

**DCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1**

CUSTOMS APPEAL NO. 53299 OF 2018

[Arising out of Order in Original No. 11/2018 dated 31.03.2018 passed by the Commissioner of Customs, New Delhi]

M/S STOUT TRADING

.....APPELLANT

BI-55B, Shalimar Bagh,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-

.....RESPONDENT

New Delhi
ICD-Import, TKD,
New Delhi

**WITH
CUSTOMS APPEAL NO. 53622 OF 2018**

[Arising out of Order in Original No. 11/2018 dated 31.03.2018 passed by the Commissioner of Customs, New Delhi]

**M/S ARJUN, PARTNER
M/S STOUT TRADING, LLP,**

.....APPELLANT

BI-55B, Shalimar Bagh,
New Delhi

Vs.

COMMISSIONER OF CUSTOMS-

.....RESPONDENT

NEW DELHI
ICD-Import, TKD,
New Delhi

Appearance:

None for the Appellants
Shri M.K. Shukla, Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO'S. 51847-51848 /2025

**DATE OF HEARING : 30/09/2025
DATE OF DECISION : 09/12/2025**

P.V.SUBBA RAO

M/s. Stout Trading¹, a limited liabilities partnership firm, and its partner Arjun filed these two appeals to assail the Order dated 31.3.2018² passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad³ deciding the proposals made in the Show Cause Notice dated 23.11.2016⁴ issued by the Additional Director General⁵ of the Directorate of Revenue Intelligence⁶ to Stout and Arjun.

2. None appeared for the appellants. When these appeals were listed on May 1, 2025, Shri Prachit Mahajan, learned counsel sought to withdraw his Vakalatnama. Permission was granted and a notice was directed to be issued to the appellants to engage another counsel indicating that the matter would be listed for hearing on July 3, 2025. On July 3, 2025, office submitted a report that the notices sent to the appellants were returned undelivered. Learned authorized representative for the Revenue was requested to take steps to serve the appellants indicating that the matter would be heard by physical mode on August 13, 2025. On August 13, 2025, learned authorized representative reported that the notice could not be served on the appellant. It was therefore, directed that the matter should be listed on September 30, 2025 making it clear that the appeals may be decided on merits even if the appellants do not appear. When the matter was listed today (September 30, 2025) none appeared on behalf of the appellants.

1 Stout
2 Impugned order
3 Commissioner
4 SCN
5 ADG
6 DRI

3. We have heard learned authorized representative for the Revenue and perused the records and proceed to decide the appeals on merits.

4. Receiving intelligence that the goods were mis-declared in Bills of Entry no. 5176361 and 5176359 both dated 6.5.2016, DRI initiated investigation and examined the goods. The goods were found to be of excess weight weighing 19,660 kg (against declared 7,124 kg) in one container and 19,930 kg (against declared 7,368 kg) in another container. The goods were declared in both containers as "100% Polyester Knitted Long Pile Fabric" classifiable under **Customs Tariff Item⁷ 6001 10 90** attracting duty at the rate of 10%. On examination, the fabric was found to be "Fabric with cut pile" and other undeclared goods viz,, wall clocks, mirrors, plush pillows. Samples were sent to the Textile Committee and it was confirmed that the fabric was 100% Polyester Knitted Cut Pile Fabric which was classifiable under **CTI 6001 92 00** which attracted a higher rate of duty of 10% or Rs. 100/- per kg whichever is higher.

5. Another container imported by Stout was examined in August 2016 which declared both long pile and cut pile fabrics and the weight was found to be marginally higher at 20,030 kg as opposed to declared weight of 19,365 kg.

6. After completing the investigation, ADG, DRI issued the SCN proposing to classify goods declared as "100% Polyester Knitted cut Pile Fabric under **CTI 6001 92 00**, confiscate the

goods under section 111(l) and (m) of the Customs Act, 1962⁸ and impose penalties on both Stout and on Arjun.

7. The proposals in the SCN were decided by the Commissioner in the impugned order as follows:

“(A) (i) I order for classification of the goods i.e., 100% Polyester Knitted Cut Pile Fabric, under CTH 60019200 instead of CTH-60011090 and that they may be charged to duty accordingly.

(ii) I confirm the demand for differential Customs duty amounting to Rs. 62,67,816/- (rupees sixty two lakh, sixty seven thousand eight hundred and sixteen only) in respect of the goods i.e., 100% Polyester Knitted Cut Pile Fabric including other miscellaneous goods imported vide three Bills of Entry Nos. 5176361, 5176359 and 5897892 dated 06.05.2016, 06.05.2016 and 07.07.2016 respectively as detailed in the SCN from M/s Stout Trading LLP in terms of the provisions of Section 28 of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

(iii) I order for confiscation of the goods i.e., 100% Polyester Knitted Cut Pile Fabric including other miscellaneous goods having total assessable value of Rs. 1,21,81,371/- as detailed the Table under para 10 of the SCN, the imported by M/s Stout Trading LLP in terms of Section 111(1) and (m) of the Customs Act, 1962. But since the goods have already been released to the above party provisionally, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 10,00,000/- (rupees ten lakh only).

(iv) I order for confiscation of goods used for concealing smuggled goods having total assessable value of Rs. 6,15,432/- in terms of Section 119 of the Customs Act, 1962. But since the goods have already been released to the above party provisionally, I give an option to the importer to redeem the same on payment of redemption fine of Rs.60,000/- (rupees sixty thousand only).

