CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40048 & 40049 of 2016

(Arising out of Order-in-Appeal C.Cus. II No.1040 & 1040A dated 23.11.2015 passed by Commissioner of Customs (Appeals-II), Chennai]

M/s.Page Industries Ltd. **Appellant**
Abbaiah Reddy Industrial Area
Jockey Campus, 6/2 and 6/4, Hongasandra
Begur Hobli
Bangalore 560 068.

VERSUS

Commissioner of Customs, **Respondent**
Custom House,
60, Rajaji Salai,
Chennai.

APPEARANCE :

Ms. Rukmani Menon, Advocate
For the Appellant

Ms. K. Komathi, ADC (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)

DATE OF HEARING : 02.02.2022
DATE OF PRONOUNCEMENT:04.02.2022

FINAL ORDER No. 40051-40052 / 2022

Order PER: P. ANJANI KUMAR

The present Appeal has been filed against the common order, No.1040 & 1040A dated 23.11.2015, passed by Commissioner of Customs (Appeals-Il), Chennai. By the said impugned order, the Commissioner upheld, the classification arrived at by Assistant Commissioner of Customs, of hook and eye imported by the appellant vide Bs/E 6381744 & 6382741both dated 08-08-2014, under CTH 62129090; the importer appellant claimed classification under CTH 83081010.

2. Learned counsel for the appellants submits that the Appellant is a manufacturer of, among other products, brassieres and similar articles falling under chapter 6212 of the Central Excise Act; they have been importing the hook and eye, which are parts of the brassieres, for the past 10 years classifying the same under CTH 83081010, which is a specific heading for hook and eye and leviable to customs duty at 10%. The Commissioner (Appeals) held that the hooks eye are not bra extenders; but are parts of brassieres and therefore classifiable under 62129090. The Commissioner (Appeals) relies on the decision of the CESTAT in the case of M/s Gosai Trading Co 2007 (214) ELT 301 (Tri-Kolkata).

3. Learned counsel further submits that headings 830810 and 62129090 read as follows:

> **"83.08.** Clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewelry, wrist watches, books, awnings, leather goods, travel goods or saddlery or for other made-up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base metal.
>
> **8308.10 -** Hooks, eyes and eyelets.
>
> **6212 -** Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted.
>
> **62129090**--- Other......

4. Learned counsel further submits that the appellant had all along classified hook and eye under 830810, which is a specific heading for the said items. They also rely upon the HSN for chapter 8308 which clearly states that the heading includes "hooks, eyes and eyelets for clothing, footwear, awnings and base metal for sale.

> "83.08. CLASPS, FRAMES WITH CLASPS, BUCKLES, BUCKLE-CLASPS, HOOKS, EYES, EYELETS AND THE LIKE, OF BASE METAL, OF A KIND USED FOR CLOTHING, FOOTWEAR, AWNINGS, HANDBAGS, TRAVEL GOODS OR OTHER MADE-UP ARTICLES; TUBULAR OR BIFURCATED RIVETS, OF BASE METAL; BEADS AND SPANGLES, OF BASE METAL.
>
> 8308.10 - Hooks, eyes and eyelets.
>
> 83.08(A)- Hooks, eyes and eyelets, for clothing, footwear, awnings, tents or sails.

She further submits that HSN says that articles referred to in (A), i.e., hooks, eyes and eyelets may also contain parts of leather, textiles, plastics wood, horn; bone, ebonite, mother of pearl, ivory, imitation precious stones, etc., provided they retain the essential character of articles of base metal; They may also be ornamented by working of the metal. Hence, it is clear from the reading of HSN that hooks and eyes of metal continue to remain classified under Heading 83.08 even if they contain certain tape of cloth which does not change the essential character of the items, which is nothing but articles of base metals.

5. She further submits that Rule 3(a) of General Rules for Interpretation of First Schedule to Import Tariff says that

> (a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."

6. She submits that as per Rule 3(a), specific heading has to be given preference to a general heading; for hook and eye Chapter Heading 83081010 is a specific heading as compared to Heading 62129090 which is generic in nature; this position of law has been upheld in the following decisions.

(a). Tamil Nadu Newsprint and Papers Ltd. Vs. Appraiser (1988 (33) ELT 22- Mad.

(b). Moorco (India) Ltd. Vs. CC (1994 (74) E.L.T. 5 (S.C.)

(C). Ascent Meditech Ltd. Vs. CC (2014 (309) E.L.T. 712 (Tri-Ahmd.) upheld by Supreme Court (2015 (320) ELT A281 SC)
(a). Zymonutrients Pvt. Ltd. Vs. CC (2020 (372) E.L.T. 458 Tri.

7. She submits that the Appellant draw the attention of the Hon'ble Tribunal to the decision of CESTAT, New Delhi in the case of Ajay Kumar Vs. Commissioner of Central Excise, New Delhi, reported in 2019 (366) E.L.T. 305 (Tri-Del.), wherein on an identical issue it has been held that hook and eye are correctly classifiable under 83081010 and not under 62129090 as part of brassieres. In this decision, the HSN for chapter 8308 had been extensively discussed. It was also held by the CESTAT that the earlier decision of the Calcutta CESTAT on the same issue in the case of M/s. Gosai Trading as per incuriam as the same has been passed without considering various aspects. This decision of CESTAT, New Delhi is squarely applicable to the facts of the Appellant's case. The department has filed an appeal before the Supreme Court and the same has been admitted "2019 (367) E.L.T. A158". However, the operation of the order has not been stayed. In view of this the Order passed by Commissioner relying on the decision of Gosai Trading is not sustainable. Commissioner has totally ignored the case law submitted by the appellant while passing the impugned Order.

8. She submits also that if the items hook and eye are classified under CTH 62129090 duties have to be paid @ Rs.33, in which case there will be an increase almost 500% to 600% in the duty payable and the landed cost of the hook and will be more than the price of the final product. Hence, the classification upheld by the Commissioner is contrary to the commercial viability of the final product wherein such parts are used. She also submits that various manufacturers of clothing import the hooks and eye in this fashion only.

9. Learned authorised representative for the Revenue, reiterates the findings of OIA and relies upon the Tribunal decision in the case of Gosai Trading (supra)

10. Heard both sides and perused the records of the case. The brief issue for decision before us is the classification of the impugned goods ie hook and eye for brassieres, whether under CTH 83081010 as claimed by the appellant or under CTH 62129090 as part of brassieres as arrived at by the assessing officer and as upheld by the learned Commissioner (A) in the impugned order. The argument of the appellants is that the article needs to be classified, under CTH 83081010 being the most specific Heading, in terms of Rule 3(a) of General Rules of interpretation; HSN also supports this view and Tribunal, in M/s Ajay Kumar's case(supra) , involving identical facts, ruled that that the impugned goods are rightly classifiable under CTH 83081010. Per contra the learned authorised representative relies on the case of M/s Gosai Trading (supra); learned counsel for the appellants submits that tribunal in the case of M/s Ajay Kumar distinguished the case of M/s Gosai Trading.

11. As submitted by the learned counsel for the appellants, we find that the CTH 83081010 provides a specific heading as follows.

> **"83.08.** Clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewelry, wrist watches, books, awnings, leather goods, travel goods or saddlery or for other made-up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base metal.
> **8308.10 -** Hooks, eyes and eyelets.

Moreover, we find that the HSN clarifies that

> "83.08. CLASPS, FRAMES WITH CLASPS, BUCKLES, BUCKLE-CLASPS, HOOKS, EYES, EYELETS AND THE LIKE, OF BASE METAL, OF A KIND USED FOR CLOTHING, FOOTWEAR, AWNINGS, HANDBAGS, TRAVEL GOODS OR OTHER MADE-UP ARTICLES; TUBULAR OR BIFURCATED RIVETS, OF BASE METAL; BEADS AND SPANGLES, OF BASE METAL.
> 8308.10 - Hooks, eyes and eyelets.

12. We also find that HSN further clarifies that articles referred to in (A), i.e., hooks, eyes and eyelets may also contain parts of leather, textiles, plastics wood, horn; bone, ebonite, mother of pearl, ivory, imitation precious stones, etc., provided they retain the essential character of articles of base metal; They may also be ornamented by working of the metal. We find having seen the sample of the article and having gone in to the notes of HSN, we find that the impugned goods should fall under the specific heading i.e. CTH 83081010.

13. We find that tribunal, in the case of M/s Ajay Kumar, has gone in to the case in detail and held the classification under CTH 83081010 to be correct. Tribunal has considered the Chapter notes, HSN notes and international nomenclature and have held that the Hooks and eye do not lose the essential character of being articles of base metal even when attached to the piece of cloth and in terms of HSN explanatory notes it is rightly classifiable under CTH 83081010. We find that the Tribunal observed that

16. The importer has given a great emphasis on the Explanation HSN pertaining to two entries.

HSN Explanation to Chapter 830810 reads as under;

(A). Hooks eyes and eyelets for clothing, footwear, awning, tents or sails
(B). ----------
(C). ----------
(D).----------

The articles referred to in (A), (C) and (D) above may contain parts of leather, textiles, plastics, wood, horn, bone, mother of pearl, ivory, imitation precious stones etc provided they retain the essential character of articles of base metal. They may also be ornamented of working of the metal.

The goods imported are covered in Chapter 8308 because the HSN Explanatory notes states that hooks and eyes stitched on *fabric are covered in 8308 if they retain the essential character of articles of base metal. The hook and eye fastening strip is nothing but hooks and eyes stitched on fabric. The goods are used for the purpose of closing and opening, the fabric is incidental as the hooks and eyes needs to be stitched on the fabric in order to hold them and to be used. The hook and eye strip imported by the appellant retains the essential character of hooks and eyes. It does not take the form of any independent article to be classified as the part of Bra/Brassieres.*

The article referred in (A) (B) (C) (D) provided that they retain the essential character of the articles of base metal.

