

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI**

Date of Hearing : 27.11.2018
Date of Decision : 17.12.2018

APPEAL NO.C/53196/2018

(Arising out of Order-in-Original No.13/2018-Commissioner, Customs, Jaipur dated 17.09.2018 passed by the Commissioner of Customs (Preventive), Jodhpur]

M/s.Desert Exim

Appellants

Vs.

CC, Jaipur

Respondent

Appearance:

Shri S. Jaikumar, Advocate for the Appellants.

Shri Sunil Kumar, DR for the Respondent.

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Hon'ble Shri Bijay Kumar, Member (Technical)

FINAL ORDER No. 53414/2018

Per Anil Choudhary

The issue in this appeal is whether in the facts and circumstances, the goods under import are restricted items, whether the confiscation is justified along with imposition of penalty under Section 112(a) of the Act with further direction to re-export the goods.

2. The appellant, importer, M/s. Desert Exim had imported Waste Nylon Rope and filed two bills of entry at ICD, RAJSICO, Jodhpur. Details of import consignments is as follows:-

S.No.	Bill of Entry No.	Invoice No.	Quantity	Value	Container No.
1	6569306	284 dated 28.02.2018 issued by M/s MINPRO Recycling AB, Odalvagen 8,71177, Stress, Sverige	141.630 MT	\$53111.00 or Rs.36,46,070/-	TCNU-4688200 (40')
					TLLU-5009692 (40')
					SEGU-6091497 (40')
					TLLU-4922222 (40')
					TCNU-7488438 (40')
					CMAU-5849551 (40')
					GESU-6104115 (40')
					APHU-7026960 (40')
2	6569276	292 dated 19.03.2018 issued by M/s MINPRO Recycling AB, Odalvagen 8,71177, Stress, Sverige	187.500 MT	\$70313.00 Or Rs.48,26,987/-	BMOU-5647943 (40')
					CAIU-8866776 (40')
					CMAU-4816851 (40')
					ECMU-9744762 (40')
					ECMU-9762961 (40')
					TCLU-6563170 (40')
					TCNU-2930207 (40')
					TLLU-4397850 (40')
					TLLU-4531505 (40')
TCNU-9861772 (40')					
			329.130 MT	\$123424.00	

3. The description of the import goods given on the import invoices was “Waste Nylon Rope” with HS Code 39159090. The importer filed bill of entry no.6569276 dated 28.05.2018 for clearance of 187.500 MT of Waste Nylon Rope valued at Rs.48,26,987.45 and filed another Bill of Entry No.6569306 dated 28.05.2018 for clearance of 141.630 MT of Waste Nylon Rope valued at Rs.36,46,070.15 for home consumption. The importer classified the imported goods under sub-heading 55051090 and opted for first check in order to ascertain classification of the import goods. As such, the imported goods were de-stuffed and the goods were examined under “First Check” in presence of Shri Ajay Agarwal, Customs Broker and Shri Pradeep Kumar, Intelligence Office, DRI, Sub-Regional Unit, Jodhpur. On examination, the goods were found to be “Waste Nylon Rope”. In order to ascertain the chemical composition of the import

item i.e. whether the Rope were made of Nylon or any other material, representative samples were drawn under Test Memo No.30/2018-19 & 31/2018-19, both dated 29.05.2018 and sent to the Chemical Examiner, CRCL, New Delhi for testing so as to ascertain, "Whether the Sample is Nylon or otherwise". Test Reports from CRCL were received under C. No. 35/CUS/CRCL/2018/CL-361-I/11.06.2018/Report from CRCL were received under C. No. 35/ CUS/ CRCL/ 2018/ CL-361-I/11.06.2018/Report dated 14.06.2018 in respect of Bill of Entry No. 6569276 dated 28.05.2018 and C. No. 35/CUS/CRCL/2018/CL-362-I/11.06.2018/ Report dated 14.06.2018 is as follows:-

" The Sample is in form of different types of dull white ropes of assorted lengths and sizes. It is composed of polyester. "It is other than polyimide (Nylon)"

4. After receipt of the Report from CRCL, copies of the Test Report were made available to the importer vide letter dated 21.06.2018 and the importer was requested to offer his comments on the same, taking into consideration the import invoice and the bills of entry filed by them in respect of the imported goods. The importer vide letter dated 25.06.2018 informed that their goods are neither classifiable under Chapter Heading 5607, nor under 6310. Their goods are correctly classifiable under Chapter Heading 5505 since Nylon as well as Polyester are obtained from Man Made Synthetic Fibres. The importer further stated that after first check and the chemical examiner's report, the classification in respect of both the Bills of Entry was to remain the same. The importer stated that the goods

can be used only for the melting purpose which can be confirmed by the Chartered Engineer.

