IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40334 of 2015

(Arising out of Order-in-Appeal No. 139 & 140/2014 dated 17.11.2014 passed by the Commissioner of Customs (Appeals - II), Trichy)

M/s. Suchithra Silk (P) Ltd. **Appellant**
33-A, Muniappan Koil Streets
Shevapet, Salem – 636 002.

Vs.

Commissioner of Customs **Respondent**
Custom House, New Harbour Estate
Tuticorin – 628 004.

And

Customs Appeal No.40328 of 2015

(Arising out of Order-in-Appeal No. 139 & 140/2014 dated 17.11.2014 passed by the Commissioner of Customs (Appeals - II), Trichy)

M/s. Suchithra Yarn Traders **Appellant**
488/10, Puthur Agraharam
Neikkarappatti, Salem – 636 010.

Vs.

Commissioner of Customs **Respondent**
Custom House, New Harbour Estate
Tuticorin – 628 004.

APPEARANCE:

Shri T. Viswanathan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos.41622 & 41623/2024

Date of Hearing : 20.11.2024
Date of Decision: 17.12.2024

Per M. Ajit Kumar,

Both these appeals arise out of a common Order in Appeal No. 139 & 140/2014 dated 17.11.2014 passed by the Commissioner of Customs (Appeals – II), Trichy. (impugned order)

2. Brief facts of the case are that the appellants have filed 13 Bills of Entry (BE) during the period May 2012 to February 2013 for clearance of "100 PCT Rayon Embroidery Thread Bright Raw White on Hand 120D/2 A Grade 50 inches 200 grams / Hank" classified under CTH No. 54012000 and originating from China. The appellants had also submitted a copy of Country-of-Origin Certificate issued by the 'China Council for the Promotion of International Trade, China', wherein it was stated that the goods had been manufactured in China and were classified under CTH 54034100. The goods appeared to attract levy of ADD in terms of Sl. No. 1 of Notification No. 23/2012-Cus dated 4.5.2022 at 5.04% Adv. In view of the foregoing, it appeared to the department that the imported goods which had been cleared under 13 BE's were liable for confiscation under the provisions of Sec. 111(m) of the Customs Act, 1962 for being cleared without payment of applicable ADD. After due process of law, the Ld. Adjudicating Authority demanded ADD of Rs.9,87,884/- and Rs.30,93,706/- under two separate orders, along with interest and imposed penalty of Rs.3,00,000/- and Rs.9,00,000/- respectively, under sec. 112 of the Customs Act, 1962. In appeal, the Commissioner (Appeals) upheld the same. Hence these appeals before this Tribunal.

3. Shri T. Viswanathan, Ld. Advocate appeared for the appellants and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Advocate submitted that since the issues in both the appeal are similar, he is making common submissions for which the details were submitted as under;

Company Name	Suchitra Yarn Traders	Suchitra Silk Pvt. Ltd.
Period of Dispute ("relevant period")	July 2012 to August 2012	May 2012 to February 2013
Issue	Levy of ADD on import of Embroidered Thread	
Demand (Anti-Dumping Duty)	Rs. 9,87,884/- along with interest under Section 28AA	Rs. 30,93,706/- along with interest under Section 28AA
Penalty (under Section 112 of Customs Act)	Rs. 3,00,000/-	Rs. 9,00,000/-
Notification Concerned	Notification No. 23/2012-Cus (ADD) dated 04.05.2012	

He submitted that the ADD Notification is a levy notification and not an exemption notification as is evident from Section 9A of the Customs Tariff Act, 1975 which is a charging provision. He placed reliance on the judgment of the Hon'ble Supreme Court in **CC Vs. Dilip Kumar** [2018 (361) E.L.T. 577], to state that when the issue pertains to levy of the duty, the onus is on the Department to prove that the goods are leviable to such duty. Further they had imported "100% Rayon Embroidery Thread " from China. Yarn is a genus and thread is a species. By classifying the goods under Heading 5403 which covers yarn, the department is accepting the subject goods as yarn. He stated that the appellant has also accepted the classification of the goods under CTH 5403. Further, for the purpose of classification under the CTH 5403, there is no difference between 'embroidered yarn' and 'embroidery thread'. CTH 5403 of the Customs Tariff reads as "Artificial filament yarn (other than sewing thread) not put up for retail sale, including artificial mono filament of less than 67 decitex". The heading does not make a distinction between yarns and threads, both of which are covered under this heading. The Ld. Advocate submitted that, what is excluded is only 'sewing threads'; thus all other threads which are made of artificial filament is covered by Heading 5403. The Ld. Advocate stated that the ground for confiscation of subject goods under

Section 111(m) requires that deliberate intent to misdeclare the subject goods should be present. In the instant case, it is not the case of the Department that the goods have been misdeclared. Thus, when the description of the goods is correct, there can be no case for confiscation of the imported goods only because of a dispute in classification. The Ld. Advocate prayed that the impugned order be set aside.

