CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH - COURT NO. IV

CUSTOMS APPEAL NO. 51142 OF 2022

(Arising out of Order in Appeal No- IND-EXCUS-000-APP-145-19-20 dated-26.09.2019. passed by commissioner (Appeals), Customs, Indore

M/s. Sharad Brushes,
53 MIG, Sector-3, Hemant Vihar,
Barra 2, Kanpur,
Uttar Pradesh- 208027 **...Appellant**

Versus

Commissioner of Customs (Import)
ICD, Tughlakabad,
New Delhi-110020 **...Respondent**

APPEARANCE:

Mr.Mohan Lal & Mr. Vaibhav Singh, Advocates for the appellant
Mr. M. K. Shukla, Authorised Representative for the Respondent

Coram:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (JUDICIAL)

DATE OF HEARING : 05/07/2024
DATE OF DECISION: 14/10/2024

FINAL ORDER NO. 58826/2024

DR. RACHNA GUPTA

M/s Sharad Brushes, the appellant is importing item viz. 'Polyester Filament, in Cut Length', for Paint Brushes of different sizes declaring those under "CTH 54041990". During Scrutiny of the Bills of Entry filed by importer, it was found that from 01.07.2017 onwards the importer has paid IGST Tax @ 18% but from 15.02.2018 onwards IGST is paid @ 12% in terms of the Notification No. 35/2017- Integrated Tax (Rate) dated 13.10.2017. Whereas, the IGST rate of "all Synthetic Filament yarn such as Nylon, Polyester Acrylic etc. "was decided at the rate of 18% vide Notification No. 1/2017- Integrated Tax(Rate) dated 28.06.2017. Further, the notification was amended vide Notification No. 35/2017 Integrated Tax (Rate) dated 13.10.2017 and an entry no. 132B was inserted in Schedule II for "Synthetic or Artificial filament yarns" (for CTH 5402,5403,5404,5405,5406) which attract IGST @12%. However, entry No. 159 of Schedule III has been substituted as "All goods other than synthetic filament yarns" wherein IGST Tax @ 18% is still applicable as tabulated hereunder:-

Table A (Notification No. 1/2017-Integrated Tax (Rate) (updated)

S.no	IGST Schedule	CTH	Description	Rate
159	III	5402, 5405, 5406	All goods other than synthetic filament yarn	18%
132B	II	5402, 5403, 5404, 5405, 5406	Synthetic or artificial filament yarn	12%

Since, the goods under import were "**POLYESTER FILAMENT FOR PAINT BRUSH POLYESTER FILAMENT IN CUT LENGTHS FOR PAINT BRUSH"** i.e. in the form of cut pieces of polyester filament in different sizes which are used in the manufacturing of paint brushes, the importer is alleged to have wrongly classified the goods under CTH 5404 as this CTH covers synthetic monofilament, whereas that synthetic filament yarn falls under CTH 5402 & 5406. Thus, department formed the opinion that, the goods under import are covered under entry No. 159 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. Hence, it is alleged that IGST paid @12% under entry no. 132B of Schedule II of Notification No. 35/2017

Integrated Tax (Rate) dated 13.10.2017 is short paid same was leviable @18% under entry No. 159 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate). Therefore, IGST short paid amounts of Rs. 1206266/- was prayed to be recovered vide SCN no 101/2019 dt.19.02.2019.

The proposal has been confirmed vide order in original no. 03/2020 dt. 29.01.2021. Appeal against the said order has been rejected by commissioner (Appeals) vide its Order in Appeal no. 1344/2021-22 dated 09.11.2021. Being aggrieved The appellant is before this Tribunal.

2. We have heard Mr. Mohan Lal& Mr. Vaibhav Singh, learned Counsel advocate for the appellant and Mr. M. K. Shukla, AuthorisedReprsentative

3. Learned Counsel for the appellant submitted that appellant have imported **Polyester Filament in cut length for paint brush of different sizes**and declared those under CTH 54041990 and while availing the benefit of Notification No. 35/2017 dated 13.10.2017 IGST @ 12% has been paid. It is submitted that the goods have been classified under CTH 54041990 because the imported goods are, in technical sense, synthetic monofilament which is a type of synthetic fiber is made from polyester and which is used in paint brushes. In common trade parlance also the synthetic monofilament is called as polyester filament. It is further impressed upon that the Polyester filament is a type of synthetic fiber made from polyester. It is a popular choice for various applications, including Paintbrushes and others which merits classification under chapter sub-heading 5404.10 of Central Excise Tariff. HSN Explanatory Notes to Heading 54.04 specifically intended to say that goods classifiable in sub- heading 5404.10 even if they are cut length

are covered under this entry. The decision in the case of **Jay MonofilamentsPvt. Ltd. vs. Commissioner of Central Excise, Thane-II reported in 2004(166)ELT 238(Tri. Mum.)**quote (as above) is relied upon.

4. Reliance is also placed on the Bill of Entry wise date of period August 2020 provided by M/s Shivaye Exim Pvt. Ltd., for the purpose of comparison of rate of IGST, wherein the similar/ identical goods at the same port were imported under CTH 54049090 by the other importers and the goods were assessed by the department by accepting the IGST @12% on the similar/ identical goods. Finally, impressing upon that it was wrongly alleged by the department that the goods are classifiable under CTH 5402, 5405, 5406 which attracts IGST @18% demand of differential IGST is prayed to be set aside and appeal is prayed to be allowed.

5. While rebutting these submissions Learned Authorised Representative of department submitted that the imported goods were the polyester filament in cut lengths which were to be used for making of paint brushes. Hence, it is clear that the imported goods were neither the continuous strand of filament nor meant for making a textile end product. Based on this grounds, The findings of order under challenge (O-I-A) are reiterated and are prayed to be upheld for having no infirmity. Appeal is therefore prayed to be dismissed.

6. In view of the submissions made by both the parties, we proceed to decide the following question.

Whether appellant is entitled to pay IGST at the rate of 12% as is mentioned in Notification No. 35/2017 dated 13.10.2017.

Foremost we have perused the Notification No. 35/2017 Integrated Tax (Rate) dated 13.10.2017 as amended, whose relevant part is reproduced as below:-

S.no.	IGST Schedule	CTH	Description	Rate
159	III	5402, 5404, 5406	All goods other than synthetic filament yarn	18%
160	III	5403, 5405, 5406	All goods other than Artificial filament yarn	18%
132B	II	5402, 5403, 5404, 5405, 5405, 5406	Synthetic or artificial filament yarn	12%

7. Perusal reveals that IGST at the rate of 12% is to be paid when imported good is synthetic or artificial filament yarn. Rest all other imported goods of CTH 5402-5406 are liable for IGST @ 18%. Admittedly appellant is importing 'polyester filament for paint brush in cut lengths' declaring those under CTH 54041990. Goods classified under CTH 5404 are allowed IGST @ 12% only when the goods are Artificial or Synthetic Yarn. In Customs Classification of Textiles and Textiles Articles; multifilament and monofilament under HSN of CTH 5404 are defined the as under:-

8. **Monofilament -**It is a fine slightly thick uniform rod, e.g., tooth brush bristle or tents badminton racket gut.

Multifilament Yarn- It is a bundle of fine filaments extruded together to form a single yarn is a Further Indian Standard Glossary of Textile Terms defines yarn: It is a continuous strand of textile fibers or filament with or without twist suitable for plying, knitting, braiding, weaving or otherwise intertwining to form a textile end product.

9. We also judicially noticed from sciencedirect.com, as is also relied upon by applied, that filament and yarn may seem like similar terms, but there is

a difference between these two types of material. A filament is a long continuous strand of fiber of material. It is usually made up of long monofilaments that are stronger and more durable than other fibers. Monofilaments can be either natural or synthetic, but they often tend to have uniform diameters throughout their length.

Yarn, on the other hand are short strands that can be twisted together in order to create textiles such as fabric or rope. Yarn can also consist of multiple plies that make them thicker and stronger than filaments. Additionally, yarn often come in various sizes that can range from very thin to thick depending on what they're used for.

The most important distinction between a filament and a yarn is the way each material behaves when subjected to different forces and temperatures: whereas filament tend to break when exposed to high heat of pressure, yarns are much more resistant due to their composition (Multiple levels) and therefore less likely to break under such conditions. Therefore, it makes sense why many products rely heavily as yarn constructions rather than using only filaments because having multiple plies gives these items extra strength which increases is durability over time!

10. From the above discussion about meanings of various terms relevant for prevent adjudication and also in view of the admitted fact that imported goods are in cut pieces and are meant for making paint brushes, we hold that imported goods are not synthetic & artificial filament yarn. Appellant is held to have wrongly declare the imported goods under CTH 5404. The goods in question as long monofilaments Synthetic in cut length hence, as rightly denied to be yarn.

Hence, appellant is rightly denied the benefit of entry no 132 of notification no. 35/2017 dated 13.10.2017 (as amended). Thus there is no infirmity found in the order under challenge. The question Framed above stands decided against the importer- appellant.

Consequent to above discussion the order in appeal dated 09.11.2021 is hereby upheld and the appeal is dismissed.

[Pronounced in the open court on 14-10-2024]

(DR. RACHNA GUPTA)
MEMBER(JUDICIAL)

(P. V. SUBBA RAO)
MEMBER(TECHNICAL)

KHUSHNUMA