5. In order to ascertain as to whether the goods are capable of being used as such or not, Technical Opinion of Shri Rameshwar Lal Prajapat, Chartered Engineer empanelled by the Customs Department was sought vide letter dated 05.07.2018. Shri Prajapat visually inspected the import goods along with the officers of Customs and submitted his report vide his letter Ref. No. RLP/113 dated 06.07.2018 opining that “these waste nylon/ polyester ropes are not further usable”.

6. After examining the Technical Opinion, the imported goods were found to be Waste of Polyester Ropes not further usable and hence the same appeared to be appropriately classifiable under Chapter Heading 3915 of the Customs Tariff Act, 1975 instead of Chapter Sub-Heading 55051090. The Waste falling under Heading 3915 is restricted goods under Exim Policy, 2015-2020 whereas the goods falling under Chapter Heading 5505 can be imported without any restriction. Thus, the Waste Polyester Ropes imported under Bill of Entry No. 6569276 & 6569306, both dated 28.05.2018 appeared to have been mis-classified so as to clear it without a valid import licence issued under Exim Policy 2015-2020.

7. On reasonable belief that the said 187.500 MT of Waste Polyester Rope valued at Rs. 48,26,987.45 covered under Bill of Entry No. 6569276 dated 28.05.2018 and 141. 630 MT of Waste Polyester Rope valued at Rs. 36,46,070.15 covered under Bill of Entry No. 6569306 dated 28.05.2018 had been imported into India in contravention of the provisions of Exim Policy, 2015-2020, and various Sections

of the Customs Act, 1962, the imported goods were seized under Section 110 of the Customs Act, 1962 vide Panchnama dated 07.07.2018. After seizure, the goods were handed over to Shri Amar Singh, Manager, ICD, RAJSICO, Jodhpur under Supurdginama dated 07.07.2018.

8. During the course of investigation of the case, Statement of Shri Arun Mittal, Proprietor M/s Desert Exim was recorded under Section 108 of the Customs Act, 1962. In his statement dated 07.07.2018, Shri Mittal has stated that he is proprietor of M/s Desert Exim, Office No. 206, Modi Market, Chopasani Road, Jodhpur. This firm was started by him during 2017. He further stated that this is a trading firm, which mainly deals in all types of scrap. When asked about the present import, under Bills of Entry No. 6569276 & 6569306, both dated 28.05.2018, Shri Mittal stated that they have come into contact with the agent of the exporter when he came to India along with samples of the goods. He stated that there was no Formal Purchase Order and the order was placed verbally. The present cargo was imported for trading purpose after processing on job work basis.

9. On being specifically asked about the restrictions on import of the imported item in question or requirement of licence from DGFT, Shri Mittal stated that he was not aware about restrictions on import of the goods in question. He stated that the goods, according to him, were classifiable under CTH 5505 as Nylon Waste, accordingly they had filed the Bill of Entry classifying the goods, which is having no pre-condition. However, Shri Mittal agreed with the reports of CRCL and the Chartered Engineer. Shri Mittal stated that the seizure proceedings of Panchnama

dated 07.07.2017 was undertaken before him and he was satisfied with the proceedings.

10.. It appears to Revenue that the appellants have attempted to import Polyester Waste without a valid import licence in contravention of Policy Circular No.20/2002-2007 dated 12.03.2003 issued by DGFT read with Public Notice No.392 (PN) -92-97 dated 1.1.97 issued under Exim Policy 2015-2020. Thus, the goods under import were put under seizure alleging mis-classification with intent to clear the same without the valid licence. Further, the import of the appellant, Shri Arun Mittal, appears to be liable to penalty under Section 110 of the Act.

11. The appellant waived the requirement of show cause and prayed for decision on merits and for release of the goods, being highly inflammable. Show cause notice dated 23.8.2018 was issued proposing to re-classify the goods under sub-heading no.3915 59041 of the Customs Tariff, with proposal to confiscate and further proposal to impose penalty.

12. The appellant contested the show cause notice stating that they were not aware that the goods were restricted items and further the goods are basically Cordage of synthetic material and hence classifiable under Chapter 63 or 5607. Further, reference was made to Chapter Note of Chapter 39 (2p) , which excludes articles of Section XI. Further, there was no mis-giving on the part of the appellant, as the appellant has for first time imported such goods and prayed for clearance on first check basis, which shows their bona fide.

13. The show cause notice was adjudicated vide the impugned order-in-original and the goods were re-classified under CTH 3915 9041 with order of confiscation

with option to redeem on payment of redemption fine of Rs. 5 lakhs. Further, a penalty of Rs.1 lakh was imposed on the importer, Shri Arun Mittal under Section 112 (a) of the Act. Further, order was passed to re-export the goods to the shipper within a period of 45 days of the issue of the order.

14. Being aggrieved, the appellant is before this Tribunal on the ground that the goods in question are *prima facie* not covered under Chapter 39. The Adjudicating Authority has nowhere disputed that the impugned goods are not textile items. In the impugned order, the goods have been held to be Waste Polyester Ropes by CRCL, which are actually textile items by virtue of Exclusion Clause of Chapter Note (2) (p) of Chapter 39. Further, the goods of Section –XI, Textile and Textile Articles are not covered under Chapter 39. Thus, the goods being Textile Items/ Articles deserve to be classified under Chapter 6310 under which there is no restriction for import. The appellant's contention has been rejected on the ground that the appellants have admitted that the goods could not be used as Cordage. Chapter Heading 63.10 interpretes the goods being – **“used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile material”**. Further, CTH 63.10 provides specific description of goods covered under Bills of Entry which include, “used scrape of Cordage or rope of textile material. Such are the goods involved in the present case. Further, in Chapter 39 of the Customs Tariff, there is no mention of Cordage /ropes. Further, from the report of CRCL itself, it is evident that, “the sample is in the form of different types of old dull white ropes of assorted lengths and sizes. It is composed of polyester. It is other than Polyamide

(Nylon)". Further, the Id. Counsel points out that CRCL has nowhere mentioned that the goods are waste or scrap of ropes. Further, he points out that CTH 39.15 specifically covers – waste, parings and scrap, of plastics. Further, the reliance was placed on the report of Chartered Engineer over and above the report of CRCL, which is totally mis-placed and prejudicial to the appellant.

15. In view of the different competing entries in the Customs Tariff, there is no conscious policy or principles of law, nor any attempt to import the restricted goods.

16. The Id. Counsel further relies on the rulings of this Tribunal in the case of **Al-Noor Exports & Imports Vs. CC, Chennai – 2017 (358) ELT 1235 (Tribunal-Chennai)**, wherein this Tribunal under similar facts and circumstances, the import of old and used tyres has been allowed and clearance of restricted goods for home consumption on imposition of redemption fine. Further, reliance is placed on the ruling of the Punjab & Haryana High Court in the case of **Horizon Ferro Alloys Pvt. Ltd. and Others Vs. Union of India – 2016-TIOL-1239-HC-P&H-CUS**.

17. Further, the Id. Counsel states that as the goods are still lying with the Customs they may be allowed clearance for home consumption on such terms, this Tribunal may deem fit. Further, prays for setting aside the penalty imposed.

18. Ld. AR for the Revenue relies on the impugned order.

19. Having considered the rival contentions, we find that the appellant is a first time importer of Waste Polyester Ropes and have bonafidely filed the Bill of

Entry under First Check Basis. We further find that as per the report of CRCL, the goods under import are old, dull white ropes of assorted length and sizes. The said ropes are composed of Polyester Plastic other than Polymide (Nylon).

20. Thus, we find that the goods are more appropriately classifiable under Chapter 63. Accordingly, we hold that no case of mis-declaration or conscious effort to import restricted goods is made out.

21. Thus, we allow the appeal in the following terms:-

- i) We set aside the confiscation,
- ii) We set aside the penalties of Rs.1,00,000/- under Section 112(a) of the Act on the proprietor.
- iii) We allow clearance for home consumption on payment of duty.

22. Further, the goods are directed to be released forthwith within seven days of deposit of duty. Order be issued Dasti.

[Order pronounced on...17/12/2018...]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp

