

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: C/00198/2012

[Arising out of Order-in-Appeal No. 18/2012 dated
24.05.2012 passed by the Commissioner of Cus. & C.Ex.
(Appeals), Tiruchirapalli]

The Commissioner of Customs, : **Appellant**
Custom House, New Harbour Estate,
Tuticorin – 628 004

Versus

M/s. Bimla Maru Fashions Pvt. Ltd., : **Respondent**
F-20, 1st Floor, East of Kailash,
New Delhi

Appearance:-

Shri. A. Cletus, ADC (AR)

for the Appellant

Shri. B. Satish Sundar, Advocate

for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 11.12.2018

Date of Pronouncement: **28.12.2018**

Final Order No. **43161 / 2018**

Per P. Dinesha :

The Department has filed this appeal against the Order passed by the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli and the only issue involved is the classification of imported Bonded Fabric by the respondent-assessee.

2. The facts as forthcoming from the assessment Order dated 05.05.2011 are that the assessee filed a Bill of Entry No. 2738018 dated 08.02.2011 for the import of Bonded Fabric declaring them as "100% Polyester Bonded Fabric width 56 - 58", GSM - 143" classifying the same under RITC 60063200. The assessing Officer-Assistant Commissioner (Imports) drew samples for test purposes and based on the examination by the Customs House Laboratory, concluded that the imported fabric consisted of two layers of fabric bonded together with adhesive; one layer made of black coloured knitted fabric composed entirely of textured multi-filament yarns of polyester and the other layer made of pale-brown coloured woven fabric composed entirely of multi-filament yarns of polyamide (Nylon); average GSM - 135.3 and the percentage woven fabric - 53.7% (Nylon) and knitted fabric - 46.3% (Polyester); that the same was therefore liable to be classifiable under RITC 54074290 i.e., 'Nylon woven-Polyester knitted Bonded Fabric'. Aggrieved by the aforesaid re-classification, the assessee preferred an appeal before the first appellate authority who, after analyzing the examination report, Board Circular No. 02/2011-Cus. dated 04.01.2011 and the interpretative Rules 2 and 3, held that the imported fabrics were liable to be classified only under CTH 6006 3200 as declared by the

assessee, that therefore the Order of the lower authorities was liable for rejection and consequently, set aside the same. Aggrieved, the Revenue has come in appeal.

3.1 Today when the matter came up for hearing, Ld. ADC (AR)

Shri. A. Cletus appearing for the Revenue contended that :

- (i) The Commissioner (Appeals) has not considered Section Notes 2(A) of Section XI as per which when goods classifiable in Chapter 50 to 55 or in heading 58.09 to 59.02 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over another single textile material;
- (ii) When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration;
- (iii) For a mixture of two or more textile materials, going by the above Section Notes, classification is based on the one textile material which predominates by weight;

- (iv) The impugned goods were tested in the Customs House Laboratory wherein it was reported as 'GSM – 135.3' in which woven fabrics was 53.7% and knitted fabrics 46.3%;
- (v) Considering the predominancy test by weight, the assessing Officer had rightly applied the Section Notes by classifying the goods as woven fabrics;
- (vi) The Commissioner (Appeals) has not properly appreciated the Board Circular (*supra*) and has misinterpreted the same;
- (vii) Even as per Rule 3(c) of the General Rules for Interpretation, the goods are classifiable under the heading which occurs last in the numerical order, which in fact was adopted by the assessing Officer, etc.

3.2 He also relied on the judgement of the Delhi Bench of the CESTAT in the case of *Y.S. Enterprises vs. Commissioner of Customs, Delhi-III – 2016 (343) E.L.T. 551 (Tri. – Del.)* and also submitted that the decision of the Delhi Bench was upheld by the Hon'ble Supreme Court which is reported in *2017 (345) E.L.T. A68 (S.C.)*.

4.1 *Per contra*, Ld. Advocate Shri. B. Satish Sundar appearing for the assessee contended as under :

- (i) The Order of the Delhi Bench of the Tribunal relied on by the Revenue is not applicable as the only fabric there is clearly Polyester bonded fabric;
- (ii) The Ld. Commissioner had rightly went by the Interpretative Rules/General Rules for the Interpretation of Import Tariff;
- (iii) That the Board Circular No. 02/2011 (*supra*) relied on by the assessing Officer himself refers to Bonded Fabrics and therefore, has been correctly interpreted by the first appellate authority, etc.

4.2 He also referred to an Order of the Commissioner of Customs (Appeals) in the case of *M/s. R.V. Fashion, New Delhi - File No. S5-450/08 Cap/Asstt.* in support of his contentions.

5. We have heard the rival contentions, perused the documents placed on record and have also gone through the Order of the Delhi Bench of the Tribunal relied on by the Revenue.

6. The undisputed fact is that the assessee imported Bonded 'Fabric' and not 'textile' or any other 'goods'. The Section Note, heavily relied on by the Revenue (Section XI), applies to textiles and textile articles in general. Sub-section (2) and Sub-clauses thereunder

refer to goods classifiable in Chapter 50 to 55, etc., consisting of mixture of two or more textile materials and the predominant test here is the weight of one *textile* material over another single *textile* material. We are afraid this is of no help to the Revenue because, admittedly, what is imported is fabric *per se*.

7. Now, when we look at the Circular No. 02/2011 (*supra*), the same specifically covers *fabrics* – bonded fabrics classifiable depending on the type of textile material and nature of bonding. We also note that even the textile industry differentiates between *textile* and *fabric*; normally a '*textile*' refers to an unfinished product which cannot be used specifically while a *fabric* is used specifically to mean a finished product. Viewed in this context, we note that the first appellate authority has rightly applied Clause 2(ii) as per which the classification is to be determined by application of Rule 3 of the General Rules for Interpretation. *Per contra*, Section Note XI refers to textiles in general, also terming them as goods, even when referring to mixture, etc. Hence, the applicability of Section Note is misplaced and the classification is therefore required to be done as per the interpretative Rules, more specifically, under Rule 3.

8. On a perusal of Rule 3 in the interpretation adopted by the first appellate authority, we find that Rule 3(c) alone is applicable

and has rightly been applied by the first appellate authority. Viewed from this angle, we see no relevance of the Order of the Delhi Tribunal relied on by the Revenue as the facts are totally different.

9. For the above reasons, we are of the considered opinion that the impugned goods are rightly classified by the importer under RITC 60063200 and accordingly, we uphold the impugned Order.

10. The appeal of the Revenue is therefore dismissed.

(Pronounced in open court on 28.12.2018)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd