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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/435 /2005 Date 02/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
COMMISSIONER OF CUSTOMS, AMRITSAR.
CUSTOMS COMMISSIONERATE, THE MALL,
AMRITSAR
COMMISSIONER OF CUSTOMS, AMRITSAR. Appellant
Vs
M/S. AMARTEX INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/324 2008 **Customs** dated 01.08.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   M/S. AMARTEX INDUSTRIES LTD.
   365, INDUSTRIAL AREA, PHASE-I, PANCHKULA.
2. Adv. / Consult DR. A S GILL, ADV,
   C/O M/S. AMARTEX INDUSTRIES LTD.
   365, INDUSTRIAL AREA, PHASE-I, PANCHKULA..
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Customs Appeal No.435 of 2005 with CO/125/05-Cus

[Arising out of Order-in-Appeal No.17-18/CUS/Appeal/LDH/05 dt.28.1.05 passed by the Commissioner(Appeals) Ludhiana)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether their Lordships wish to see the fair : copy of the order?

4. Whether order is to be circulated to the : Department Authorities:

CC, Amritsar Appellant

Versus

M/s. Amartex Inds. Ltd. Respondent

Appearance

Sh. R.K.Verma, Authorised Departmental Representative(DR) For appellant
DR. A.S.Gill, Adv. For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Final

Date of decision: 1.8.08
Order No. C/324/08

Per Rakesh Kumar:

This is Revenue's appeal against Order-in-Appeal No.17-18/Appl/LDH/05 dt.28.1.05 passed by Commissioner of Customs(Appeals), Ludhiana by which –

a) Order-in-original dt.17.2.04 of Joint Commissioner confirming duty demand against the Respondents on the ground of mis-declaration of the description and value of the goods and imposing penalty on them was set aside, and

b) Revenue's appeal against Joint Commissioner's order for imposition of redemption fine on the goods released against bank guarantee was rejected.

1.1 The Respondents imported a consignment declared to be of 17244 yards (23247 Sq.meters) of "Polyester Knitted and Woven Fabric" totally valued at Rs.7,12,488/- at ICD, Ludhiana and filed a Bill of Entry No.78 dt.20.11.2000 for its clearance. Out of 17244 yards of fabric, 13428 yards was "Polyester Knitted Fabric" whose classification was claimed under 6002.43 and the remaining was polyester "Woven fabric" whose classification was claimed under 5407.52. The goods were examined on Ist check basis. On examination, representative samples were drawn from "Polyester Knitted Fabric" to ascertain its exact classification and pending the receipt of test report, duty was provisionally assessed under Section 18 of the Customs Act and the goods were released against Provisional Duty Bond & Bank Guarantee. The Chemical Examiner vide test reports dt.12.1.01, 21.3.01 and 28.3.01 reported one sample to be "printed knitted fabrics" ~~as~~ and other three samples to be "knitted cut pile fabrics of polyester" . The Chemical Examiner, however, asked for samples with selvedges to enable him to determine whether the fabrics are warp knitted or otherwise. The required samples were sent, but the Chemical Examiner vide report dt.14.9.01 again reported the samples to be of "Polyester knitted cut pile fabrics" having velvet like surface, but the report was silent as to whether the samples are of warp knitted fabrics. On the basis of the test reports, the Revenue sought classification of the goods under sub-heading 6001.92 as "Pile Fabrics of Polyester", as against classification under sub-heading 6002.43 as "Warp Knit Polyester Fabrics" claimed by the Respondents. In view of the fabrics declared as "knitted polyester fabrics", being found to be "Pile Fabrics of Polyester", the Revenue sought enhancement of their value to Rs.11,55,275/- as against declared value of Rs.5,86,821/- CIF. It is on this basis that the Joint Commissioner vide order-in-original dt.17.2.04, confirmed the duty demand of Rs.4,40,351/- against the Respondents and imposed penalty of Rs.1,50,000/- on them under Section 112(a) of the Customs Act.

The Joint Commissioner did not impose any redemption fine on the goods, held to be liable for confiscation for being misdeclared in terms of description and value, on the ground that the same have been released against Provisional Duty Bond and are not physically available. Commissioner of Customs(Appeals), by the impugned order set aside the Joint Commissioner's order confirming the duty demand and imposing penalty on the grounds that –

a) while the SCN refers to only one test report dt.14.9.01, the order-in-original relies on test reports dt.12.1.01, 21.3.01, 28.3.01 and 14.9.01; which is violation of the principles of natural justice;

b) while five varieties of fabrics had been imported, it is not certain whether all the five varieties had been subjected to test;

c) the samples had not been drawn under panchnama;

d) in view of the above, the Joint Commissioner's order classifying the goods as "pile fabrics of polyester" under sub-heading 6001.92 is not sustainable and the same are correctly classifiable under sub-heading 6002.43 and

e) there is no justification for enhancement of value.

