

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. III

Customs Appeal No. 352 of 2010

(Arising out of Order-in-Original No. 18/2010 dated 21.04.2010 passed by the Commissioner of Customs, New Delhi)

M/s Sarvatra International

Appellant

B-64, Defence Colony,
New Delhi-110024
Through its Proprietor
Sh. Sudhir Manchanda

Versus

**Commissioner of Customs, ICD
Tuglakabad, New Delhi**

Respondent

Appearance:

Present for the Appellant: None

Present for the Respondent: Shri Nagendra Yadav, Authorized Representative

And

Customs Appeal No. 353 of 2010

(Arising out of Review Order No. 06/2010 dated 09.06.2010 passed by the Commissioner of Customs, Delhi Zone)

**Commissioner of Customs, ICD
Tuglakabad, New Delhi**

Appellant

Versus

M/s Sarvatra International

Respondent

B-64, Defence Colony,
New Delhi-110024

Appearance:

Present for the Appellant: Shri Nagendra Yadav, Authorized Representative

Present for the Respondent: None

CORAM:

Hon'ble Ms. Binu Tamta, Member (Judicial)

Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing: 07/01/2025
Date of Decision: 29/01/2025

Final Order Nos. 50106-50107/2025

Binu Tamta

Challenge is to the Order in Original No. 18/2010 dated 21.4.2010. **M/s. Sarvatra International**¹ has challenged the re-classification of the goods and the levy of differential customs duty along with confiscation, redemption fine and penalty. The **Revenue** has separately filed an appeal challenging this order for non-levy of mandatory penalty of Rs. 15,59,363/- under section 114A of the Customs Act, 1962.²

2. Facts of the case are that an Intelligence was gathered that the appellant were trying to import the 100% polyester knitted cut pile fabric under two Bills of Entry³ Nos. 769991 dated 21.02.2009 and 776711 dated 24.03.2009 by mi-declaring the item as "100% Polyester Knitted Fabric" thus by mis-declaration and mis-classification, they were trying to evade the customs duty. The goods were examined by the SIIB officers and samples were drawn and sent to Textile Commission⁴, New Delhi for testing. On the basis of TTC report dated 18.03.2009 and 20.04.2009 that the fabric was 100% Polyester Cut Pile Fabric, both the consignments were seized on 27.03.2009 and 30.04.2009 respectively. Statement of Sudhir Manchanda, Proprietor of the appellant firm was recorded under Section 108 of the Customs Act, 1962 on 31.03.2009 and 30.04.2009 wherein he has been shown the test

¹ the appellant
² the Act
³ BE
⁴ TTC

reports which he has seen and acknowledged and agreed to deposit the duty difference. The goods were provisionally released on 09.04.2009 and 05.05.2009 respectively on payment of full differential duty along with Bond and BG of 25% of the value of the goods. Show cause notice has been issued on 27.07.2009 to the appellant for re-classification of goods; confiscation of goods; demand of differential duty and imposition of penalty under Section 112/114A of the Customs Act, 1962. The adjudicating authority vide order in original dated 21.04.2010 confirmed the duty of Rs. 47,89,393/- and Rs. 15,59,363/- in respect of the two Bills of Entry and imposed redemption fine of Rs. 1,50,857000/- and penalty of Rs. 47,89,393/- only under Section 114A of the Act. Aggrieved, the appellant has filed the appeal before this Tribunal and department also filed appeal against non-imposition of mandatory penalty of Rs. 15,59,363/- under Section 114A in respect of Bill of Entry No. 776711 dated 24.03.2009.

3. None has appeared on behalf of the appellant despite repeated opportunities granted by this Tribunal. Hence, we have perused the appeal records and heard Shri Nagendra Yadav, the authorized representative for the Revenue.

4. The basic issue to be decided is whether "100% Polyester Knitted Fabric" imported by the appellant were mis-declared and mis-classified under CTH60059000, attracting Customs duty @ of 10% Adv. or the same merits classification as "Polyester Cut Pile Fabric" under CTI 60019200 attracting customs duty at the rate of 10% Adv. or 4Rs.100/- per KG, whichever is higher.

5. For considering the issue, it is necessary to quote the chapter heading 60 having six main headings, which is further divided into various sub headings as under:

6001:- Pile fabrics including "long pile" fabrics and terry fabrics, knitted or crocheted

6002:- Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001

6003:- knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002

6004.- Knitted or crocheted fabrics of a width not exceeding 30 cm containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001.

