that the GSM of the product is high and such types of fabrics found used as roller blend fabrics in the literature available. From the Test Report, it is evident that these goods are not fit for any other use in normal course*". A key factor in that favourable ruling was the Textile Committee's thorough analysis of the GSM (grams per square meter) measurement, which substantiated the conclusion that *"these goods are not fit for any other use in normal course."*

8. The learned counsel further submits while the Textile Committee Report does acknowledge the mass per square meter of our imported material, falls conspicuously short of providing the comprehensive analysis that would have likely confirmed our classification position.

9. The learned counsel submits that; for classification under Chapter 59, the impregnation, coating, or covering must be substantial enough to alter the essential character of the fabric and must be visible to the naked eye as explicitly stated in Chapter Note 2(a)(1) of Chapter 59 of the Customs Tariff Act, 1975-First Schedule (as amended); Customs Excise and Gold (Control) Appellate Tribunal in the case of Ducksole (I) Ltd. Vs Commissioner of Central Excise, Bangalore [2000 SCC OnLine CEGAT 1212 : (2000) 125 ELT 830] where in a similar question as to whether a goods fall under Chapter 52 or 53 was raised has held that;

> *"However, Section Note 5 (earlier it was Section Note 4 till 1989-90) excludes the applicability of Heading 59.06 to certain fabrics as detailed therein. Its para (a) with which we are concerned, reads as under:*
>
> *"(5) Heading No. 59.06 does not apply to -*
>
> *(a) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to*

55, 58 or 60); for the purpose of this provision, no account should be taken of by resulting change of colour;"

10. The learned counsel submits that; it is quite evident that the fabric in which the impregnation, coating or covering cannot be seen with the naked eyes would not stand covered by Customs Chapter Heading (CTH) 59.06 for the purpose of classification. It is only when the impregnation, coating or covering can be seen with the naked eyes on the fabric, the product would be classifiable under this Heading. A mere reading of the above will show that the subject goods - Polyester roller window blinds fabric do not meet these stringent requirements as the Textile Committee Report fails to demonstrate that any visibility testing was conducted, and there is no evidence that the Polymeric impregnation is visible to the naked eye as explicitly required by Note 2(a)(1).

11. The learned counsel submits that; Chapter 63 specifically addresses Made-Up Textile Articles including Interior Blinds; According to the HS Code, Chapter 63 covers "Other made-up textile articles; sets; worn clothing and worn textile articles; rags.". Specifically, heading 6303 applies to "curtains (including drapes) and interior blinds: curtain or bed valances and all goods of sale value exceeding Rs. 1000 per piece".

12. The learned counsel further submits that; according to Note 7 of Section XI of Chapter 50 of the Customs Tariff Act, 1975, "made-up" means:-

"(a) Cut otherwise than into squares or rectangles;

(b) 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)

(c) Cut to size and with at least one heat-sealed edge with a visibly tapered compressed border and the other edges treated as described in any other sub paragraph of this Note, but excluding fabrics the cut edges of which have been prevented from unravelling by hot cutting or by other simple means;

(d) 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;

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

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

(g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length."

13. The learned counsel submits that; As per the Customs House Laboratory vide test report CHLK/QR-51 stated in the sample nature of the material as "the sample is a cut piece of fabric it is composed of base net fabric and weave with filament yarn at regular intervals to form strip design. It is composed of Polyester filament impregnated with Polymeric material". This satisfies point "f" as the description mentions that "composed of base net fabric and weave with filament yarn at regular intervals" and "impregnated with polymeric material," indicating assembly beyond mere fabric cutting. The goods meet the definition of "made-up" under point "(b)" as well, being "produced in the finished state, ready for use" with minimal

additional processing required to function as window blinds; the key distinction is that true "assembly" in this context requires manufacturing processes that transform the textile materials into a new, purpose-specific product with distinct characteristics from the original materials; the base net fabric provides structural support and light filtration; woven with filament yarn creates functional strip designs that reinforce the structure and control light; the Polymeric impregnation transforms the material by enhancing durability, providing UV protection, adding dimensional stability, improving stain resistance, and potentially increasing fire retardancy; these combined manufacturing processes create a specialized product with distinct characteristics specifically designed for use as window blinds, justifying classification under Custom Chapter Heading 6303 as interior blinds.

