IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40345 of 2013

[Arising out of Order-in-Appeal C.Cus. No.1490/2012 dated 18.12.2012 passed by Commissioner of Customs (Appeals), Chennai]

M/s. Shoppers Stop Ltd. **: Appellant**
Eureka Towers, B-Wing,
9th Floor, Mindspace,
Link Road, Malad (W),
Mumbai 400 064.

VERSUS

The Commissioner of Customs, **: Respondent**
No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

CUSTOMS APPEAL No.40539 of 2014

[Arising out of Order-in-Appeal C.Cus. No.1832/2013 dated 16.12.2013 passed by Commissioner of Customs (Appeals), Chennai]

M/s. Shoppers Stop Ltd. **: Appellant**
Eureka Towers, B-Wing,
9th Floor, Mindspace,
Link Road, Malad (W),
Mumbai 400 064.

VERSUS

The Commissioner of Customs, **: Respondent**
No.60, Rajaji Salai,
Custom House,
Chennai 600 001.

APPEARANCE:

Ms. S. Yogalakshmi, Advocate
For the Appellant

Mr. S. Balakumar, Assistant Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40224-40225 / 2023

DATE OF HEARING: 28.03.2023
DATE OF PRONOUNCEMENT: 31.03.2023

Per: Ms. SULEKHA BEEVI C.S.

The issue in both these appeals being the same they are heard together and disposed of by this common order.

2. Brief facts are that appellants filed Bills of Entry dated 18.09.2007, 26.09.2007 and 24.01.2007 and cleared the goods declaring as "100% Cotton Woven Jackets". The appellants classified the goods under Customs Tariff Heading 62029990. The goods were cleared on payment of Basic Customs Duty @ 10% *Advalorem.* As per memo dated 25.01.2008, the Customs Revenue Audit raised an objection with regard to the classification of the goods. According to the department, the goods are to be classified under CTH 62033200 and 62043200 which covers "Woven Jackets for Men's or Boy's and Women's or Girl's" respectively. Show cause notice dated 07.02.2008 was issued proposing to reclassify the goods and to demand differential duty. After due process of law, the original authority vide Order-in-Original No.7867/2008 dated 07.07.2008 confirmed the differential duty of Rs.11,08,142/- along with interest. Against such order, the appellants filed appeal before the Commissioner (Appeals) who remanded the matter to the

adjudicating authority for *de novo* consideration, directing the said authority to verify and peruse the documents produced by the appellants. After such *de novo* proceedings, the original authority vide order dated 12.04.2010 again confirmed the demand of Rs.11,08,142/- as proposed in the SCN. Aggrieved by such order, an appeal was filed before the Commissioner (Appeals) who upheld the same. Hence this appeal.

3. Ld. Counsel Ms. S. Yogalakshmi appeared and argued on behalf of the appellants. It is submitted by her that in the Bills of Entry, the appellant had classified the goods under CTH 6202. However, in the appeal proceedings, the appellant had filed classification list under CTH 6209/6111 based on the clarification letters issued by the foreign supplier namely M/s.Mothercare UK Ltd. The appellant had furnished these letters before the Commissioner (Appeals) in the earlier round of litigation and claimed that the imported goods were to be used by infants only and have to be rightly classified under CTH 6111. After considering the submissions of the appellant, the Commissioner (appeals) had remanded the matter directing to consider these documents. However, the original authority in the *de novo* proceedings did not consider the claim of the appellant.

4. It is submitted by the Ld. Counsel that the rate of duty under Chapter Heading 62029990 (original classification adopted by the appellant) and the rate of duty under Heading 6209/6111 are the same i.e. 10% and therefore there is no revenue loss.

However, the department has classified the goods under CTH 6204 for which 10% or piece rate whichever is higher would be applicable. The differential duty has thus been demanded.

5. Ld. Counsel explained that the clarification issued by their foreign supplier M/s.Mothercare UK Ltd. indicated that the goods are meant for babies / infants. The style numbers of the garments / articles showed that the size number does not exceed 86 cms in length. As per Note 6 to Chapter 61 & Note 4 to Chapter 62, all the garments which do not exceed 86 cms. in length are to be considered as infants wear / babies wear. The authorities below have erred by failing to note that the supplier M/s.Mothercare UK Ltd. has given the style numbers of the goods indicating the size as well as the invoice numbers under which the goods were shipped to the appellant. The invoice numbers are easily identifiable with the respective Bill of Entry. The appellant has therefore been able to establish that the goods are of length which does not exceed 86 cms. and they merit classification as infants wear / babies wear under CTH 6111 as claimed by the appellant. Further that Chapter heading 6209 covers 'Babies garments and clothing accessories'. The rate of duty is only 10%. The classification determined by the department is incorrect. She prayed that the appeal may be allowed.

