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

Customs Appeal No. 53454 of 2015

[Arising out of Order-In-Appeal No. CC(A) CUS /D II/ICD/690 /2015 dated 02.07.2015 passed by Commissioner of Customs (Appeals), New Delhi]

Commissioner of Customs **Appellants**
New Delhi

Vs.

M/s. S R M (India) Ltd. **Respondent**

Appearance:

Shri K Poddar, AR for the Appellants
Shri J P Kaushik, Advocate for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 28.03.2017

FINAL ORDER NO . 52685 /2017

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing both the sides duly represented by Shri K Poddar, learned AR appearing for the Revenue and Shri J P Kaushik, learned advocate appearing for the respondent-assessee, we note that appellant imported 'fibre glass woven roving 'C' Class from China and filed Bill of Entry dated 24.7.12. The dispute in the present appeal relates to payment of Anti –Dumping Duty in terms of notification No. 30/11-Cus. dated 04.03.2011, read with corrigendum dated 31.3.2011. The said notification levies Anti Dumping duty on various items specified therein and as per explanation attached to the said notification, glass woven roving are excluded from levy of duty, as held by Commissioner (Appeals).

2. The Revenue's grievance is that such finding of the Commissioner (Appeals) are not proper inasmuch as only glass woven roving which are meant for thermoplastic applications, are excluded from the scope of glass woven roving which is a specified item for the purpose of levy of Anti Dumping duty.

3. For better appreciation, we reproduce below the amended explanation to the notification:

> *Explanation – For the purpose of this Table, "Glass fibre" means glass fibre, including glass roving (assembled rovings (AR), direct rovings (DR), glass chopped strands (CS), glass chopped strands mats (CSM). Specifically excluded from the scope of the product under consideration are glass wool, fibre*

glass wool, fibre glass insulation in wool form, glass yarn, glass woven fabrics, glass fibre fabric, glass woven rovings and chopped strands meant for thermoplastic applications, micro glass fibre used in battery separator, surface mat/ surface veil / tissue."

As is seen from the above explanation glass woven roving are excluded from the scope of product in consideration, but the Revenue's contention is that it is only that glass woven roving, along with chopped strands which are meant for thermoplastic applications which are excluded.

4. The Revenue has obtained opinion from an independent Chartered Engineer who vide his report dated 22.9.2013 has opined that report is as under:

> *"i) Thermoplastic are polymers that become liquid when heated and return to the solid state when cooled. This property of thermoplastic finds its application to facilitate shaping / moulding in desired shapes and sizes. This cycle of melting and freezing can be repeated, so that the plastic can be reshaped by heating it. Thus, thermoplastic materials find a variety of applications, including consumer goods, machine parts, medical equipment and packaging and storage materials and the Thermoplastic Materials used in making of such goods can be recycled.*
>
> *ii) 'Fibre Glass' is a composite plastic reinforced by extremely fine glass fibres, making it very strong and flexible.*

Roving is strands of fabric glass groped together to form twisted yarn. Glass Woven Roving is a fabric made by interweaving rovings and is mainly used for hand lay up of various FRP products such as storage tanks, cooling towers, pipes etc., which mainly require corrosion resistance besides strength.

iii) In his opinion the representative sample given to him is not to be used in thermoplastic applications, as the same is not to be made liquid by heating the same (a pre-requisite for thermoplastic applications). Rather, it is mainly to be used for hand laying of the same (in single or multilayers) for storage tanks, boats, bath tubs, providing vehicle roof insulations and cooling tower etc., where uniform cross section is desired. This is well suited to use for applications in making of odd shaped parts."

5. The respondent has also sought the opinion from the Director General of Anti-Dumping & Allied Duties under RTI Act and the Director General of Anti Dumping and Allied Duties vide their letter dated 10.12.2013 which has clarified that that the item 'glass woven rovings' are specifically excluded from the scope of notification levying Anti Dumping Duty.

6. It is the contention of the respondent that the glass woven rovings can never be used for thermoplastic application and as such, Revenue's contention that exclusion of only those glass woven rovings as thermoplastic applications can never be accepted. Further,

it stand submitted before us that once the Director General (Anti Dumping) who are the notification issuing authority, who is a proper investigating authority for proposing the levy of Anti Dumping duty clarified that glass woven rovings fall under the exempted category, the Revenue should have accepted the said effect.

7. We note from the opinion of the Chartered Engineer that glass woven roving are mainly used, for a manufacture of various items mentioned therein and are not used in the thermoplastic application. If that be so, the Revenue's interpretation of the notification that only those glass woven rovings which are used only for thermoplastic applications are exempted cannot be accepted in absence of any substance to the contrary. Further, the Director General (Anti Dumping has itself clarified that Anti Dumping Duty is not levied on glass woven roving. The said authority being investigating authority on the recommendation of whom the Customs Notifications are issued, their opinion is required to be accepted. As such, we find no infirmity in the order of the Commissioner (Appeals) so as to interfere in the same. Accordingly, Revenue's appeal is rejected.

(dictated and pronounced in the open court)

(V Padmanabhan)	**(Archana Wadhwa)**
Member(Technical)	**Member(Judicial)**

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