6005: Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004.

6006:- Other knitted or crocheted fabrics

Rate of BCD

6001 10	"Long pile" fabrics:	
6001 10 10	Of cotton	10% Adv.
6001 10 20	Of man-made fibres	10% Adv.
6001 10 90	Of other textile materials	10% Adv.

LOOPED PILE FABRICS

6001 21 00	Of cotton	10% Adv.
6001 22 00	Of man-made fibres	10% Adv.
6001 29 00	Of other textile materials	10% Adv.

OTHER

6001 91 00	Of cotton	10% Adv.
6001 92 00	Of man-made fibres	10% Adv. Or Rs.100 per Kg.
Whichever is higher		
6001 99	Of other textile materials	10% Adv.
6001 99 10	Of wool or fine animal hair	10% Adv.

6. The importer has declared the imported fabric under chapter heading 60059000 which covers "Polyester Knitted Fabric",

(including those made on gallon machine), other than those of heading 6001 to 6004 of artificial fibres – other. In the present case, the samples were sent for examination and as per the test report of TTC, the fabric is “100% Polyester Knitted Cut Pile Structure” falling under chapter heading 6001. It is also necessary to quote the two test reports on which the entire controversy is based:

TTC TEST REPORT IN RESPECT OF B/E NO. 769991 DT.21.02.2009

Sample reference No.	Test report No. and date received from TTC	Declared description of fabrics	Fabrics found on Testing
279-A	1252/TC/SE/LDE/08-09 dated 18.03.2009	100% Polyester Knitted Fabric	100% Polyester Cut Pile Fabric
279-B	1253/TC/SE/LDE/08-09 dated 18.03.2009	100% Polyester Knitted Fabric	100% Polyester Cut Pile Fabric
279-C	1254/TC/SE/LDE/08-09 dated 18.03.2009	100% Polyester Knitted Fabric	100% Polyester Cut Pile Fabric

TTC TEST REPORT IN RESPECT OF B/E NO. 776711 DT. 24.03.2009

Sample reference No.	Test report No.	Declared description of fabrics	Fabrics found on Testing
282 dated 01/04/09	51/TC/SE/LDE/08-09 dated 20.04.2009	100% Polyester Knitted Fabric	100% Polyester Cut Pile Fabric

7. In the proceedings before the adjudicating authority, the appellant had not produced any evidence in rebuttal and the case was decided on the basis of the evidence led by the department. We find that the test reports by TTC received in respect of the two bills of entry, in clear terms have reported that the experts after testing has found the fabric to be “100% Polyester Knitted Cut Pile Fabric”. In this regard, the discussion and findings arrived at by the adjudicating authority, relevant are set out below:

“As per test results of Textile Committee (TTC), New Delhi, the fabric is "100% Polyester Knitted Cut Pile Structure". Pile fabrics falls under chapter heading 6001. This chapter heading is further divided into different sub-headings. The test results also indicates that the imported fabrics is of a 'cut pile

structure' which implies that the fabrics in question is neither long pile' fabrics nor, 'looped pile fabrics'. As such said fabrics cannot be classified either under chapter sub headings from 6001 1010 to 6001 10 90 pertaining to 'long pile fabrics or under chapter sub-headings 6001 21 00 to 6001 29 00 pertaining to 'looped pile' fabrics. Since the fabrics is of man-made fibers it can also not be classified under chapter sub-heading 6001 99 10 and 6001 99 90 which covers pile fabrics of 'other textile materials. Now the only chapter sub-headings which are left in chapter heading 6001 are sub-headings 6001 91 00 and 6001 92 00 which covers all types of pile fabrics 'other' than long pile fabrics and looped pile fabrics. As the present fabrics is of 'cut pile structure' it can be classified under 600 1 92 00 being of man-made fibers. Thus the impugned fabrics most appropriately merits classification under chapter sub-heading 6001 92 00 chargeable to Basic Customs Duty (BCD) @ 10% or Rs.1 00/- per kg., whichever is higher".

8. We agree with the above findings as there is no reason to doubt the veracity of the test report by the experts in the absence of any rebuttal by the appellant. Accordingly, the impugned fabric is classifiable under chapter heading 6001 9200 and chargeable to basic customs duty at 10% or Rs.100/- per KG, whichever is higher.

