IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 12/10/2018

Appeal No. C/53153/2018-(DB)

(Arising out of Order-in-Appeal No. CC-A-CUS-D-I-IMPORT-NCH-344-2018 dated 05/09/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-NEW DELHI(IMPORT & GENERAL)

AJAY KUMAR — Appellant

Vs.

C.C.-NEW DELHI — Respondent

<u>Appearance</u>
Ms. Seema Jain, Adv. — for the appellant
Mr. Sunil Kumar, DR — for the respondent

CORAM: **Hon'ble Mr. ANIL CHOUDHARY, Member (Judicial)**
Hon'ble Mr BIJAY KUMAR, Member (Technical)

<u>Final Order: 53507/2018</u>

Per Bijay Kumar

1. The present appeal is filed against the Order-in-Appeal No. CC-A-CUS-D-I-IMPORT-NCH-344-2018, dated 5/9/2018, passed by the Commissioner(Appeal) New Custom House, New Delhi, wherein he has upheld the assessment Order No. 40/2018 dated 12/06/2018 issued by the Original Adjudicating Authority.

2. Brief facts of the case are that the appellant has imported the consignment of "hooks and eye fastening strips", Nylon 60 (herein after rendered to as the imported goods also) in different colours and size from M/s Chuangshun Lingerie Accessories Company, China. The

appellant filed EDI Bill of Entry No. 4422603 dated 15/12/2017, at ACC, import, NCH, New Delhi, for clearance of imported goods. The consignment imported was subjected to first check, with 100 per cent examination by the appraising groups on account of proper classification of the hook and eye fastening strip, imported by the appellant, which appear to have been mis-classified under the CTH 8308 10 10 in stead of appropriate classification under Tariff Heading 6212 90 90. After examination, it was held by the Assessing Officer that these goods i.e. hook and eye fastening strip are the parts of brassieres, containing of metallic hooks eyes strips made of cloth material. The imported goods (fastening strip containing hook and eye) were readymade component and meant for brassieres only. Accordingly, the Assessing Officer changed the classification of the imported consignment to heading No. 6212 90 90 instead of 8308 10 10 of Customs Tariff Heading, after following the process of adjudication. This adjudication order was upheld by the Ld. Commissioner (Appeal) in the impugned order. While upholding the order of Adjudicating Authority the ld. Commissioner (Appeal) referred to and relied upon the decision of ***M/s Gosai Trading Company vs. Commissioner of Customs, Kolkata-2007(214) ELT 301(Tri.-Kolkata)***

3. Being aggrieved with the impugned order the appellant has filed the appeal on the following grounds;

(a) That the general explanatory note of Rules for interpretation in first schedule, to Customs Tariff Act, 1975, states that the classification has to be arrived in the following manner;

1. Where in column(2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "—", the said article of group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---"or "---", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-"or "—".

It is, thus, submitted that the heading 6212 mentions that parts of Brassieres, girdles, corsets, braces, suspenders, garters and similar articles are classified in Chapter heading 6212. But heading 6212 does not prescribe the rate of duty payable. To ascertain the rate of duty on the goods, the goods have to be classified in the sub-heading against which the rate of duty has been prescribed in the CT Act. There is no sub-heading of parts in the heading 6212. The goods imported by the Appellant are not covered under Chapter heading 6212 90 90 because 6212 90 90 does not cover parts. Whereas parts are included, they are expressly mentioned in the Tariff and merit classification under specific Tariff heads. The sub-heading “others” in heading 6212 90 90 is preceded by --- which is the sub classification of classification of the article or group of articles covered by the said heading.

