IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

C/249/2011

(Arising out of Order-in-Appeal No. 37/2011 dated 28.4.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

M/s. Cheran Spinners Ltd. Appellant

Vs.

Commissioner of Customs, Tuticorin Respondent

Appearance

Shri M. Karthikeyan, Advocate for the Appellant
Shri P. Anbuchelvan, Superintendent (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **22.12.2017**

Final Order No. 43406/2017

Per Bench

The brief facts of the case are that the appellants have filed a Bill of Entry dated 15.12.2010 declaring the imported cargo as Bamboo fiber for the quantity of 61,759 kgs. The appellant declared the assessable value as Rs.82,90,597/- and classified the "Bamboo Fiber" under CTH 5504 9090. The imported goods have been supplied by M/s. China Textile Resources Pudong Ltd., Shanghai, 'People's Republic of China. The Bill of Entry was assessed under first check and

Customs, Excise & Service Tax Appellate Tribunal representative samples drawn by Shed Officers were forwarded to the Customs House Lab, Tuticorin and the Textiles Committee, Chennai for testing to verify whether the goods are Bamboo fiber of Viscose Staple fiber or others. The Custom House Laboratory, Tuticorin vide their report 21.12.2010 opined that the sample is in the form of dull white fibrous mass composed entirely of cellulosic origin, but have not categorized whether the goods are Bamboo Fiber Viscose or Viscose Fibre of others. The Textiles Committee, Chennai vide their test report dated 29.12.2010 stated that the goods are 100% Viscose (Rayon) Staple Fibre excluding Bamboo Fibre originating in or exported from People's Republic of China falling under CHT 5504 1000 attracts Anti Dumping Duty @ 0.194 per kg. On the basis of the test report of the Textiles Committee, Chennai, it appeared to the Department that the goods imported are 61,759 kgs. of 100% Viscose (Rayon) Staple Fiber and merit classification under CTH 5504 1000 attracting Anti-dumping Duty of Rs.5,52,935/-. Hence show cause notice dated 14.1.2011 was issued to appellants proposing confiscation of imported goods valued at Rs.82,90,597/- under section 111(m) of the Customs Act, 1962 and imposition of penalty under section 112(a) ibid. In adjudication, the original authority vide order dated 3.2.2011 held that the imported goods are 100% Viscose (Rayon) Staple Fibre falling under CTH 5504 1000 attracting anti-dumping duty under Notification No. 76/2010-Cus. The adjudicating authority also ordered confiscation of the goods however gave an option to appellant to redeem the goods on payment of redemption fine of Rs. 5 lakhs under section 125 of the Act. Penalty of Rs.3 lakhs was also imposed under section 112(a). On appeal, Commissioner (Appeals) vide impugned order dated 28.4.2011 reduced the redemption fine to Rs. 4 lakhs and the penalty to Rs. 2 lakhs, however, upheld the remaining portion of the order of the adjudicating authority. Aggrieved, the appellants are before this Tribunal.

2.1 On 22.12.2017, when the matter came up for hearing, ld. counsel Shri M. Karthikeyan made oral submissions which can be briefly summarized as under:-

2.2 Test report of Regional Laboratory, Textile Committee describes the product in test report as 'Viscose (Rayon) Staple Fibre'. The report does not specify whether the ciscoes rayon fibre is of bamboo origin or otherwise. Viscose Rayon is a general term which applies to all rayons obtained through viscose method.

2.3 Viscose rayon is undoubtedly a manufactured regenerated cellulose fibre. The report could be taken as conclusive only when there is a clear indication as to nature of material that has gone into manufacture of viscose fibre. The cellulose fibre can be various origin as pine, eucalyptus, bamboo etc. it is submitted that the item of import, bamboo fibre, is a regenerated cellulose fibre which is made form 100% bamboo through a hitech process.

2.4 Department has obtained test reports from Custom House Labs and as well as Textile Committee. As per the Order in Original the report of Custom House Lab, Tuticorin dated 21.12.2010 the sample is in form of 'white fibrous mass composed entirely of cellulose origin. On the other hand the report of Regional Laboratory, Textile Committee describes the sample as 'Viscose (Rayon) Staple Fibre' There is no specific finding in either of the reports as to the nature of the raw material that has gone into making of the product. In absence of any clear finding, it is submitted that the appellant should have been given benefit of doubt.

2.5 The appellant is an established star status holder and there was no necessity for them to misdeclare the product as the classification of the imported goods was done on bonafide belief that they were in the bamboo fibre. Hence classification of the goods, imposition of redemption fine and penalty is unjustified.

2.6 The appellant drew attention to Chapter 55 of the Schedule to the Customs Tariff Act. According to him, they had classified the goods under 5504 90 90, since in their view, the imported fibre is being made out of bamboo fibre which would very much fall under that heading.

3. On the other hand, ld. AR Shri P. Anbuchelvan supports the impugned order.

4. Heard both sides.

5. The appellants had imported the impugned goods declaring them as bamboo fibre (1.2 DEN x 38 MM). No doubt, the packing invoice and packing list also indicate the goods to be bamboo fibre. The appellants have also produced some letters from China Textile Resources Pudong Ltd., Intertek etc. which state that the goods described as bamboo fibre is made from natural bamboo and that the goods were actually 100% rayon from bamboo. Be that as it may, the inputs have been got tested by the departmental officers from the Customs House Laboratory as well as from the Textiles Committee, Chennai. Although the report of the Customs Laboratory is not specific and only indicates that the sample is fibrous mass composed entirely of cellulosic origin, Report of the Textiles Committee has categorically stated that the goods are nothing but 100% Viscose (Rayon) Staple Fibre. From the facts, it does not appear that the appellants have asked for any retest. This being so, when the goods are 100% Viscose (Rayon) Staple Fibre, they will ~~easily~~ have to be classified in the specific sub-heading in entry 5504–Artificial staple fibres, not carded, combed or otherwise processed for spinning, namely "5504 10 00 – "of viscose rayon". We therefore unable to find any infirmity with the order of the lower appellate authority

upholding the very same classification arrived at by the original authority. Consequential decision of the lower authorities ordering payment of anti-dumping duty of Rs.5,52,935/- as per Notification No. 76/2010-Cus.d ated 26.7.2010 also does not merit any interference. So ordered.

6. Coming into the matter of confiscation, redemption fine and imposition of penalty, we find that the appellant have all through been contending that the goods made from bamboo fibre would fall within the residual entry of 5504 90 90. The suppliers have also invoiced the goods as bamboo fibre only. This being the case, benefit of doubt will have to be given to the appellants that they have declared the goods under 5504 90 90 on the bona fide belief, albeit misconceived, that the goods would fall under that heading. In the circumstances, the confiscation of the goods, imposition of redemption fine and penalty is not justified and hence the same is set aside.

7. In the result, the appeal is partly allowed in the above terms.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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