14. The learned counsel submits that; the principle of specific over general classification applies to the subject goods; according to Rule 3(a) of the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975,

"When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to heading providing a more general description; Heading 6303 specifically includes "interior blinds" and as a clearly identified product category, whereas Chapter 59 broadly covers impregnated textile fabrics without specific reference to finished products like window blinds; The subject goods' primary identity is as "polyester roller window blinds fabric ready to use" -made-up textile article specifically designed and manufactured for use as interior window blinds. The presence of any incidental impregnation does not override this specific functional identity and intended use. The goods purpose-specific design, manufacture, and ready-to-use condition align precisely with the specific description in chapter heading 6303, making this classification more appropriate than the general category of impregnated fabrics. In the present case, the imported material is specifically manufactured as window blinds fabric ready for use, with specialized features including light control and durability enhancements. This specific nature and purpose directly correspond to the chapter heading 6303 description, making it the more specific and appropriate classification for the subject goods. This position is further substantiated by the Hon'ble Supreme Court's judgment in Commissioner of Customs and Central Excise, Amritsar (Punjabi .D.L. Steel and Others (2023) 17 SCC 358, wherein the Hon'ble Court held;

> *" 14. We would, at this stage, take on record the well settled principle that words in a taxing statute must be constructed in consonance with that commonly accepted meaning in the trade and their popular meaning."*

Applying this principle to the present case, the subject goods are commercially recognized and traded specifically as window blinds fabric ready for use, which aligns directly with heading 6303 rather than the broader classification of impregnated fabrics under Chapter 59.

15. The learned counsel submits that; The Appellant has rightly classified the Goods under the Heading 6303 in the bills of entry; the Textile Committee Report dated 24.09.2019 clearly states that the goods consist of more than 90% Polyester with the rest being "Polymer based material" under its Test Results. The definition of "Polyester" falls under the ambit of synthetic fibre according to Chapter Note 1(a) read with the definition of "synthetic" provided under the same note of Chapter 54, as under:-

"1. Throughout this Schedule, the term man-made fibres means staple fibres and filaments

NOTES:

of organic polymers produced by manufacturing processes either:

(a)by polymerisation of organic monomers to produce polymers such as polyamides, poly-esters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process (for example, poly(vinyl alcohol)prepared by the hydrolysis of poly(vinyl acetate)); or

(b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates.

The terms -synthetic and artificial, used in relation to fibres, mean: synthetic: fibres as defined at (a); artificial : fibres as defined at (b).

Strip and the like of heading 5404 or 5405 are not considered to be man- made fibres.

The terms -man-made, -synthetic and artificial shall have the same meaning when used in relation to -textile materials.;

2. Headings 5402 and 5403 do not apply to synthetic or artificial filament tow of Chapter 55."

16. This definition has been applied in the case of Sunil Kumar Gilra vs. CC (Export) Nhava sheva of the Custom, Excise & Service Tax Tribunal, dated 10th October, 2019 (Customs Appeal No. 85150 of 2013), wherein it is held:-

> *"In view of Chapter Notes of Chapter 54 Polyester falls under the category of 'synthetic' whereas 'Viscose rayon' falls under the category of 'artificial'. It is also mentioned in the chapter notes that these notes are applicable to the goods falling under Chapter 55 also as the same definition extends to throughout the schedule when used in relation to 'textile materials'."*

17. The learned counsel submits that; since CTH 63039200 specifically covers "Curtains (including drapes) and interior blinds; curtain or bed valances" made "of synthetic fibres" and the goods primarily consist of Polyester, which is a synthetic fibre as stated above, their classification is appropriate and fully substantiated. The Appellant has rightly classified the goods in Bills of Entry No. 109823 dated 04.10.2019 (Document 20) and No. 109443 dated 04.09.2019 (Documents 4 & 5) under the heading 6303; the Textile Committee has erred in classifying the goods under the Heading 5903; According to Note 2(a) (4) of chapter 59, it has been provided that "fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments" are excluded from the heading 5903. As per the Textile Committee Report dated 24.09.2019, an amount of Polymer, i.e., less than 10%, has been identified as the goods' constituent. Since Polymers can be brought under the ambit of plastics, it can be stated that the goods are exempted from the heading 5903, further substantiating that the Textile Committee has erred in classifying the goods under 5903.