6. Ld. A.R Mr. S. Balakumar appeared for the Department and supported the findings in the impugned order.

7. The Ld. A.R argued that the clarification issued by the supplier cannot be accepted or relied. The original authority has noted that on comparison with the style and description of the goods in the invoices, it was found that in the invoices it is mentioned as "Jacket 100% Woven Cotton" and in the literature issued by supplier, it is mentioned as "Baby Boys 100% Cotton Jacket". Further that the goods imported could be used by both boys and girls and were not 'sex specific'. That therefore the goods merit classification under 6204. Ld. A.R. prayed that the appeal may be dismissed.

8. Heard both sides.

9. While importing the goods, the appellant has adopted the classification under CTH 62029990 and paid 10% Basic Customs Duty. The Department has determined the classification under CTH 62043200.

10. The Customs Tariff Heading of 6202 reads as under :

TARIFF ITEM (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECT. (5)	PRE (6)	ACD (7)	CVD (8)	CESS (9)	TOTAL (10)	POLICY (11)	REMARKS (12)
6202	Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski jackets), wind—cheaters, wind-jackets and similar articles, other than those of heading **62.04** **-**Overcoats, raincoats,										*CVD: See Ntfn 29/2004-CE dated 09.07.2004*

	car-coats, capes, cloaks and similar articles:		

TARIFF ITEM (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECT. (5)	PRE (6)	ACD (7)	CVD (8)	CESS (9)	TOTAL (10)	POLICY (11)	REMARKS (12)
6202 99 90	Other	u	10.00	10.00	---	4	8	0.57	24.421	Free	

11. The Customs Tariff Heading 6204 reads as under :

TARIFF ITEM (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECT. (5)	PRE (6)	ACD (7)	CVD (8)	CESS (9)	TOTAL (10)	POLICY (11)	REMARKS (12)
6204	Women's or girls' suits, ensembles, blazers, jackets, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swim-wear) Suits:										*CVD: See Ntfn 29/2004-CE dated 09.07.2004*

12. It is argued by the Ld. A.R that since Chapter Note 8 to Chapter 62 provides that where the 'sex-base' of the garments could not be ascertained as "men's or boy's or women's or girl's, the goods should be assessed to duty under CTH 6204 only. It is thus concluded by the department that as the garments were not 'sex-specific', the goods merit classification under 6204. Per Contra, the Ld. Counsel for appellant has argued that Chapter Note 4 to Chapter 62 would show that 'babies garments' and

'clothing accessories' means articles for young children of a body height not exceeding 86 cms and it has to be classified under CTH 6111. The said chapter note 4 to chapter 62 reads as under :

> *'4. For the purposes of heading 62.09:*
>
> *(a) The expression "babies" garments and clothing accessories" means articles for young children of a body height not exceeding 86 cm; it also covers babies' napkins;*
>
> *(b) Articles which are, prima facie, classifiable both in heading 62.09 and in other heading of this Chapter are to be classified in heading 62.09."*

13. Alternatively, the appellant has resorted to CTH 6209 also which is as under :

TARIFF ITEM (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECT. (5)	PRE (6)	ACD (7)	CVD (8)	CESS (9)	TOTAL (10)	POLICY (11)	REMARKS (12)
6209	**Babies' garments and clothing accessories**										*CVD: See Ntfn 29/2004-CE dated 09.07.2004*
6209 20 00 6209 30 00 6209 90 6209 10 6209 90 90	-Of cotton -Of synthetic fibres - Of other textile materials: ---of silk ---Other	u	10.00	10.00	---	4	8	0.57	24.421	Free	

14. From the letters issued by the supplier namely M/s.Mothercare UK Ltd., it has been mentioned that the garments supplied to the appellant are to be used for babies/infants of size less than 86 cms. In the earlier round of litigation, the appellants had produced these documents before the Commissioner (Appeals) who had remanded the matter with a specific direction to decide the classification on the basis of these documents. However, in the remand proceedings, the original authority has disregarded these

documents on very flimsy grounds. There is no finding rendered as to the plea taken by the appellants with regard to length of the garments being less than 86 cms. and also with regard to the application of Chapter Note 6 to Chapter 61. On perusal of the letters issued by the supplier, we find that the invoice numbers are also mentioned therein. The imported goods being in the nature and style of 86 cms. in length we hold that they merit classification under CTH 6111 as infants / babies wear. The classification adopted by the appellants at the time of import or the classification redetermined by the Department is incorrect. Since the classification adopted by the department for raising the demand of differential duty is incorrect, we are of the considered opinion that the demand cannot sustain.

15. In the result, impugned orders are set aside. The appeals are allowed with consequential relief, if any.

(pronounced in court on 31.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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