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

Appeal No.E/566/2008

[Arising out of Order-in-Appeal No.25/2008 dt. 17.10.2008 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

Vijay A Polymers — Appellant

Versus

Commissioner of Central Excise,
Tiruchirapalli — Respondent

Appearance:

Shri Ramesh Ananthan, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 20.04.2017

FINAL ORDER No. 40637/2017

Per Sulekha Beevi C.S

Issue involved in the above case is whether classification of products namely HDPE strips, HDPE knitted fabrics, HDPE knitted bags are classifiable under sub-heading No.392010.92, 392690.90, 392329.90 of CETA'1975 or under sub-heading No.540490.20, 540720.90, 630533.00 of CETA'1985.

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2. The appellants are engaged in the manufacture of strips, HDPE knitted fabrics, HDPE knitted bags and HDPE waste under respective sub heading Nos.392010.92, 393690.90, 392329.90 & 391510.00 of CETA'1985 till March 2006 and they had paid excise duty @ 16% *advalorem* on home clearances. During April 2006, they had reclassified the said goods under Chapter 54 as well as 63 and did not classify HDPE waste. Department was of the view that the products are classifiable under Chapter 39 and therefore a SCN dt. 28.9.2006 was issued raising the demand of Rs.3,53,916/- along with interest and also proposing to impose penalties. After due process of law, original authority held that the goods are classifiable under Chapter 39 and confirmed duty along with interest and imposed penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of appellant, Ld. Counsel Shri Ramesh Ananthan appeared and submitted that the issue of classification of HDPE strips, HDPE knitted fabrics etc. is no longer *res integra* and is covered by the judgement in the case of *Flora Agrotech Vs CCE Vapi* - 2015 (319) ELT 333 (Tri.-Ahmd.) and *CCE Tirunelveli Vs Sunpak* - 2016 (343) ELT 201 (Tri.-Chennai).

4. Against this, Ld. A.R reiterated the findings in the impugned order. He relied upon Board's circular dt. 24.09.1992 and submitted that the said decisions relied upon by counsel for appellant is only with regard to strips and argued that amendment brought forthwith in Chapter 54 by inserting Note 1A is only with regard to man-made fibre and filament yarn, and the products in the present case are HDPE strips and not HDPE fibre of filament yarn made out of HDPE.

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5. We have considered the submissions made by both side. The main contention of Ld. A.R for Revenue is that the products are not manmade fibre but are strips and so amendment brought forth vide Note 1A in Chapter 54 is not applicable. We have perused Chapter Heading 5404 which deals with "*Synthetic Monofilament of 67 Decitex or more and of which no cross-sectional dimension exceeds 1mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm*". It is indicated that the heading includes strips of not less than 5 mm. Therefore the case law relied by ld. counsel in the case of *Flora Agrotech Vs CCE Vapi* (supra) is squarely applicable to the facts of the case. For better appreciation the relevant portion of the judgement is reproduced as under :

> "**5.1** However, before discussing the technical opinion given by certain agencies it is relevant whether the CETA, 1985, as existing now after its total alignment with the HSN, convey the meaning of Synthetic Textile Material. For this purpose, a reading of Chapter Note 1 of Chapter 54 of CETA, 1985 is very relevant and is reproduced below :-
>
> "**Notes :**
>
> 1. Throughout this Schedule, the term 'man-made fibres' means staple fibres and filaments of organic polymers produced by manufacturing process, either :
>
> (a) by polymerization of organic monomers to produce polymers such as polyamides, polyesters, 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.

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

1A. Notwithstanding anything contained in Note 1, man-made fibre such as polyester staple fibre and polyester filament yarn manufactured from plastic and plastic waste including waste polyethylene terephthalate bottles shall be classified as textile material under Chapter 54 or Chapter 55, as the case may be.”

5.2 As per above Chapter Note 1A of Chapter 54 the fibres/filaments yarns made out of products of polymerization are synthetic fibres/filaments. All polymerized products made by polymerization of organic monomers are called synthetic plastic materials of Chapter 39. Chapter Note 1A added to Chapter 54 of CETA, 1985 was introduced w.e.f. 29-6-2010 and was made retrospective in operation. As per this chapter note filament yarn made from plastic or plastic waste have been considered to be textile materials. This amendment was not available in the statute books when judgment was delivered by M.P. High Court in the case of *Raj Packwell Ltd.* v. *UOI* (supra) which was followed by Rajasthan High Court and CESTAT Benches. It is an undisputed fact that the plastic strips used in making the ‘Knitted Fabrics Shed Net’ is less than 5 mm width. As per Section Note 1(p) of Chapter 39 strip of plastic less than 5 mm in width is not classifiable under Chapter 39 of the CETA, 1985. As per Section Note 1(g) of Section XI of the CETA, 1985 strips or the like of plastic 5 mm less are classifiable in Section XI (Textile & Textile Articles). By virtue of tariff description under Tariff Heading 54.04 of CETA, 1985 plastic strip or the like up to 5 mm are required to be classified as man-made filaments; strip and the like of man-made textile materials. When there is a classification of man-made textile materials of specified description given in the Central Excise Tariff Act, 1985 itself then there is no need to look into any other statute for deciding the classification of the ‘Knitted Fabric Shed Net’ which is thus made out of materials of CETH 54.04.

