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

Appeal No. C/50870/2015-Cu(DB)
[Arising out of Order-in-Appeal No. CC(A)CUS/766/2014, dated18.12.2014, passed by the Commissioner of Customs, New Delhi]

M/s P.B. Enterprises **....Appellant**

Vs.

CC, New Delhi **....Respondent**

Appearance:

Sh. Mohan Lal, Advocate for the Appellant
Sh. K. Poddar, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.01.2017
Date of Pronouncement: 28.02.2017

FINAL ORDER NO. 51993 /2017-CU[DB]

Per V. Padmanabhan

The present appeal is directed against the Order-in-Appeal dated 22.12.2014. The importer/appellant imported goods by declaring them as "100% Nylon Knitted fabrics in width 56" colour-grey undyed" and classified the same under CTH 60063100 and discharged basic Customs duty at the rate of 10%. The consignment was examined by SIIB on the suspicion that it was "Nylon Net fabric" instead of "Nylon knitted fabric" as declared by the appellant. Samples of the consignments were drawn and sent to CRCL for testing. The test report from CRCL confirmed that the goods were "White Net Fabric" composed of Nylon (polyamide). On the basis of the CRCL test report, Revenue proceeded to classify goods under CTH 58041090 which attracted BCD at the rate of 10% or Rs 200/- per Kg, whichever was higher. On the basis of the above, Show Cause Notice dated 28.09.2012 was issued, which was followed by Order–In–Original by Additional Commissioner of Customs dated 15.10.2013. The Order-in-Original ordered the classification of the goods under 58041090 and the demand of differential Customs duty was confirmed. The goods were also ordered for confiscation under Section 111(m) of the Customs Act and were allowed for redemption on payment of redemption fine. The Show Cause Notice and Order-in-Original covered not only the goods imported under the above Bill of Entry but also a few earlier consignments. Penalty amounting to Rs 10 lakhs was also imposed under Section 112 (a) read with Section 114 AA of the Customs Act, 1962. When the order was challenged before the Commissioner (Appeals), he upheld the Order-in-Original. Hence, the present appeal.

2. With the above background, we heard Shri Mohan Lal, ld. Counsel for the appellant as well as Shri SK Poddar, Ld. DR for the respondent.

3. The ld. Counsel assailed the impugned order mainly on the following grounds:

i) CRCL has given the test report to the effect that the imported goods are in the nature of “White net fabric”. The appellant forwarded a sample from the same consignment to the Textile Committee, who opined vide their report dated 11.05.2012, that the goods are in the nature of "knitted fabrics". He further submitted that on the basis of the Textile Committee report, they requested the department for retesting the consignment, which was not allowed by Customs. The opinion of Textile Committee supports the classification as "Knitted fabric" under chapter 60 as claimed by the appellant.

ii) He further submitted that a few consignments have been imported earlier by the same appellant where the goods were declared as "Nylon Knitted Fabrics" and the same was approved by the Customs.

iii) He also submitted that an identical consignment was imported in JNCH Nava Sheva from the same supplier at the same price, which was got tested through Textile Committee, Mumbai and ultimately cleared as "Nylon Knitted fabrics" under Chapter 60.

4. Accordingly, he submitted that the classification of goods under Chapter 60 may be approved and the penal proceedings may be set aside.

5. The ld. DR opposed the contentions of the ld. Counsel for the appellant. He supported the impugned order, which has been passed on the basis of the test report of CRCL, who has opined that the goods are in the nature of "White net fabric" and not "Knitted fabric". He also submitted that the goods imported at Nava Sheva even if from the same supplier, does not necessarily mean that they were identical to that covered in the present proceedings. The consignment at Nava Sheva cannot be

taken as a basis for deciding the classification of the present consignment.

6. Heard both sides and perused the records. The importer filed Bill of Entry declaring the goods as "Nylon knitted fabric" and classified the same under CTH 60063100. Samples of the goods were got tested by CRCL laboratories, who had confirmed that the goods were not in the nature of "knitted fabrics" but were actually "Net fabrics" made out of Nylon (Polyamide). Considering, the goods net fabric, the Customs reclassified the same under CTH 58041090, which attracted higher rate of duty @ 10% or Rs 200/- per Kg, whichever was higher. Since, the re-classification of the goods was done on the basis of test report of the specific samples drawn for the consignment, we are of the view that the same is required to be upheld. The Original classification of the goods stands over ruled because the goods have been found to be not Knitted fabric but is "Net fabric". Identical goods imported in an earlier consignment also have been re-classified and differential duty demanded. Since, the re-classification is on the basis of test report of the sample of imported goods, it is upheld.

7. In addition to confirming the different duty, the ld. Commissioner in the impugned order has also ordered for confiscation of the goods imported under the various Bills of Entry covered in the order. The reason for the the order of confiscation under Section 111(n) of the Customs Act is that

goods have been intentionally mis-declared to avail the benefit of lower rate of duty. Penalty also has been imposed under Section 112(A) read with Section 114(AA).

8. We are of the view that the confiscation of the goods is sustainable only in respect of the goods covered under the Bill of Entry No. 5301915, dated 26.11.2011. The goods covered under this Bill of Entry were seized and provisionally released pending adjudication of the case. The imposition of redemption fine amounting to Rs 12,50,000/- for this consignment under Section 125 of the Customs Act, 1962 is upheld. However, in respect of the earlier consignment covered by Bill of Entry No. 41760211, dated 27.09.2011, the goods involved have already been cleared and were not available for confiscation at the time of passing the impugned order. Consequently, we are of the view that only the differential customs duty can be demanded in respect of the earlier consignment. In the absence of the goods, no order of confiscation under Section 111(m) can be made on these goods. Consequently, the redemption fine imposed on the same is set aside.

9. We note that this is a classification dispute. Revenue could arrive at the correct classification only on the basis of test report. Hence, it cannot be said that the mis-declaration was willful with intention to evade customs duty. Consequently, in the facts and circumstances of the case, the penalty imposed on

the appellant is also reduced from Rs 10 lakhs to Rs 5 lakhs under Section 112 A read with Section 114 AA of the Customs Act.

10. In view of the above discussion, the appeal is disposed off in the above terms.

[Pronounced in the Open court on 28.02.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

RS