3.2 The Ld. AR stated that the Appellant has conceded that the goods are classifiable under CTH 540341 as stated in the Country-of-Origin certificate. She stated that the imported goods were nothing but "viscose filament yarn" of heading 5403 which is leviable to anti-dumping duty @ 5.04% under S1.No.1 of Notification No. 23/2012-Cus. The Ld. AR stated that para 25 of the OIO has summed up the reasons why the impugned goods are only 'yarn' i.e. 'viscose filament yarn' and not 'thread' or 'embroidered thread'. Reason being the goods are;

a) not piled yarn
b) not sized
c) not on supports
d) not numbered by various systems for size
e) the heading 5403 covers only yarn and thread is excluded from its scope
f) description 'thread' is loosely used and accordingly declared in import documents
g) description thread when it is loosely used for yarn it obviously cannot be used for needle work (i.e. embroidery)

The Appellant mis-declared and mis-classified the goods as thread with an intention to evade payment of appropriate anti-dumping duty. Thus, the importer is liable for penalty under Section 112. She prayed that the impugned order may be upheld.

4. We have gone through the appeal memorandum carefully and the submissions made. We have also heard the rival parties. We find that the description and classification of the imported goods i.e. '100 PCT Rayon **Embroidery Thread** Bright Raw White on Hand 120D/2 A Grade 50 inches 200 grams / Hank' under CTH 540341, is not presently disputed. It is also in conformity with the COO certificate accompanying the goods. It is also not disputed that impugned goods fall under the category of 'Artificial filament yarn'. 'Viscose Filament Yarn' attract levy of ADD in terms of Sl. No. 1 of Notification No. 23/2012-Cus dated 4.5.2022. It is the appellants contention that the impugned goods are embroidery threads and that under the Customs Tariff there is no difference between 'embroidered yarn' and 'embroidery thread'. Hence since 'embroidered yarn' is specifically excluded from the scope of Notification No. 23/2012-Cus, no duty is payable by them.

5. For a better understanding of the issue the relevant portion of the notification is reproduced below;

S. No	Heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty rate (ad-valorem)
1	5403	**Viscose Filament Yarn**	China PR	China PR	M/s Yibin Hiest Fibre Limited Corporation	M/s Yibin Hiest Fibre Limited Corporation	5.04%

Explanation. - For the purposes of this notification, -

*(i) Viscose Filament Yarn herein means Viscose Rayon Filament Yarn up to 150deniers (and $\pm$ 4% permissible variation thereof) including mono filament yarn of less than 67 decitex also known as Viscose filament yarn or VFY, Rayon Filament Yarn, Art Silk Yarn, Cellulose Yarn or Rayon Yarn and includes all yarns made of 100% viscose yarns such as dyed yarn, flat yarn, microfilament micro yarn, twisted yarn (__**with the exclusion of embroidered yarn**__), doubled/ multiple ply yarn etc. of VFY. (emphasis added)*

6. We find that the impugned goods have been declared to be 'Embroidery Thread'. The department has classified the goods under

CTH 5403 as against the declared CTH 5401. CTH 5403 of the Customs Tariff reads as *"Artificial filament yarn (other than sewing thread) not put up for retail sale, including artificial mono filament of less than 67 decitex*". The use of the phrase 'other than sewing thread', indicates that the heading though dealing with '*Artificial filament yarn'* does not specifically exclude threads other than sewing thread. Embroidery thread is not the same as sewing thread in trade parlance. It is perhaps for this reason that even the department has found the imported 'thread' classifiable under CTH 5403 since we find the description of the goods has not been challenged nor has any test or expert opinion been sought for.

7. As rightly stated by the appellant and also held by the Hon'ble Supreme Court in **CC v. Dilip Kumar** (supra), that when the issue pertains to imposing a levy, the onus is on the Department to prove that the goods are leviable to such duty.