Since the duty demand and penalty was set aside, the Revenue's appeal for imposition of redemption fine on the goods were also rejected.

2. Heard both the sides.

2.1 Shri R.K.Verma, the learned Departmental Representative made the following submissions:

(1) Out of six varieties of fabric imported under Bill of Entry No.78 dt.20.11.2000, five varieties are of Polyester Knitted Fabrics and one variety is of Polyester Woven Fabrics. Dispute is only about the classification of polyester knitted fabrics. Out of five varieties, as described in packing list two varieties are similar and, therefore, four samples were drawn – one from each variety of polyester knitted fabrics and the same had been drawn in presence of the CHA. It is these four samples which were forwarded to CRCL, Delhi for test. The CRCL reported the samples to be polyester pile fabrics.

(2) Since the CRCL required samples with selvedges for ascertaining whether the goods are warp knitted or not, duplicate samples were sent and it is in respect of these samples that CRCL submitted its report dt.14.9.01 in which it was reported once again that the same are cut pile fabrics. These samples had been taken from each variety of the disputed fabrics in presence of the importer's CHA and on test the same were found to be cut pile fabrics of polyester.

(3) There had been no violation of the principles of natural justice, as the importer was a party to the complete process of test and retest and the test results were known to them and were also disclosed to them as mentioned in para 4 of the show cause notice.

(4) When the goods declared as "Polyester knitted fabrics" were found to be "Polyester Pile Fabrics", their value, based on the contemporaneous imports of pile fabrics has been correctly enhanced.

(5) As held by Hon'ble Supreme Court in case of Weston Components Ltd. vs Commissioner of Customs,Delhi, reported in 2000(115)ELT.238(SC) redemption fine can be imposed in respect of the goods held to be liable for confiscation, even if the goods are not available for confiscation.

2.2 Shri A.S.Gill, Advocate, the learned Counsel for the Respondents made the following submissions:

(1) As per Examination Order and examination report on the reverse of the Bill of Entry, neither any order for drawl of samples was given, nor any samples were drawn.

(2) As is evident from the endorsements on the face of the original Bill of Entry, the goods were assessed "provisionally for test". Hence the provisional assessment was only for test i.e. composition, and not for value. Hence demanding duty on account of valuation after a gap of two and half years is time barred.

(3) Even as per the chemical examiner's report, out of four types of polyester knitted fabrics, one (covered by test report ICL 2443 Imp) is admittedly non-pile fabrics. Hence clubbing this with others and confirming demand for the entire quantity of polyester knitted fabrics is wrong.

(4) There is no basis for loading the declared CIF value of the polyester knitted fabrics. No information regarding contemporaneous imports at higher prices has been disclosed. Moreover the duty demand from valuation point of view is time barred as at the time of ordering provisional assessment, no objection regarding value had been raised.

3. We have carefully considered the submissions from both the sides. In this case, six varieties of fabrics had been imported – five varieties of knitted fabrics and one variety of Woven ~~wave~~ fabrics. Since classification dispute was in respect of knitted fabrics only and out of five varieties of knitted fabrics, as per the packing list, two varieties were the same, in all four samples were drawn from knitted fabrics – one from each variety. These four samples were forwarded to the Chemical Examiner, CRCL, New Delhi vide letter No.CUS/CFS-CONCOR/104/2000/03 dt.2.12.2000. There is an endorsement signed by the Respondent – importers' CHA on this letter confirming that the samples were drawn in his presence. Therefore, there is no irregularity in drawing of the samples, which obviously had been ordered by the Deputy Commissioner as he, on the face of the Bill of Entry, had ordered provisional assessment pending test result. There are three reports of the Chemical Examiner – one report No.CL 2443 Imp in respect of first sample, second report No.CL 2913 & 2914 Imp in respect of second and third sample and third report No.CL 2915 Imp in respect of fourth sample. Report in respect of Ist sample CL 2443 Imp reports the sample to be of grey colour knitted

polyester fabrics with 66.3% polyester, 18.8% mettalised yarn and balance Nylon yarn. This simple obviously is not of pile fabrics, as there is no such conclusion in the report. The reports in respect of the other three samples – CL 2913, 2914 & 2915 Imp report the sample to be of knitted cut pile fabrics of polyester. But in respect of these samples, the Chemical Examiner wanted samples with selvedges to enable him to ascertain whether the fabrics are warp knitted or otherwise and second set of samples(three samples) were sent by the ICD vide letter dt.18.8.01 in respect of which the Chemical Examiner sent the report vide letter dt.14.9.01 in which he again reported the samples to be cut pile fabrics with valvet like surface in which the base knitted fabrics is composed of polyester multifilament yarn and cut piles are composed of polyester fibres..... Thus only the lots of fabrics covered by the report No. CL 2913, 2914 & 2915 Imp are cut pile fabrics of polyester meriting classification under sub-heading 6001.92 and the lot of knitted polyester fabrics covered by report No. CL 2443 Imp is "knitted polyester fabrics, other than pile fabrics" and classifiable under sub-heading 6002.43.

4. As regards the value of the goods, we find that value of only the fabrics, held to be polyester knitted pile fabrics has been revised, but no basis for this revision has been given. In this regard, para 6 of the show cause notice dt.11.4.03 reads as under:

> "6. In view of the above, it appears that the importer has misdeclared the import product as 'Warp knit polyester fabric' as against "Pile fabric of Polyester", wilfully and intentionally in

order to evade Customs duty. The goods, valued at Rs.11,55,275/- at the rate of Rs.94.13 Mtrs (value revised based on contemporaneous Import dt.15.11.2000 of pile Polyester fabric reported in valuation bulletin) thus, appear to be liable for confiscation under Section 111(m) of Customs Act,1962".

4.1 In this show cause notice, the Respondents(Importers) have not even been asked to show cause for enhancement of the assessable value of the fabrics held to be pile fabrics. The Joint Commissioner in his order-in-original mentions that loading of the value is based on contemporaneous imports of identical goods – polyester knitted pile fabrics of same country of origin vide Bill of Entry No.156498 & 156499 dt.15.11.2000 at Mumbai. But the order does not mention whether the quantities are comparable and whether the goods imported in this case are identical or similar with the goods covered by Bill of Entry No.156498 & 156499 dt.15.11.2000, in terms of quality, ~~gram~~ weight per square meter etc. Moreover when the Respondents were not even show caused on the issue of enhancement of assessable value and the basis of enhancement of assessable value was never disclosed ~~for~~ to them, the Joint Commissioner's order enhancing the assessable value of the fabrics held to be "knitted polyester pile fabrics", is wrong and not sustainable and the same was rightly set aside by the Commissioner of Customs(Appeals).

5. However, the fabrics which were declared in the Bill of Entry as "knitted polyester fabrics" classifiable under sub-heading 6002.43, which on test, were found to be "knitted pile fabrics of polyester" classifiable

under sub-heading 6001.92, would be liable for confiscation under Section 111(m) of the Customs Act for misdeclaration with regard to their description and even if the same are not physically available for confiscation as the same have been released against P.D.Bond, the same would be liable for redemption fine in view of Hon'ble Supreme Court's judgment in the case of Weston Components Ltd. vs Commissioner of Customs, Delhi(Supra). Besides this, the Respondents(Importer) would also be liable for penalty under Section 112(a) of the Customs Act.

6. In view of our above findings while we uphold the impugned order with regard to valuation of the goods held to be "knitted pile polyester fabrics" and dropping of the duty demand in respect of them on account of enhancement of assessable value, we set aside the portion of the impugned order with regard to classification of the disputed goods and hold that the lots of the fabrics ~~vide~~ covered by test reports No.CL 2913, 2914 & 2915 Imp which were found to be "knitted polyester pile fabrics", are correctly classifiable under sub-heading 6001.92 and the fabrics covered by test report CL 2443 Imp - "knitted polyester fabrics other than pile fabrics" are classifiable under sub-heading 6002.43, ~~We~~ we also hold that the fabrics, which on test were found to be pile fabrics, are liable for confiscation under Section 111(m) of the Act and the Respondents(Importer) would be liable for penalty under Section 112(a) for mis-declaration and even though the same have been released against a P.D.Bond, the Respondents would be liable to pay

redemption fine in respect of the same. The matter is remanded to Commissioner of Customs(Appeals), Ludhiana for -

(a) quantification of the duty demand in respect of the fabrics covered by test report No.CL 2913, 2914 & 2915 Imp; which have been held to be "Polyester knitted pile fabrics" classifiable under sub-heading 6001.92 and

(b) redetermination of the quantum of redemption fine in respect of the goods held to be liable for confiscation under Section 111(m) of the Act and quantum of penalty on the Respondent under Section 112(a) of the Act.

6.1 The Revenue's appeal and the cross objection filed by the Respondents stand disposed off as above.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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