9. Apart from the test reports, we find that in the statement recorded under section 108 of Shri Sudhir Manchanda, proprietor of M/s. Sarvatara International, accepted the test reports and in acknowledgment thereof had put his signatures. Pursuant thereto, he voluntarily deposited the entire duty amount. Although the appellant in this regard has submitted that the imported fabric which he had ordered has been wrongly dispatched by the foreign supplier, however, he failed to substantiate the said statement by any cogent evidence as according to him even the purchase order was given only telephonically. The law on the admissibility of the statements recorded under Section 108 of the Act has been well established over the years. Reference is invited to the decision of the Apex Court in **Surjeet Singh Chhabra versus Union of**

India, 1997 (89) ELT 646 (SC), holding that the customs officers are not police officers and therefore the confession is an admission and binds the petitioner. Similar view was taken by the Apex Court in **Assistant Collector of Central Excise, Rajamundri Versus Duncan Agro Industries Ltd. - 2000(120) ELT 280 (SC)** observing that a statement made by a witness or a party under Section 14 of Central Excise Act, 1944 or section 108 of Customs Act, 1962 is ex-facie admissible in evidence to sustain penalty. The proprietor of the firm having categorically accepted the test report and paid the entire duty amount is a clear admission on his part. In view of the settled principle of law by the Apex Court in **Commissioner of Central Excise, Madras versus Systems & Components Pvt. Ltd. - 2004 (165) ELT136 (SC)** "what is admitted need not be proved ", nothing further is required to be substantiated by the department. Thus, there is no iota of doubt that the appellant had mis-declared the classification of the goods in question as " 100% Polyester Knitted Fabric" and classified the same under chapter heading 6005 9000, which actually covers "warp knit fabrics ".

10. We cannot ignore the conduct of the appellant to some how avoid the proceedings. The appellant had not submitted any reply to the show cause notice and when opportunities were granted by the adjudicating authority for personal hearing on 24.02.2010, 3.03.2010, 10.03.2010 and 17.03.2010, the appellant failed to appear and instead sought adjournment on the ground that they have to receive communication from the importer. The adjudicating authority, accordingly decided the case on the basis of

the available record. Though the appeal was filed on 2.07.2010, however, several adjournments have been taken on the ground that the issue pertains to the jurisdiction of the DRI officers to issue show cause notice and the same is pending before the Apex Court. The issue was decided by the Apex Court that the offices of DRI have jurisdiction to issue show cause notice vide judgement delivered on 8.11.2024 in the case of **Cannon India Ltd.** The matter was listed on 7.01.2025, when the applicant had once again chosen not to appear. Considering that the appeal is of the year 2010, we heard the learned Authorized Representative and after perusing the record had reserved the order, granting two weeks time to file written submissions, if any.

11. Since there is apparent mis-declaration in the description of the goods as well as the value thereof, the goods are liable to be confiscated under section 111(m) of the Act along with redemption fine. On the same reasoning and analogy duty is recoverable under the proviso to subsection (1) of section 28 of the Act. Consequently, the differential customs duty calculated by the adjudicating authority in respect of the two bills of entry is affirmed. With regard to imposition of penalty under section 114A of the Act, the same needs to be upheld as the appellant had resorted to suppression of facts resulting in evasion of duty.

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12. We may now consider the appeal filed by the Revenue, challenging the impugned order on the ground that the adjudicating authority had failed to impose the mandatory penalty under the provisions of section 114A of the Act in respect of Bill of Entry No.

776711 dated 24.03.2009. In the impugned order the adjudicating authority had imposed penalty under section 114A of equivalent amount of Rs. 47,89,393/- pertaining to Bill of Entry No. 769991 dated 21.02.2009, however, failed to impose the mandatory penalty of equivalent amount pertaining to Bill of Entry No. 776711 in respect of which Customs duty amounting to Rs 15,59,363/- was confirmed. This seems to be a bona fide mistake on the part of the adjudicating authority not to have imposed the penalty of the said amount equally for confirmation of duty liability under the two Bills of Entry. We, therefore, hold that the appellant is liable to pay the mandatory penalty of equivalent amount of Rs. 15,59,363/-. The appeal, filed by the Revenue, is accordingly allowed.

Conclusion:

Appeal No. C/352/2010 filed by M/s Sarvatra International stands dismissed and Appeal No. C/353/2010 filed by the Revenue stands allowed.

(Pronounced in open Court on 29th January, 2025)

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)