(b) That the appellant has also referred to the entry of chapter heading 6212 of Customs Tariff Act which is reproduced as under;

6212	**Brassieres, girdles, corsets, braces Suspenders, garters, and similar Articles and parts thereof, whether Or not knitted or crocheted**	
6212 10 00	- Brassieres	30% or Rs. 30 per piece, whichever is higher
6212 20 00	- Girdles and panty-girdles	30% or Rs. 30 per piece, whichever is higher
6212 30 00	- Corselettes	30% or Rs 30 per piece, whichever is higher
6212 90	--- Other	
6212 90 10	--- Suspender belts, Braces, Suspender garters and the like	30% or Rs 30 per piece whichever is higher

6212 90 90	--Other	30% or Rs. 30 per piece, whichever is higher

(c) That HSN Explanatory Notes to chapter 62 read reproduce as under;

"This chapter also covers unfinished or incomplete articles of the kind described therein, including shaped textile fabric for making such articles and shaped knitted or crocheted fabrics for making articles or parts of articles of heading 62.12. Provided these products have the essential character of the articles concerned, they are classified in the same heading as the finished articles. However parts of garments or of clothing accessories, not knitted or crocheted (other than those of heading 62.12.) are classified in heading 62.17.

The HSN explanatory notes states that products that have the essential character of the articles concerned, they are classified in the same heading as the finished articles. The hook and eye fastening strip is merely strip of nylon material and wadding having the hooks and eyelets stitched on it. It is part of brassieres, but does not have the essential characteristic of the finished articles. Therefore, the item cannot be classified in Tariff Head 6212 9090"

4. It was submitted that the General rules for interpretation of Rule 2(a) states that;

"2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished

(or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled."

Any reference in a heading to article will shall be taken to include a reference in an article incomplete for unfinished goods, provided that as presented, incomplete or unfinished article has essential character of complete and finished article. It shall also be taken to include reference to that article complete or unfinished, (falling to be classified has complete or finished goods) presented assemble or disassemble. Accordingly, it was submitted that an article which has essential character of brassieres would be included in Tariff heading 6212. The hook and eye fastening strip does not have essential character of brassieres, and therefore, will not be classified under heading 6212.

5. On the other hand chapter heading 8308 10 10 specifically covers the hooks and eye, eyelids at heading No. 8308 10 10. For the ease of reference the Tariff heading 8308 10 10 is reproduced as under;

Tariff Items	**Description of goods**	**Unit**	**Rate of duty**	
			Standard	**Pref. Areas**
8308	**Claps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewellery, wrist watches, books, awnings, leather goods, travel goods or saddler or for other made up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base**			

	metal			
	Hooks, eyes and eyelets:			
	Hooks and eyes……….			
	--Eyelets			
8308 10				
8308 10 10		**Kg.**	**10 %**	**--**

<u>"Parts"/ " others" are classified under different heads in the tariff. Parts cannot be classified under others</u>.

The Custom Tariff has a specific classification for " parts" wherever the intention is to classify the "parts" in a specific sub-heading. The tariff also has specific classification will not include " parts" of brassieres. The words " parts thereof" in the Heading 6212 refers to products that have the essential character of the articles concerned as per the HSN explanatory notes. for other goods of a sub-heading. " Parts" cannot be classified as " others" and vice versa. Since the Hooks and eye, imported by the appellant does not have essential characters of Brassieres and thus not classifiable under heading 6212 of Customs Tariff.

To substantiate its claim about the classification under heading 8308 10 10, the appellant referred to HSN explanatory note which is reproduced as under;

"The goods imported are covered in Chapter 8308 because the HSN Explanatory notes states that hooks and eyes stitched on fabric are covered in 8308 if they retain the essential character of articles of base metal. The hook and eye fastening strip is nothing but hooks and eyes stitched on fabric. The goods are used for the purpose of closing and opening, the fabric is incidental as the hooks and eyes need to be stitched on the fabric in order to be used. The hook and eye strip retains the essential character of hooks and eyes. It does not take the form of any article."

6. The appellant also stated that the Adjudicating Authority as well as appellate authority has relied upon the decision of the Hon'ble Tribunal in case of Gosai Trading Company (Supra), for the classification of imported goods i.e. hooks and eye fastening strips as the part of brassieres. It is submitted that there is no finding in the order on the submission made by the appellant. In the Gosai Trading Company (supra) case the classification of hooks and eye fastening strips was decided by the Hon'ble Tribunal without taking notice of the HSN Explanatory Note or the Rules for interpretation of the Tariff. The HSN Explanatory Note for the interpretation of Tariff was never argued before the Tribunal by the parties. It was submitted that the Explanatory Notes and the General Rule for interpretation of Tariff are in consonance with each other and following the same the Hooks and Eyes, imported by appellant should have been classifiable under Tariff heading 8308 10 10. It is settled law that the HSN is a safe guide to resolve the classification dispute and is internationally acceptable nomenclature system emerging from Harmonising System, which are dependable guide for interpretation of Indian Customs Tariff also. For this reliance was placed on the decision of Hon'ble Supreme Court in case of ***CCE, Shillong vs. Wood Craft Products Ltd.*** *1995 (77) ELT 23 (SC)* **&** ***LML Ltd vs Comm of Customs-****2010 (258) ELT 321 (SC)*

7. It was also stated that levy of Customs duty of Rs. 30 on an item of 20 to 60 paisa cannot be the intention of legislature, as the Customs duty of Rs. 30 or 30 per cent whichever is higher is (on the service) on the goods of chapter 6212. The appellant, further, stated that hooks and eye fastening strips are being regularly imported under chapter heading 8308 by the other importers and accordingly there is no reason to hold the different view in the case of appellant.

8. Ld. Advocate, on behalf of the appellant has stated that the goods are being classified under heading No 8310 10 by the various other Custom House and the goods are being regularly imported under the same heading. The ld. Advocate also exhibited the sample of the hook and eye fastening strip being imported by them. It was further stated that the hook and eyes fastening strip imported by the appellant has not the only exclusive use as a part of brassieres but also is being used as the part of gloves, shoes etc., as binding strips and also as other textile accessories meant for fastening by the strips.

9. Ld. Advocate also impressed upon the classification of the goods under heading 8308 10 10 drawing support from the classification determined by the EU Binding Information for United Kingdom as well as Portugal. Accordingly, she said the order of the Commissioner (Appeal) suffers very inherent infirmity as he has completely relied upon the decision of ***Gosai Trading Company (supra),*** without making any distinction in the case of article imported by the appellant and ignoring the HSN Explanatory Notes.

10. On the contrary ld. AR reiterated the reasons contained in the impugned order. He submitted that the issue has been settled by the Hon'ble Tribunal in case of ***M/s Gosai Trading Company(supra)*** and accordingly and same is required to be followed in this Case also.

11. Heard the parties and carefully considered the case records and various submissions made by both sides.

12. The issue involved in this case is regarding the classification of "hook and eye fastening strip" Nylon 60 imported by the appellant. As per the import invoices, the exporter is manufacturer also. The imported goods are of different colours, shapes and sizes. The exporter declared the classification of aforesaid exported goods under Customs Tariff Head. 83081010. Total invoices value of export goods as per CIF is U.S. dollar 206.00 FOR 900 doz which stood at Rs. 13623.96 after conversion.

This classification was not acceptable to the Customs and after examination of the said imported goods, reclassification the goods as " hooks and eye fastening strip of brassieres" consisting of metallic hooks and eyes inserted in the strip made up of cloth. Accordingly, the accessing officer changed the classification of the imported goods under 6212 90 90 as the part of brassieres, placing the reliance on the Hon'ble Cestat in the case of ***M/s Gosai Trading Company vs. Commissioner of Customs, Kolkata (supra)*** wherein it is held that the eye and hooks are the part of bra and classifiable under Chapter heading 6212 90 90.

13. We have also seen the samples of the imported goods. It consists of a set of hook and eye incorporated into a textile backing. One strip has three parallel rows with the brackets and other strips have a row with two hooks. Some samples were having only one hook and three eyes on the two different strips. For the better appreciation of the controversy on the classification of hooks and eyes imported by the appellant it is worthwhile to consider the two inter competing entries;

13.1 Under CTA Chapter 8301 is already is described above; The Chapter heading 6212 is meant for classification of brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof whether knitted or crocheted, in this regard we would like to mention para 5 of the Gosai Trading Company (supra);

> *"5. Heading 8308 thus includes hooks as well as eyes of a kind used for cloth, whereas the impugned goods are meant for brassieres,*

which are classified as clothing accessories. Yet the heading 8308 can perhaps be read broadly to includes hooks and eyes for brassieres also. However, the difficulty in classifying the impugned goods under Heading 8308 lies in the fact that the appellants have not imported hooks and eyes of base metals as such, but they have imported hooks and eyes inserted in cloth. The sample shown to us by the ld. Consultant consists of two parts- one part is made from black cloth containing three hooks and the other part is again made from black cloth of the same material containing three eyes each in three rows. Moreover, though the impugned goods have been described in the invoice as Bra hook, these two parts are actually " hooks and eye tape for brassieres" consisting of metallic hooks and eye inserted in the cloth tap. These are readymade component made from cloth tape which can be stitched on to brassieres of the same and similar colour. Secondly, the eyes are placed in three rows spaced apart to enable extension or shortening the brassier length. The cloth portion also ensures that the metallic hooks and eyes do not come in contact with the body of the person wearing the brassieres and cause discomfort. Thus the cloth tape is not merely incidental but has functional uses. For these reasons, it is not possible to classify the hooks and eye tape imported by the appellants as metallic hooks and eyes for clothing under Heading 8308. These are more appropriately classifiable as parts of brassieres under Heading 6212 as these can be readily stitched to adjacent part of brassieres to manufacture a complete brassier."

14. In the case of Gosai Trading Company(supra) the Hon'ble Tribunal considered the fact that the eyes and hooks mentioned under heading 8308 comprised of the type which are used for the cloth and not brassieres. The Tribunal in that further held that Chapter 83 perhaps can also includes eyes and hooks of base metal if not fastened on strips

of cloth which is used only in the brassieres and hence part of cloth type on which hooks and eyes are fastened is functional one as the same not only used for the extension/shortening of the bra but it also ensure that metallic hooks and eyes do not come in contact of the person, who wear the bra that so that there is no discomfort on the body part. The Hon'ble Tribunal thus concluded that the hooks and eyes tape as part of the bra and concluded the classification under 6212, the Tribunal perhaps got more impressed with the functioning of tape required for functions of bra and thus overlooked the functionality of Hooks and eye treating the same to be incidental.

15. But this is also evident that in the case of Gosai Trading Company Hon'ble Tribunal did not had the occasion to examine in depth the HSN explanation pertaining to two inter competing entries and went by the entry of imported item, in brassieres giving more emphasis on attached cloth strips on hooks and eyes.

16. The importer has given a great emphasis on the Explanation HSN pertaining to two entries.

HSN Explanation to Chapter 830810 reads as under;

HSN Explanatory Notes.

This heading includes;

(A) *Hooks eyes and eyelets for clothing, footwear, awning, tents or sails*

(B) --------------

(C) ----------------

(D) ------------------

The articles referred to in (A), (C) and (D) above may contain parts of leather, textiles, plastics, wood, horn, bone, mother of pearl, ivory, imitation precious stones etc provided they retain the essential character of articles of base metal. They may also be ornamented of working of the metal.

The goods imported are covered in Chapter 8308 because the HSN Explanatory notes states that hooks and eyes stitched on fabric are covered in 8308 if they retain the essential character of articles of base metal. The hook and eye fastening strip is nothing but hooks and eyes stitched on fabric. The goods are used for the purpose of closing and opening, the fabric is incidental as the hooks and eyes needs to be stitched on the fabric in order to hold them and to be used. The hook and eye strip imported by the appellant retains the essential character of hooks and eyes. It does not take the form of any independent article to be classified as the part of Bra/ Brassieres.

The article referred in (A) (B) (C) & (D) provided that they retain the essential character of the articles of base metal.

17. It is thus clear that if the eye and hook which is made of base metal with some part containing that of textile, plastic etc., would be classifiable under that heading, if it retains the character of hook and eye. The eye and hook retain their character even after being placed on the cloth plastic leather strip. The bra cannot be functional without hook and eye loop. It is manifestly clear that main function of the hook and eye is to fasten the bra and the strips are only used for holding them. In the

Gosai Trader Case(supra) the man emphasis has been assigned to "cloth plastic strip" and "hook and bra" has been given only ancillary function, which to us, is highly mis-placed. In addition to above it has also been demonstrated that the imported item has another application as hand gloves, shoes etc. So the goods imported does not have exclusive use in brassieres to be covered as part thereof.

18. We also find that Ld. Advocate has supplied the internet printout of classification of product (set of hook and eyes intended for use as a part of brassieres as determined by EU Binding Tariff Information which is reproduced as below;

"**HS Code: 8308, 10,00,00**

BTI Reference: GB109439269

Issuing country: UNITED KINGDOM

Date of Issue: 30 Jul, 2002

Keywords: EYES, HOOKS, OF BASE METALS, ON A TEXTILE BASE

Description: A SET OF HOOKS AND EYES INCORPORATED INTO A TEXTILE BACKING CONSISTS OF TWO RECTANGLES OF TWO TEXTILE LAYERS ONE HAS A SURFRACE INCORPORATING THREE PARALLEL ROWS OF THREE BASE METAL EYES. THE OTHER HAS A ROW OF THREE HOOKS INTENDED FOR USE AS PART OF BRASSIERES.

Sources: EU Binding Information"

"**HS Code: 8308,10.00**

BTI Reference: PT2004-000122

Issuing Country: PORTUGAL

Date of Issue: 28 Dec. 2004

Keywords: RIBBON

Description: Assembly consisting of metal brackets and their hooks that have incorporated the two rectangular strips of textile materials, with 3.8× 2.7 cm and 3.8 cm. One of the strips has three parallel rows where the brackets are hooked, and the other strip has a row with two hooks. The strips have an ancillary too the brackets and are intended to be applied in bras.

Source: EU Binding Tariff Information"

1. This classification is also based on HSN description, accordingly, we find that the classification of hook and eye more appropriately covered by 83 081010 by adopting the international classification also. Further, regarding the ratio laid down in Gosai Trading case(supra) these aspect have not been considered and accordingly we hold the same to be *sub-silentio* and *per incuriam*. These principles, while interpreting the statute is explained as under;

"In 'Salmond on jurisprudence' Twelfth' Edition Section 27 page 153 ·it is opined that "A decision passed sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind The court may consciously decide in favour of one party because of point A, which. it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not

argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio".

The aforesaid principle has been followed by the Tribunal in the case of ***Collector of Central Excise vs. Surgichem*** reported in 1987 (27) E.L.T. 548 (Tribunal), also relied upon the relevant paragraph 5 is reproduced as under;

> *"**5.**Mrs. J.K. Chander, the learned J.D.R. in reply to the arguments of the respondent states that the product manufactured by the respondent is Adhesive Tape and not Surgical Dressing. Tariff Advices issued by the Board or Collectorate are not binding on the Tribunal. She has further pleaded that the decisions of the Central Board of Excise and Customs has got only a persuasive value. She also argued that in J.L. Morison, Son and Jones (India) Ltd's case the Tribunal had come to the conclusion after going through the facts of the case and has given its detailed observations in Para No. 21 of its order. She has pleaded for the acceptance of the appeal. We have heard both the sides and have gone through the facts and circumstances of the case. For the proper classification we feel that reproduction of Tariff Item 60 is very essential.*

Tariff Item No.	*Description of Goods*	*Rate of duty*
60	*ADHESIVE TAPES, all sorts, not elsewhere specified, including cellulose adhesive tapes and paper*	*15% ad valorem*

	backed adhesive tapes, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

A simple perusal of Tariff Item 60 shows that it relates to adhesive tapes. The product manufactured by respondent is adhesive plaster B.P.C. In common parlance it is surgical dressing. The learned Advocate had referred to the tariff advices issued by the Board and also a judgment of the Board in the case of M/s. Leukoplast India Pvt. Ltd. We are in full agreement with the order passed by the Central Board of Excise and Customs (Order No. 29/81, dated 31st August, 1981). We are not inclined to follow the earlier judgment of the Tribunal in the case of J.L. Morison, Son and Jones (India) Ltd., Bombay reported in 1984 (15) E.L.T. 251 in which case the Tribunal had ordered the classification of Adhesive Plaster B.P.C. under Item l4E. The judgment was based on the statement of Shri D.B. Engineer, Advocate, it was in the nature of the concession. In 'Salmond on jurisprudence' Twelfth Edition Section 27 page 153 it is opined that "A decision passed sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio".

"A good illustration is Gerard v. Worth of Paries, Ltd. (K). There, a discharged employee of a company, who had obtained damages against the company for wrongful dismissal, applied for a garnishee order on a bank account standing in the name of the liquidator of the company. The only point argued was on. the question of the priority of the claimant's debt, and, on this argument being heard, the Court of Appeal granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in the subsequent case before the Court of Appeal (1), the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R. said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed.

The rule that a precedent sub silentio is not authoritative goes back at least to 1661 (m), when counsel said: "An hundred precedents sub silentio are not material"; and Twisden, J., agreed: "Precedents sub silentio and without argument are of no moment". In view of the above discussion we are not inclined to follow the earlier judgment of the Tribunal in the case of J.L. Morison, Son and Jones Pvt. Ltd. Shri Sundar Rajan during the course of arguments had also argued that the revenue does not press its classification under Tariff Item 14E of the Central Excise Tariff and he leaves it to the Bench. The Adhesive Plastic B.P.C. Tape does not possess any medicinal or therapeutic properties. It is a surgical dressing in Pharmaceutical and commercial parlance. Accordingly we hold that the adhesive plastic B.P.C. manufactured by *the respondents falls under Tariff Item 68. In the result the appeal filed by the revenue fails.”*

6. *Sir Raymond Everssed in Wiliams v. Fawcett (1985) CA held that - "as a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding 011 the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong."*

These two principles have been explained by the Hon'ble Supreme Court in the of Case of Synthetic & Chemicals Vs State of UP reported in 1991 SCC (4) 139. The following Paragraph will be worth quoting:

Incuria' literally means 'carelessness'. In practice per incurium appears to mean per ignoratium. ' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (1944 IKE 718 Young vs. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while interpreting <u>*Article 141*</u> *of the Constitution which embodies. The doctrine of precedents as a matter of law.* <u>*In JaisriSahu v. Rajdewan Dubey*</u> *(1962) 2 SCR 5588 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted 'a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding.*

Does this principle extend and apply to a conclusion of law, Which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular' point of law involved in the decision is not perceived by the Court or present to its-

mind' (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941} IKB 675 the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation or Delhi v. Gumam Kaur, [1989] 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decedendi. In Shama Rao v. State of Pondicherry, AIR 1967

SC 1680 it was ob- served, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'.

Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.(A copy of the judgment down loaded from indiankanoon.org is Annexed as Annexure II)

8. In the light of the aforesaid dissertation and interpretation of the law of precedence, the decision of the CESTAT for a period prior to the present period has to be looked into to ascertain whether the said decision could be considered as a binding precedent."

19. The principle of *sub-silentio* and *per incuriam* is decided by the Apex Court in case of ***Synethtic & Chemicals vs. State of UP*** reported in 1991 SC(4) 139.

20. In view of above, we are of the considered view that ld. Tribunal in the case of ***Gosai Trading Company(supra)*** had not an occasion to examine the issue above the classification of the impugned good in detail considering the Section, Chapter and Heading entries vis-a-vis HSN Explanation and other Tariff clarification internationally decided. In view of that, we treat the ratio laid down in the Gosai Trading case (supra) as *per incuriam* and respectfully disagree with the same.

21. We, therefore, hold that the classification of the hook and eye fastening strips, imported by the appellant will be rightly covered under heading 8308 10 10. Accordingly, set aside the impugned order and allow the appeal with consequential relief if any.

(Operative part of the order *pronounced* in open court)

(Anil Choudhary) **(BijayKumar)**
Member(Judicial) **Member(Technical)**

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