18. The learned counsel submits that; there can be no differential treatment; consistent classification of the goods by the Textile Committee across Ports in India; the facts set forth

demonstrate a clear pattern of uniform classification by the Textile Committee for identical goods imported by the Appellant from the same supplier, M/s. Xera Co. Ltd., Korea, across multiple Indian ports, including Tughlakabad, Sonepat, Faridabad, Delhi, Chennai. and in each case resulted in classification under HS Code 6303, supported by Textile Committee Reports. The Test Report Number TC/LCH/Q/1349/2019-20, dated 04.07.2019, obtained by the Appellant with reference to an import of similar goods from M/s. Xera Co. Ltd., Korea., clearly specifies the grounds under which the imported goods were classified under Chapter heading 6303. This classification is directly reinforced by the decision in Order-in- Appeal No.CC(A)CUS/ICD/PPG/928/2022-23, passed by the Office of the Commissioner of Customs (Appeals) in a factually identical case involving the same importer. In that case, the goods were initially self-assessed under CTH 6303 92 00, but were later reclassified by the assessing authority under CTH 5407 63 00, based on laboratory findings describing the fabric as polyester yarn impregnated with Polymeric material. The Commissioner (Appeals) rejected this reclassification and reaffirmed that the fabric, though in roll form, was a made-up article, owing to its fixed dimensions, purpose specific construction, and minimal post-import processing. The decision acknowledged that the fabric was commercially and functionally recognized as a window blind material and not as general purpose textile fabric. In the present case, the Appellant's imports from M/s. Xera Co. Ltd., Korea have been consistently cleared under CTH 6303 with nil duty, yet similar goods have been classified differently by the Respondent. Furthermore, the Textile Committee Report from Chennai, concerning an import from the same consignor, explicitly incorporates the relevant parameters to classify the goods under CTH 6303, thereby confirming the consistency in treatment across different ports. Such selective deviation in classification, in the absence of any intelligible differentia, amounts to arbitrary and unjust differential treatment. This is substantiated by the ruling of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore in M/s. Juniper Networks Solution India Pvt. Ltd Vs. The Principal Commissioner Of Customs (Customs Appeal No. 20415 of 2024) wherein the Tribunal held that:

'Such a differential classification of the impugned goods imported at different places would negate the very purpose of the Tariff Act on the one hand and would cause avoidable litigation for the importers on the other.'

Therefore, differential classification of same goods imported at different places would negate the very purpose of The Customs Tariff Act, 1975. It clearly establishes that inconsistent classification of identical goods based solely on the port of import constitutes unjust discrimination and undermines the uniformity and certainty that the Customs Tariff seeks to uphold. In light of this, the Respondent's deviation from consistently accepted classification standards not only violates statutory classification norms but also offends the Constitutional guarantee of equality before the law. Therefore, the goods imported by the Appellant are entitled to the same classification under CTH 6303, and the inconsistent treatment adopted by the Respondent deserves to be set aside as arbitrary, discriminatory, and violative of both statutory classification principles and the Constitutional mandate of equal treatment under Article 14.

19. The learned counsel places reliance on the following case laws

1. Commissioner of Customs (Import) (ICD TKD), New Delhi Vs. Shri Dinesh Lohia [2018 SCC OnLine CESTAT 3299]

"16 After going through the impugned order, we find that the ld. Adjudicating authority has very clearly and precisely held that the 'subject goods' fall under chapter heading 63039200

and not under 54077200 as claimed by the Department. In the adjudication order ld. Adjudicating Authority has taken support from HSN and European Commission, Customs Code Committee, Section Notes and Chapter Notes to classify the product under 63039200. In the Appeal Memorandum, Revenue has taken only ground that since the imported goods are in Roll form and hence not 'made up' to be classified under Chapter 63039200. This aspect has been examined in the impugned order at para 34.4, 34.5 and 34.6 (supra). In this case, the importer has imported the fabrics which is suitable for use as curtain blends only. The CTH Heading 5404 of Customs Tariff is for "woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of Heading 5404". This heading covers the General purpose fabric with some others like parachute fabrics and Tent fabrics. The test report also confirmed that the GSM of the product is high and such types of fabrics found used as roller blend fabrics in the literature available. From the Test Report, it is evident that these goods are not fit for any other use in normal course. We, therefore, conclude that Revenue appeal is devoid of merits."