8. The discussions in the OIO regarding the difference between 'thread' and 'yarn' are contained at para 17 to 23 of the OIO and are reproduced below

> "17. ……… To ascertain the goods imported are "thread" or "yarn" reference is drawn to Section note 4(A) and 5 to Section XI of Customs Tariff Act which are reproduced as below.
>
> > "4.-(A) For the purposes of Chapters 50, 51, 52, 54 and 55, the expression "put up for retail sale" in relation to yarn means, subject to the exceptions in paragraph (B) below, yarn (single, multiple (folded) or cabled) put up:
> >
> > (a) On cards, reels, tubes or similar supports, of a weight (including support) not exceeding:
> >
> > (i) 85 g in the case of silk, waste silk on man-made filaments; or
> >
> > (ii) 125g in other cases;
> >
> > (b) In bells, hanks or skeins of a weight not exceeding

(i) 85g in the case of man-made filament yarn of less than 3,000 decitex, silk or silk waste;

(ii) 125g in the case of all other yarns of less than 2,000 decitex; or

(iii) 500 gm in other cases.

(c) In hanks or skeins comprising several smaller hanks or skeins separated by dividing threads which render them independent one of the other, each of uniform weight not exceeding:-

(i) 85g in the case of silk, waste silk or man-made filaments; or

(ii) 125g in other cases

5. For the purposes of heading 52.04, 54.01 and 55.08, the expression 'sewing thread' means multiple (folded) or cabled yarn:

(a) Put up on supports (for example, reels, tubes) of a weight (including support) not exceeding 1,000 g

(b) Dressed for use as sewing thread; and

(c) With a final "Z" twist

18. As seen from Note 4A to Section XI, **it appears that yam normally comes on supports** (cards, reels, tubes etc) or in bails/hanks or skeins. Where as sewing thread in terms of Note 5 to Section XI invariably comes on supports, Besides this yarn is always dressed for use as sewing thread. As per Fairchild's Dictionary of Textiles the word "dressing" means sizing of yam/bath with substances like starch, china clay, gum, glue to give luster, weight, stiffness or smoothness and facilitates use of textile yarn as a sewing threat. The last but not the least the sewing thread should be given a final "Z" twist. **Thus yarn is the basic input required for converting into thread by dressing, twisting and winding it on supports.**

19. The goods in this case declared as embroidery thread supplied in the form of "hanks" and not on supports. **In addition, the goods imported are not dressed as seen from importers own admission during personal hearing** wherein they have stated that the goods have undergone twisting and reeling process, quality checking, grading and packing. Thus the goods imported **does not appears to be "sewing thread"** and otherwise conforms to the specifications of a "yarn". This view gets fortified by the HS code given in the country-of-origin certificate as 54034100 which covers yarn. The said classification of the imported goods under heading 540341 otherwise has been accepted by the importer in his written submissions.

20. Now coming to the issue of whether sewing thread and thread are one and the same or can be different, the said terms are defined in the Fairchild's Dictionary of Textiles as under.

Sewing Thread: A variety of yarn, regardless of fiber, which is treated with solid or semi solid waxy materials to secure a smooth, compact strand which is quite flexible but which presents no loose fibers. The yarn is usually plied. A three-cord thread is one that is made from three yarns twisted together, six cord is made by twisting twisting six yarns together and so on. Sewing threads are numbered by various systems for size: In one system, number 40 is fairly coarse and would be suitable for sewing slip covers and drapery fabrics; number 60 is finer than 40 and would be used on percale or gingham. The higher the number, the finer the sewing thread.

Thread: 1.Thin continuous cord, especially one made by combing strands of cotton, linen, silk, wool and manmade fibers. Specifically, smooth, compact, yarn, generally plied, characterized by a combination of twisting and finishing with solid or semi-solid, wax-like materials to secure a flexible strand. Chiefly used in sewing. See Bonded Thread. 2. The term is often loosely applied to yarn used for weaving and knitting, for example "warp thread," "threads per inch" etc., although it properly applies only to yarns twisted for sewing or other needle-work.