5.3 A specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985, as per the Rules of interpretation to the CETA, 1985. The Synthetic & Art Silk Mills Research Association (SASMIRA), Mumbai SASMIRA is linked to the Ministry of Textiles, Govt. of India, SASMIRA and after giving the definitions of Synthetic Textiles, warp knitted fabric etc., opined in their letter, dated 18-4-2012 & 15-3-2013 that the product manufactured by the appellant is ‘Warp Knitted Fabrics Technical Textile made up of man-made synthetic yarn of width less than 5 mm. As per F. No. 1(11)/2011/TTC/Vol.XX, dated 7-2-2012 written to the appellant by Assistant Director, Govt. of India, Ministry of Textiles, Office of the Textile Commissioner, Mumbai appellant’s unit has been registered as a technical textile unit in the records of the office of Textile Commissioner and has been allotted registration No. 05152007. As per the Technical Textile literature issued by office of Textile Commissioner, Ministry of Textile, Govt. of India “Agrotex” includes technical textile products used in Agriculture, horticulture (incl. floriculture), fisheries and forestry. Example of Agrotex technical textile include Shed nets, mulch mats, crop covers, anti-hail nets, brid protection nets, fisheries nets, etc.” Further office of Joint DGFT Surat while issuing Authorisation No. 5230009764, dated 15-11-2011 has held their product Warp Knitted Fabrics to be classifiable under ITCHS Code 60059000. As per Indian Standard ICS 59.080.70; 65.020.20 Agro Textiles-Shed Nets, for Agriculture & Horticulture purposes are fabrics made from plastic materials."

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6. Similar view was taken by the Tribunal taking note of Board's circular dt. 24-09-1992 relied by Ld. A.R. in the case of *Sunpak* (supra) is as under :

> "**8.** Heard both sides and perused the records. The issue involved in the present appeals is regarding classification of DHPE warp knitted fabrics, HDPE ropes, strips, rachal knitted fabrics for agro products and wastes made out of plastic strip less than 5 mm in width. There were different practices for classification of plastic woven bags within the country. The Madhya Pradesh High Court in the case of *M/s. Raj Packwell Ltd.* held that such bags are classifiable as other articles of plastics under Chapter 39. This decision of Madhya Pradesh High Court relates to a period prior to 1990. Based on this, C.B.E. & C. issued a classification circular dated 24-9-1992 directing classification of HDPE Tapes Strips and HDPE Sacks as classifiable under Chapter 39. Section XI Note 1 (g) states that strips of an apparent width exceeding 5 mm of plastics fall under Chapter 39. Heading 54.04 specifically includes in the heading description "synthetic textile material of apparent width not exceeding 5 mm." Note 2(p) to Chapter 39 excludes textile and textiles article from Chapter 39. HSN Explanatory Notes 54.04 explains Synthetic Textile materials of apparent width not exceeding width 5 mm as under :-
>
> "Strips and the like, of synthetic textile materials. The strips of this heading are flat, of a width not exceeding 5 mm, either produced as such by extrusion or cut from wider strips or from sheets".
>
> Chapter Note 1A to Chapter 54 was inserted with effect from 29-6-2010 with retrospective effect. The products under question in the present appeals are not plastic woven bags. These are knitted fabrics used as agro net. Hence distinct from the plastic bags considered in the earlier cases. By taking into account the changes in the scope of the tariff heading and the item under consideration recently the Ahmedabad Bench of the Hon'ble Tribunal in the case of *Flora Agrotech* v. *CCE, Vapi* (supra) has held that such knitted fabrics are classifiable under 6005 90 00. In this decision, the previous decisions of Madhya Pradesh High Court and the Board Circular have been distinguished. The appellants have also obtained the following certificates for classification of their products :
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> 1. Certificate from Central Institute of Plastics Engineering and Technology, dated 19-1-2015.
> 2. Certificate from Textiles Committee, Mumbai, dated 5-3-2013.
> 3. Certificate from Sasmira, dated 1-3-2013.
>
> These certificates confirm that the fabrics manufactured by the appellants are warp knitted fabrics made out of synthetic yarn of width less than 5 mm be classified under 6005. Further, the ISI standard notified by Bureau of Indian Standards for agro textiles - shade nets for agriculture and horticulture and as per this standard the above textile fabrics are made from tapes of 1.7 mm width.

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And in the present case the width of the tape is of 1.5 mm and the goods manufactured by the appellants are classifiable as textile fabrics and articles of fabrics rightly classifiable under chapter heading 6005 90 00 and the strips (HDPE) not exceeding 5 mm is classifiable under 5404 90 20. Accordingly, we set aside the impugned order to that extent and

(i) all the three assessees appeals are allowed with consequential benefit.

(ii) correspondingly, the Revenue appeal is rejected."

7. Following above judgements (supra), we hold that demand of duty is unsustainable. Impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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