17. It is thus clear that if the eye and hook which is made of base metal with some part containing that of textile, plastic etc., would be classifiable under that heading, if it retains the character of hook and eye. The eye and hook retain their character even after being placed on the cloth plastic leather strip. The bra cannot be functional without hook and eye loop. It is manifestly clear that main function of the hook and eye is to fasten the bra and the strips are only used for holding them. In then Gosai Traders case(supra) the main emphasis has been assigned to 'Clothing plastic strip' and 'Hook and Bra' has been given only ancillary function, which to us, is highly misplaced. In addition to the above, it has been demonstrated that the imported item has another application in hand gloves shoes etc. So, the goods imported does not have exclusive use in brasseries to be covered as part thereof,

18. We also find that Learned Advocate has supplied the internet printout of classification of product (set of hook and eyes intended for use as a part of brassieres as determined by EU Binding Tariff Information which is reproduced as below:

"HS Code: 8308, 10,00,00

BTI Reference: GB109439269

Issuing country: UNITED KINGDOM

Date of Issue: 30 July, 2002

Keywords: EYES, HOOKS, OF BASE METALS, ON A TEXTILE BASE

Description: A SET OF HOOKS AND EYES INCORPORATED INTO A TEXTILE BACKING CONSISTS OF TWO RECTANGLES OF TWO TEXTILE LAYERS ONE HAS A SURFACE INCORPORATING THREE PARALLEL ROWS OF THREE BASE METAL EYES. THE OTHER HAS A ROW OF THREE HOOKS INTENDED FOR USE AS PART OF BRASSIERES.

Sources: EU Binding Information"

"HS Code: 8308,10.00

TI Reference: PT2004-000122

Issuing Country: PORTUGAL

Date of Issue: 28 Dec., 2004

Keywords: RIBBON

Description: Assembly consisting of metal brackets and their hooks that have incorporated the two rectangular strips of textile materials, with 3.8 x2.7 cm and 3.8 cm. One of the strips has three parallel rows where the brackets are hooked, and the other strip has a row with two hooks. The strips have an ancillary to the brackets and are intended to be applied in bras.

Source: EU Binding Tariff Information"

This classification is also based on HSN description. accordingly, we find that the classification of and eye more appropriately covered by 8308 10 10 by adopting the international classification also. Further, regarding the ratio laid down in Gosai Trading case (supra) these aspects have not been considered and accordingly we hold the same to be sub silentio and per incuriam.

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19. The principle of sub silentio and per incuriam is decided by the Apex Court in case of Synthetic & Chemicals v. State of UP reported in (1991) 4 SC 139.

20. In view of above, we are of the considered view that Ld. Tribunal in the case of Gosai Trading Company (supra) had not an *occasion to examine the issue above the classification of the impugned goods in detail considering the Section, Chapter and Heading entries vis-a-vis HSN Explanation and other Tariff clarification internationally decided. In view of that, we treat the ratio laid down in the Gosai Trading case (supra) as per incuriam and respectfully disagree with the same.*

21. We, therefore, hold that the classification of the hook and eye fastening strips, imported by the appellant will be rightly covered under Heading 8308 10 10. Accordingly, set aside the impugned order and allow the appeal.

14. We find that tribunal, in the above case, has correctly analyzed the facts of the case and arrived at the conclusion in terms of relevant Section, chapter notes and HSN explanatory notes. Tribunal has also considered the international conventions regarding the classification of the impugned articles. We find that Apex Court; high Courts and this tribunal held in a plethora of cases that HSN and the explanatory notes have a persuasive effect. Also, the international classification becomes relevant to know the trade practice of classification and to know as to how the impugned product is known in the commercial or common man's parlance. We find that the appellants have successfully demonstrated that the import documents describe the product to be 'Hooks and eye' for the Brassieres; other importers are also claiming the classification under the same heading. We find that such overwhelming evidence cannot be overlooked. We find that the learned commissioner has heavily relied upon the case of M/s Gosi Trading Co. We find as above, the case was discussed and distinguished by Tribunal in the case of M/s Ajay Kumar. To be fair, learned counsel for the appellants submits that the decision in the case of M/s Ajay Kumar is appealed against and is pending before Apex Court. However, we find that as no stay is reported to be given, the fact opf pendency before Apex court should not deter us from deciding the case in view of M/s Ajay kumar. We follow the decision of the Tribunal in the case of M/s Ajay Kumar and hold that impugned goods are rightly classifiable CTH 83081010.

15. In the result, we set aside the impugned orders and allow the appeals, with consequential relief, if any, as per law.

(Pronounced in court on 04.02.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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