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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/642-643 /2005 - CU[DB] Date 10/11/2008

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

To :
M/S TAVIN FASHIONS
C-15, GANGA RAM VATIKA, TILAK NAGAR,
NEW DELHI - 110018

M/S TAVIN FASHIONS Appellant

Vs

THE COMMISSIONER OF CUSTOMS, KOLKATA Respondent

I am directed to transmit herewith a certified copy of Final order No. C/570-571/08-CUS DATED 23.10.08 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
THE COMMISSIONER OF CUSTOMS, KOLKATA
CUSTOMS HOUSE, 15/1, STRAND ROAD, KOLKATA 700001
2. Adv. / Consult
MR.RUPESH KUMAR
46, BANK ENCLAVE, DELHI

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 - 3
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
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.

C/642-43/05

[Arising out of Order-in-Appeal No.KOL/CUS/CKP/81-82/2005 dt.31.3.05 and 6.4.05 passed by the Commissioner(Appeals), Kolkata)

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: :

M/s. Tavin Fashion — Appellant

Versus

The Commissioner of Customs,Kolkata — Respondent

Appearance
Shri Rupesh Kumar, Adv. For appellant
Shri Sumit Kumar, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 23.10.08
Order No. C/570-571/08

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby the footwear imported by the appellant were held to be classifiable under Tariff Heading 64041190 of the Customs Tariff. The appellant claimed the classification tariff under Heading 64052000 of the Tariff. The contention of the appellant is that the lower authorities held that the footwear imported by the appellant are Sports Footwear. The contention is that as per the Chapter Note 64 of the Customs Tariff, Sports footwear which are specially designed for a sporting activity and has, or has provision for the attachment of spikes, springs, stops, clips, bars or the like. It also includes skating boots, ski-boots and cross-country ski footwear etc. The contention is that the footwear are not sports footwear. These are ordinary footwear. The appellant relied upon the opinion of the Footwear Design and Development Institute, Ministry of Commerce which was obtained by the Commissioner of Customs and Footwear Design and Development Institute vide letter dt.23.2.05 ~~opined~~ opining that the footwear, in question, does not have special feature to enhance sports activity to enhance sports activity or to improve the sports performance. In these circumstances the contention is that footwear in question are classifiable under Tariff Heading 64052000 of the Tariff.

2. The contention of the revenue is that there is a specific finding that the footwear in question are for enhancing the sporting activity. As the

same are having cushioning effect to facilitate sporting activity and the shoes have bars built in the bottom soles, therefore, the shoes are rightly classifiable as per impugned order.

3. We find that the case of the revenue is that the imported footwear are sports footwear. As per Chapter Note to chapter 64, sports footwear are defined which are designed for sporting activity and has, or has provision for the attachment of spikes, springs, stops, clips, bars or the like. We have also seen the samples produced by the appellant and we find that these shoes do not have any attachment of spikes, springs, stops, clips, bars etc. or for provision for attachment of these. Further, we find that as per the opinion of the Footwear Design & Development Institute which was obtained by the revenue, the footwear in question does not have special feature to enhance sports activity or to improve the sports performance. In these circumstances, we find merit in the contention of the appellant that the footwear in question are not sports foot wear. The impugned order is set aside and the appeals are allowed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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