2. Ducksole (I) Ltd. Vs. Commissioner of Central Excise, Bangalore *[2000 SCC OnLine CEGAT 1212: (2000) 125 ELT 830]*

"7 However, Section Note 5 (earlier it was Section Note 4 till 1989-90) excludes the applicability of Heading 59.06 to certain fabrics as detailed therein. Its para (a) with which we are concerned, reads as under:

"(5) Heading No. 59.06 does not apply to -

(a) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to

55, 58 or 60); for the purpose of this provision, no account should be taken of by resulting change of colour;"

Therefore, it is quite evident that the fabric in which the impregnation, coating or covering cannot be seen with the naked eyes would not stand covered by Heading 59.06 for the purpose of classification. It is only when the impregnation, coating or covering can be seen with the naked eyes on the fabric, the product would be classifiable under this Heading."

3. Commissioner of Customs and Central Excise, Amritsar (Punjab) Vs. D.L. Steel and Others [(2023) 17 SCC 358]

"*14. We would, at this stage, take on record the well settled principle that words in a taxing statute must be constructed in consonance with their commonly accepted meaning in the trade and their popular meaning."*

4. Sunil Kumar Gilra vs. CC (Export) Nhavasheva of the Custom, Excise & Service Tax Tribunal [2019 SCC OnLine CESTAT 6726, Customs Appeal No. 85150 of 2013, dated 10 October, 2019]

" 4.3. In view of Chapter notes of Chapter 54 Polyester falls under the category of 'synthetic' whereas 'Viscose rayon' falls under the category of 'artificial'. It is also mentioned in the chapter notes that these notes are applicable to the goods falling under Chapter 55 also as the same definition extends to throughout the schedule when used in relation to 'textile materials."

5. M/s. Juniper Networks Solution India Pvt. Ltd vs. The Principal Commissioner Of Customs [Customs Appeal No. 20415 of 2024, dated 20.12.2024]

"7. We also find that the department has not filed any appeal against the order passed by learned Commissioner (Appeals), Hyderabad and whereas no appeal has been filed against the

order passed by Commissioner (Appeals), Mumbai. We find that it is not open that the Department to take a different stand on the same issue in Mumbai and Hyderabad. Such a differential classification of the impugned goods imported at different places would negate the very purpose of the Tariff Act on the one hand and would cause avoidable litigation for the importers on the other hand. We find that the findings given by the ld. Commissioner (Appeals) vide the order cited above are quite elaborate and reasoned which were followed by the learned Commissioner (Appeals), Mumbai in the impugned order. Therefore, we find that no case has been made out by the Department against the impugned orders and accordingly, we find that the impugned orders do not require any interference by this Bench."

20. The learned Authorised Representative (AR) For the Revenue reiterated the findings in the impugned order of the Commissioner. He further submits that; two tests have been done in this issue one by Custom House Laboratory and another by Textile Committee. The Custom House Laboratory (CHL) is a technical expert opinion under Section 156 of the Customs Act, 1962. The CHL's independent re-testing (Circular No. 30/2017) corroborated the findings of Textile Committee Report; both the tests focused on polymer impregnation, in arriving at the decisive factor for classification under CTH 5903.90. Learned AR as regards reliance on CESTAT order in the case of Shri Dinesh Lohia - [2019 (370) E.L.T. 366 (Tri.-Del.)] submits that; the CESTAT order is fact-specific and distinguishable. The issue in the relied upon case law is classification of goods between CTH 5407 72 versus CTH 6303 92 whereas, in the case at hand it is between CTH 5903 90 versus CTH 6303 92. Moreover, the importer, Dinesh Lohia was also importing the subject goods under CTH 5903 90 (para 2 of the cited Order); Classification hinges on objective characteristics, not subjective intent

(Supreme Court in CCE Vs. Wood Polymers Ltd.). The learned AR as regards goods intended for use as Blinds submits that; Customs classification depends on product nature, not end-use. The goods are fabric rolls requiring substantial processing (e.g., cutting, adding fixtures for hanging on pelmet and thread for pulling up-down or sideways) to become blinds. As per HSN, Chapter 5903 includes "furnishings". Furnishings in common understanding includes curtains, along with other items like furniture, rugs, and decorative objects. Specifically, curtains are considered a type of soft furnishing; Chapter Notes to 6303, only covers textile fabrics "so processed after weaving that they are clearly suitable for conversion by minor operations." In the case at hand, significant steps are needed, disqualifying classification under CTH 6303. The learned AR as regards alleged inconsistency in various ports classifications submits that; each case is assessed on its merits, the examination of goods and test reports. To corroborate, list of same goods being imported under CTH 5903 at various port across India was submitted; as regards misapplication of HSN Explanatory Notes, the appellant misinterprets "minor operations." The imported fabric lacks essential features of finished blinds (e.g., frilled edges, fixtures) hence General Rule 2(a) for incomplete articles is inapplicable. As regards natural justice and procedural compliance, the appellant was granted a personal hearing, retesting opportunities, and a corrigendum was issued.

