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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/534 , 543, 558 & 560, 568 & 551 / 2006 - CU[DB] Date 11/11/2008

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

To :
M/S KRISHNA BUSINESS HOME
T-565,PRAGATI COMPLEX,ROOM NO 28,
II FLOOR, IDGAH CIRCLE, DELHI

M/SKRISHNA BUSINESS HOME Appellant

Vs

C.C. FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/582-587/08-CUS. DATED 07.11.08**

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

C.C. FARIDABAD, NEW CGO COMPLEX,
NH-IV,FARIDABAD

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.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 Nirdeshak 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)

PTO

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 534, 543, 558 & 560 of 2006-Cus

(Arising out of Order-in-Original No. 02/KKJ/Adj/2006-07 dated 19.5.2006, 03-05/KKJ/Adj/2006-07 dated 23.5.2006, 12/KKJ/Adj/2006-07 dated 20.7.06 & 09-11/KKJ/Adjn/2006-07 dated 6.7.2006 passed by the Commissioner, Customs & Central Excise, Faridabad)

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 Departmental authorities.	

M/s Krishna Business Home
M/s Amar Sales Corporation
M/s Royal Trading Co.
M/s Exportec India Exports

Appellant

Vs.

CCE, Delhi-IV

Respondent

Custom Appeal No. 568 & 551 of 2006

(Arising out of Order-in-Original No.02, 03-05/KKJ/Adjn/2006-07 dated 19.5.06 & dated 23.5.06 passed by the Commissioner, Customs & Central Excise, Faridabad)

CCE, Delhi-IV

Appellant

Vs.

M/s Krishna Business Home
M/s Amar Sales Corporation

Respondent

Appearance:
Shri V.K. Agrawal, Advocate & Sh. Piyush Kumar, Advocate - For appellant
Shri R.K. Verma, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 22.7.2008

Date of Pronouncement:

Final Order No. C/582 – 587/08 dated 7/11/08

Per S.S. Kang:

Common issue is involved in these appeals, therefore, are being taken up together. The appellant filed these appeals against the impugned orders whereby the demand was confirmed after classifying the imported goods under Chapter Heading No.5407.6190 of the Tariff and the goods were also confiscated on the ground of mis-declaration.

2. The adjudicating authority held that the goods are not available for confiscation hence no redemption fine is imposable. The Revenue filed appeals against this part of the order asking for redemption fine in respect of confiscated goods.

3. The appellant made import of polyester fabric (untextured) and claimed the classification under Chapter Heading No. 5407.6190 of Custom Tariff. At the time of

clearance, samples were drawn and were sent to CRCL, as per the report of CRCL imported fabric was composed of textured filament yarn of polyester. In view of this test report, the Revenue wants to re-classify the goods.

4. The contention of the appellant is that the goods were imported and Bill of Entry was filed and the description of goods were given as per the invoice under which goods were imported. The main contention of the appellant is that as per HSN Explanatory notes a protocol was prescribed for testing the samples of fabric and the same was not followed and this fact was admitted by the chemical examiner in his cross-examination. The chemical examiner also admitted that the test was done in general lab conditions and not in conditioned temperature humidity or pressure. The appellant also made request for re-testing of the samples and the same was declined. The contention is that the samples which were handed over by the Custom authority to the appellant were sent to Indian Institute of Technology and the test report is in favour of the importer. The contention is that as the

samples were not tested as per the protocol prescribed under the HSN and samples were on the visual examination, therefore, the test report cannot be relied ~~rely~~ upon to say the fabric is composed of textured quality filament yarn.

5. The contention of the appellant is that definition of textured yarn given in the HSN, when the yarn is textured, crimps are permanent or irreversible on the yarn. When the yarn is straightened by a specified stretching force the yarn will resume the original shape. Permanency of the crimps on the yarn cannot be tested by visual examination alone. Standard Test Methods have been prescribed for ascertaining as to whether a particular yarn removed from fabric is textured or not. There is a Standard Test Method for yarn Crimps and Yarn Take Up in Woven Fabrics, Designation D3883-99 prescribed by ASTM. As per ASTM the summary of test methods given in the ASTM is as under :-

"Bench marks are placed on a length of a yarn as it lies in a woven fabric. The distance between the bench marks is measured. The yarn is removed from the fabric, straightened by applying suitable tension, and the distance between the bench marks is re-measured. Yarn crimp is the change in length expressed as a percent and based on the in-fabric distance."

6. It is also mentioned in the ASTM that yarn removed from the woven fabric contains undulations or waves that have been introduced by the weaving process. Heat moisture, and mechanical shrinkage on subsequent finishing operations may accentuate these undulations, and in all probability increase the force to pull them out and straighten the yarn. In order to accurately measure the length of the yarn after the removal of the crimp, these undulations must be pulled out.

7. As per ASTM suitable force by suitable device for straightening the yarn is through application of horizontal or vertical tension, having two yarn support surfaces or two clamps. Straightening by hand according to ASTM is the least accurate option. Indian Standard Method for Determination of Crimps and Count of Yarn Removed from Fabrics, IS, 3442 – 1980 prescribes apparatus for the determination of crimps of yarn removed from fabrics. It

is not in dispute that the test report given by the departmental laboratory has not used apparatus or crimp tester for straightening of yarn removed from fabrics. It is further submitted that mere visual examination may not reveal the presence of crimps on the yarn. It is not sufficient to categorize it as textured yarn removed from fabric because visual examination will not reveal whether the crimps are permanent or not as the crimps take place on account of undulation during weaving process.

8. The contention of the Revenue is that the samples were taken from the imported fabric and the same were sent to CRCL and the CRCL in his test report categorically mentioned that the fabric is composed of textured filament yarn of polyester, therefore, imported goods are mis-declared to evade payment of duty.

9. We find that the Revenue is relying upon the test report of CRCL. The chemical examiner was cross-examined by the importer. In the cross-examination, the chemical examiner admitted that the examination was on visual as well as microscopic examination. It is also

admitted in the cross-examination that there are standard method prescribed to check the textured nature of filament ~~prescribed~~ under American Standard for Testing Material and the same has not been followed. It is also admitted that protocol prescribed under HSN has not been followed. As per Section XI of HSN Explanatory notes there were standard was prescribed for testing of textiles. For ready reference the relevant portion is reproduced below :-

(A) Scope and field of application.
The characteristics and use of standard atmospheres for conditioning and for determining the physical and mechanical properties of textiles are set out hereafter for guidance.

(B) Definitions.

(a) Relative humidity: the ratio of the actual pressure of the water vapour in the atmosphere to the saturation vapour pressure at the same temperature. The ratio is usually expressed as a percentage.

(b) Standard temperate atmosphere: an atmosphere which has a relative humidity of 65% and a temperature of 20 degree C.

(c) Standard temperate atmosphere for testing: an atmosphere which has a relative humidity of 65% and a temperature of 20 degree C.

NOTE : The adjective "temperate" as used above has been chosen for the limited use of the textile industry.

(C) Pre-conditioning.

Before conditioning a textile, pre-conditioning may be required. If so, the textile shall be brought approximately to equilibrium in an atmosphere having a relative humidity of between 10 and 25% and a temperature not exceeding 50 degree C.

These conditions may be obtained by heating air at 65% relative humidity and 20 degree C to a temperature of 50 degree C.

(D) Conditioning.

Before a textile is tested to determine a physical or mechanical property, it shall be conditioned by placing it in the standard temperate atmosphere for testing, in such a way that the air flows freely through the textile, and keeping it there for the time required to bring it into equilibrium with the atmosphere.

Unless otherwise specified in the method of test, the textile should be considered to be in equilibrium when successive weighings, at intervals of 2 hours, of the textile freely exposed to the moving air show no progressive change in weight greater than 0.25%.

(E) Testing

Except for special cases (for example wet tests), physical and mechanical tests of textiles are carried out in the conditioned state in the standard temperate atmosphere for testing."

As the test report which is relied upon by the Revenue to re-classify the fabric as composed of textile filament yarn, the test was not conducted as per the protocol laid down under the HSN Explanatory Notes or as per American Standard for Testing Materials, therefore, the impugned order is not sustainable hence set aside, Appeals filed by importers are allowed. As we are allowing the appeal filed by the importers consequently the appeal filed by the Revenue which are only for imposition of redemption fine are dismissed.

(Pronounced on 07-11-2008)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM