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

Customs Appeal No. 51668 of 2017

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD IMPORT/ 366/2017 dated 15.06.2017 passed by the Commissioner of Customs (Appeals) , New Delhi]

M/s. Ram Balram International. **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri R V Naik, Advocate for the Appellants
Shri P Juneja, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 18.12.2017

FINAL ORDER NO. 58712/2017

Per: Justice (Dr.) Satish Chandra:

The present appeals have been filed against the order in Appeal No. 366/2017 dated 15.06.2017.

2. Vide Bill of Entry dated 09.7.2014, the appellant has imported 'Polyester Quilt cover' from China. The same was packed in 280

bales having gross weight 25000. The gross value of the goods was Rs.8,47,382.34. The DRI detained the consignment and further sent the samples for examination to Textile Committee.

3. After having the expert opinion and test report, the said goods were declared as 'Polyester Woven Fabrics'. So, enhanced duty was demanded. Being aggrieved, the appellant has filed the present appeal.

4. With this background, Shri R V Naik, learned Counsel for the appellant took preliminary objection that the adjudicating authority was not competent to pass the order on pecuniary side. But fact remains that the original duty was just Rs. 4,80,566/- only which was below Rs. 5 lakh. So, the Deputy Commissioner has jurisdiction to examine the same as Assessee Officer. Moreover, the appellant has filed the appeal before the Commissioner but no plea was taken to this effect as appear from the impugned order. So, the preliminary objection raised by the learned Counsel has no merit and same is over-ruled.

5. On merit, at the strength of written submission, the learned Counsel for the appellant submits that the Textile Committee test report dated 19.11.14, has declared the said items as 'Polyester Woven Fabrics' classified under 6302.22. But the same has no basis as the items were 'quilt covers'. It is the submission of the learned Counsel that the finding of the adjudicating authority is contrary to the

finding of the Commissioner, Inland Container Depot, TKD as recorded in his letter dated 11.9.14 holding that the impugned goods being closed from three sides with two sides machine stitched are classifiable as 'quilt covers' and not as running fabrics. The classification made by the department is contrary to the report of the Textile Committee. For the reason that the said report cannot be accepted as the same was given without taking the appellants into confidence.

6. Further, he has relied on the ratio laid down in the case of ***M/s. Annapurna Industries and others vs. CC, Kolkata Final Order No. 77308-77315/2017 dated 30.8.2017,*** where identical 'qulit covers' were discussed. But fact remains that in the said case, dispute was that 'quilt cover' is nothing but double bed sheet and duty rate for both the items was the same. But in the instant case, the dispute is regarding running cloth which was imported. The same was contained in 280 bales of Polyester woven fabrics . The same was claimed as 'polyester quilt covers' but fact remains that the fabrics was not cut into sizes. Stitches were temporary which can easily be removed and the imported textile can be used for other purposes.

7. In these circumstances, we are of the view that the 'quilt covers' usually comes in pieces but in the instant case, it is in length. When the cloth is in 280 bales having the weight of 25900 Kgs., one cannot be identified as what is the length of quilt and its weight.

Moreover, Apparel Export Promotion Council (AEPC) by its letter dated 1.04.2015 has declared the goods as “Upholstery Fabrics”. The AEPC has declared the imported bales as fabrics and not as ‘quilt covers’ as there was no individual weight and/or length. In view of the above and by considering totality of the facts and circumstances, we are of the view that imported items cannot be covered as ‘quilt covers’ as there was no reference to composition, nature, structure to be identified as ‘quilt cover’. Hence, we find no reason to interfere with the impugned order. Same is hereby sustained along with reasons mentioned therein.

8. In the result, appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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