21. The learned Authorised Representative (AR) with regard to the imposition of fines and penalties submits that; confiscation is justified under section 111(m) for the misdeclaration and the redemption fine imposed of Rs. 10,000/- is proportional to the value of the goods of Rs. 1,65,000/- and the penalty imposed on the appellant of

Rs. 5000/- is minimal considering the duty evasion of Rs. 35,452/-.

22. Heard both sides, perused the records and the submissions of the learned counsel and learned Authorised Representative (AR) for the Revenue.

23. The issue involved in the present case is with respect to the classification of the goods imported vide 2 (two) Bills of Entry no. 109823 dated 04.10.2019 and 109443 dated 04.09.2019 declared as "Polyester Roller Window Blinds Fabric ready for use and "Polyester Fabric for Ready Goods 118", and self-assessed under Customs Tariff Heading (CTH) 6303 9200 (made-up textile articles) under claim of duty exemption at Sl. No. 304 of Notification. No. 82/2017 dated 27.10.2017 and at Sl. No. 494 of Notification. No. 152/2009 dated 31.12.2009, respectively.

24. The classification of the goods claimed by the appellant under Customs Tariff Heading (CTH) 6303 9200 has been reclassified by the Department under Customs Tariff Heading (CTH) 5309 90 based on the test reports of the Textile Committee and the Customs House Laboratory (CHL), Kochi. The appellant contested the test reports and the classification suggested by the both the agencies. It is the contention of the importer that the Textile Committee's report and that of Customs House Laboratory (CHL) are incomplete to the extent that they did not test the crucial aspect of visibility of the polymer coating on the impugned goods with the naked eye which is the critical criteria for distinguishing the items falling under chapter heading 5903 as per Chapter note 2(a)(1) which reads as follows;

"2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and

whatever the nature of plastic material (compact or cellular), other than:

*(**1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually Chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of colour.***

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25. Therefore, we find that in the absence of any testing / report as regards the visibility by a naked eye of the polymer coating on the polyester fabric the classification cannot be redetermined as opposed to what has been declared by the appellant. Therefore in other words for the textile fabric to be classified under Custom Tariff Heading (CTH) 5903 it is essential that polymer coating on the fabric is visible to the naked eye. Even though the test reports of the Textile Committee and the Custom House Laboratory (CHL) does not make a mention about the visibility it cannot be taken that the polymer coating is visible to the naked eye for the impugned goods to be classified under Custom Tariff Heading (CTH) 5903. Further we find that the appellant has raised the issue of consistency of classification across various ports of India wherein similar goods have been / are being classified under Customs Tariff Heading (CTH) 6303 9200. In this regard the appellant had submitted the copies of bills of entry for the goods cleared by them in Tughlakabad, Sonepat, Faridabad, Delhi, Chennai. We find that these imports at other ports of similar goods are cleared classifying them under Customs Tariff Heading (CTH) 6303 9200. Further, we find that in this case the goods imported are in running length and are not cut to size to be installed as such on the windows as roller blinds without cutting to the required size (length) and attaching other fittings, therefore

the goods imported are not ready to use roller blinds with attachments on both sides to facilitate installation as roller blinds on the windows depending on the dimensions of the windows where they are likely to be installed. We also find that as per the bills of entry and the packing list details of the some of the consignments cleared by the appellant in other ports they were imported along other fittings required for installation of the roller blinds with minor operation to make the goods ready for installation. However in the instant imports, we find that such fitting are not present in the impugned imports as per the details of the packing list of the impugned goods.

26. In view of the above discussion and in the facts and circumstances of the case and when the critical parameter of testing of the goods as regards the visibility of the polymer coating to the naked eye having not tested / reported as per Chapter Note 2(a)(1) to Chapter 59, the impugned order reclassifying the goods under Custom Tariff Heading (CTH) 5903.90 is not sustainable and is liable to be set aside. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

27. Accordingly, the Appeal is disposed in the above terms.

(Order pronounced in Open Court on 16.10.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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