21. As seen from Section Notes & definitions given in Fairchild's Dictionary of Textiles, "yarn" and "thread" are distinct and "sewing thread" and "thread" are synonymous and used interchangeably. The imported goods i.e yarn of two filament (i.e120D/2) and not plied but thread has to be invariably" plied". Sewing threads are indicated by number system indicating its size like number 40, 60 etc. **No numbers are declared for the imported threads. Thus, the imported goods appear to be yarn and not thread.** The purpose of mis-declaring the goods as thread is to misguide and mis classify under the heading 5401 as thread with an intention to evade payment of anti-dumping duty. When the importer was questioned on the basis of HS code indicated in the country of origin, they have conceded that goods are classifiable under heading 540341 as indicated therein which covers yarn. Further to come out from the charge of mis-declaration of description they are sticking to their declared description as thread. The stand taken by them that goods are thread and are classifiable under heading 540341 is going against them, since thread as such is not classifiable under heading 540341as it specifically excludes sewing thread. Alternatively for the goods to be classified under heading 540341 it has to be yarn (i.e. viscose filament yarn) as the heading. specifically excludes sewing thread."

xxxx xxxx xxxxx xxxx

23. The next issue that arises is whether the imported goods are embroidery yarn or other than embroidery yarn. For the sake of brevity the second definition of "thread" given in Fairchild's Dictionary of Textiles is reproduced below:

> *"2. The term is often loosely applied to yarn used for weaving and knitting, for example "warp thread," "threads per Inch" etc., although it properly applies only to yarns twisted for sewing or other needle work"*

On plain reading of aforesaid definition with the declared description in the import documents (including country of origin certificate) and contention of the importer that goods in question are classifiable under heading 540341 only, what emerges is that goods imported are only "yarn" used in weaving and knitting. Thus going by the declared description "thread" loosely applied to yarn in this case, which is used in weaving and knitting and not for needle work, the imported goods cannot be termed as "embroidery yarn" I repeat "embroidered yarn" which is excluded from anti-dumping duty."

(emphasis added)

Based on the discussion the Ld. Adjudicating Authority concluded as under;

> "26. From the above discussion and analysis based on Section Notes, and definitions given in internationally acclaimed and widely referred Fairchild's Dictionary of Textiles (which has also been referred to by the importer in their submissions made), I find that the goods are yarn or viscose filament yarn classifiable under heading 540341 and attracts anti-dumping duty levied under Sr. No. 1 of Notification No. 23/2012-Cus dated 4.5.2012."

9. We find that the issue involves a question of fact which is very technical in nature as seen from the portions highlighted in the extract of the OIO above. The classification of the impugned goods between 'Embroidery Yarn' and 'Embroidery Thread', requires a physical scrutiny of the characteristics of the goods. However, neither are the goods available to us nor is there any manufacturers product literature; examination report by the department or a test report / opinion of an expert body been placed before us. Even the Ld. Adjudicating Authority depends on the importer's 'admission' during the personal hearing to support his arguments, apart from assumptions and presumptions on what the qualities of the imported goods were, to make it 'appear' to him that the impugned goods are not 'thread' but 'yarn' without challenging the description of the goods. We thus find that there is a lack of evidence to back the findings made by the Ld Adjudicating Authority. On the other hand as per the impugned order chapter heading number 5401 covers sewing thread of man-made filaments whereas all other varieties of synthetic or artificial threads have been placed in the category of yarn under chapter heading number 5402, 5403, 5405 and 5406 of the Customs Tariff Act 1975. However he goes

on to state that from a perusal of chapter heading number 5403 it is clear that it covers various varieties of filament yarn and there is no mention of any variety of thread there in, ignoring the fact that only sewing thread is excluded from CTH 5403. It appears to us that if thread was not at all covered under CTH 5403 it was not necessary for the Customs Tariff to exclude 'sewing thread' alone from its coverage. It would have stated *"Artificial filament yarn (other than threads) . .* To avoid a confusion on basic facts, it was for the departmental authorities to gather the product literature, process of manufacture and even a test report/ opinion from the appropriate authority and make it a part of the SCN, while seeking to change the classification and extending the levy under ADD to the product, since the burden of proof is on the department. In fine, there is a complete absence of anything to prove the allegation made in the Show Cause Notice.

10 We find that the impugned order No. 139 & 140/2014 which is on the lines of the OIO and upholds the same, has failed to see that the OIO has not discharged the burden of proof to come to a conclusion that the goods attract anti-dumping duty under Notification No. 23/2012 dated 04.05.2012. The impugned order hence merits to be set aside.

11. As discussed, the impugned order is set aside with consequential relief as per law, if any. The appeals are disposed of accordingly.

(Order pronounced in open court on 17.12.2024)

Sd/-	Sd/-
(**M. AJIT KUMAR**)	(**P. DINESHA**)
Member (Technical)	Member (Judicial)

Rex