(v) I impose penalty of Rs. Rs. 62,67,816/- (rupees sixty two lakh, sixty seven thousand eight hundred and sixteen only) upon M/s Stout Trading LLP in terms of Section 114A of the Customs Act, 1962;

(B) (i) I impose penalty of Rs. 5,00,000/ (Rupees five lakh only) upon Sh. Arjun, partner of M/s Stout Trading LLP under Section 112(a) of the Customs Act, 1962.

(ii) I impose penalty of Rs. 2,00,000/- (Rupees two lakh only) upon Sh. Arjun, partner of M/s Stout Trading LLP under Section 114AA of the Customs Act, 1962.”

Submissions on behalf of the appellants -Stout and Arjun

8. In the appeals, Stout and Arjun made the following submissions:

- (i) The impugned order has been passed violating principles of natural justice and hence it is bad in law;
- (ii) The Commissioner denied the appellant cross-examination of the textile committee experts;
- (iii) The goods were not liable to confiscation under section 111(l) and (m) of the Act;
- (iv) Penalty is not imposable on the appellants;
- (v) The impugned order may be set aside the appeal may be allowed.

Submissions on behalf of the Revenue

9. Learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) There are three issues for consideration in these appeals- whether the imported goods should be classified as "100% Polyester Knitted Cut Fabric" under **CTI 6001 92 00** instead of "100% Polyester Knitted Long Pile Fabric" under **CTI 6001 10 90**?
- (ii) Whether stout mis-declared the goods with an intent to evade duty?
- (iii) Whether the goods were liable to confiscation and whether Stout and Arjun were liable to penalties;
- (iv) As far as the reclassification of the goods was concerned, it was necessary because what was declared

was "long pile fabrics" and on examination, Textile Committee found the fabric to be 'Cut pile fabrics" and accordingly the correct classification is **CTI 6001 10 90;**

- (v) In addition to mis-declaring the nature of the goods, the appellants also mis-declared the quantity of the goods which was discovered on examination of the goods;
- (vi) The appellant also imported several goods which were not declared at all in the Bills of Entry;
- (vii) In view of the above, the goods were correctly held liable to confiscation under section 111 and penalties were correctly imposed;
- (viii) The impugned order may be upheld and the appeal may be dismissed.

Findings

10. We have considered the submissions advanced by both sides and perused the records.

11. The quantity of the goods was mis-declared in all three containers. In container NYKU 5843774 the declared weight was 7,124 kg while the actual weight was 19, 660 kg, i.e., more than twice the declared weight. Similarly in SEGU 5298849 the declared weight was 7,368 kg while the actual weight was 19, 930 kg-more than twice the declared weight. In both these containers while only long pile fabric was declared, there was also undeclared cut pile fabrics. Further, several undeclared items such as wall clock, mirrors, plush pillows were also found in SEGU 5298894.

12. In the third container NYKU0818357, both long pile and cut pile fabrics were declared and there was an excess weight of 665 kg.

13. On testing, by the Textile Committee, the correct nature of the fabrics was discovered. The relevant entries in the Customs Tariff are reproduced below:

6001 PILE FABRICS, INCLUDING LONG PILE FABRICS AND TERRY FABRICS, KNITTED OR CROCHETED

6001 10	<i>"Long pile" fabrics:</i>
6001 10 10	Of cotton
6001 10 20	Of man-made fibres
6001 10 90	Of other textile materials
	<i>Looped pile fabrics</i>
6001 21 00	Of cotton
6001 22 00	Of man-made fibres
6001 29 00	Of other textile materials
	<i>Other</i>
6001 91 00	Of cotton
6001 92 00	Of man-made fibres

14. A perusal of the above tariff entries shows that there is no dispute that the goods fall under the four-digit **Customs Tariff Heading of 6001**. Under this CTH, there are three sub-headings, long pile fabrics, looped pile fabrics and others. Cut pile fabrics imported by the appellant were as per the test reports, neither long pile fabrics nor looped pile fabrics and hence they fall under 'others'. The 'others' are further sub-classified into 'of cotton' and 'of man-made fibres'. Since the fabrics were made of polyester, they fall under **CTI 6001 92 00** as those made of man-made fibres. Therefore, the demand consequent upon such re-classification must also be upheld. **We, therefore, find that the impugned order needs to be upheld insofar as the classification of the goods and the consequential demand is concerned.**

15. Next is the question of confiscation of the goods under section 111(l) and (m) of the Act. These read as follows:

"Section 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77 ;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54 ;"

16. Since the goods were vastly mis-declared in terms of quantities and type of goods, they were correctly confiscated by the Commissioner in the impugned order under section 111(l) and (m).

17. Penalties have been imposed on Stout under sections 114A and 112(a) of the Act and on Arjun under section 112(a) and 114AA of the Act. These sections read as follows:

"Section 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 , or abets the doing or omission of such an act, or

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Section 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

18. The facts of the case show that the goods were mis-declared in terms of quantity and nature and some goods were not declared at all. Shri Arjun was the main partner of the appellant firm involved in the imports. The actions on the part of Stout and Arjun rendered the goods liable to confiscation. Therefore, the penalties imposed on them under section 112 need to be upheld. Through the mis-declarations, duties were short paid and hence the mandatory penalty under section 114A on Stout, the importer, needs to be upheld. Arjun is the main partner of Stout involved in these importers and the mis-declarations. Therefore, penalty under section 114AA on Arjun also needs to be upheld.

19. The impugned order is upheld and both appeals are dismissed.

[Order pronounced on **09/12/2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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