CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal Number C/51/2009

(Arising out of Order-in-Original Number 12/2008-Adjn.Cus, dated 22.10.2008 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II)

Sachdev Overseas **…..Appellant(s)**

Vs.

CCCE&ST, Hyderabad **…..Respondent(s)**

Appearance

Shri M V S Prasad, Advocate for the Appellant.

Shri M Chandra Bose, Additional Commissioner (AR) for the Respondent.

Coram:

Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr C J Mathew, MEMBER(TECHNICAL)

Date of Hearing: 21/02/2018
Date of Pronouncement: 03/04/2018

FINAL ORDER No. A/30398/2018

[Order per: C J Mathew, Member (Technical)]

1. Appeal has been filed by M/s Sachdev Overseas against order-in-original no. 12/2008-Adjn.Cus dated 22nd October 2008 of Commissioner of

Central Excise & Customs, Hyderabad-II, which has ordered recovery of differential duty of `5,907/- in relation to goods imported *vide* bill of entry no. 706238/05.10.2007, of ` 13,41,951/- on imports effected against bills of entry no. 500656/10.02.2006 and 503201/04.07.2006 and of ` 2,22,882/- on goods imported under bill of entry no. 702705/10.05.2007, along with interest thereon, and imposition of penalty of `Rs. 15,00,000/- on M/s Sachdev Overseas under section 112 (a) of Customs Act, 1962.

2. At the core of the dispute is the classification of 'billiards cloth' under heading number 5112 1930 and 5112 3030 (according to the composition) as held by the adjudicating authority and under heading number 9504 9090 of the First Schedule to the Customs Tariff Act, 1975 as claimed in the bills of entry. Samples from live consignment sent for testing to the Textile Committee were found to be either mixture of fabric and wool or of pure wool. The report of the Textile Committee was the basis for the impugned order to reclassify the goods and to visit detrimental consequences on the live consignment as well as earlier imports.

3. According to Learned Counsel for appellant, test results for composition is not a valid ground for the reclassification, that the imported material is known as 'billiards cloth' in trade parlance and that notes in chapter 95 of the First Schedule to the Customs Tariff Act, 1975 allow classification of parts of goods

also in that very chapter. It is also his contention that goods are classified under chapter 95 and not under chapter 51 at other parts of entry. According to him, the imports of the earlier period cannot be subject to reclassification on the report pertaining to samples drawn from current import.

4. Learned Authorized Representative reiterates that fresh classification is warranted as the goods are imported in rolls of running length and is composed of pure wool, mixture of wool or mixture of other fabrics. He also submits that the intended use is not a valid ground for classification especially as the goods are not presented in the manner of usage.

5. Having heard the rival submissions and perused the records, we take note that the goods have been imported in running length and not as cut pieces for ready use as covering on billiards table. We have no reason to misdoubt the claim of the appellant that cloth for use on billiard tables may be of the same material but, in the absence of presentation in 'made to measure' form or for direct use on billiard tables, find ourselves unable to accept the proposition that intended use should be inferred from the declaration. The samples are established to be composed of fabric or fabric mixtures and no different from imports of textile fabric for other uses. Consequently, we find no reason to discard the re-classification of the goods under chapter 51 of the First Schedule to the Customs Tariff Act as determined in adjudication order. Though the Learned Counsel has placed reliance on the decision of the Tribunal, in *Mac &*

Megha Agro Equipments (P) Ltd v. Commissioner of Customs, Cochin [2006 (199) ELT 260 (Tri-Bangalore)] and *Commissioner of Central Excise, Aurangabad v. Videocon Appliances [2009(235)ELT 513 (Tri-Mumbai)],* to question the authority to reclassify imports cleared against assessed bills of entry without review of the assessment order in the manner provided for in Customs Act, 1962, we need not consider these at this stage as the bar of limitation under section 28 of Customs Act, 1962 has also been raised by him.

6. The earlier bills of entry had been filed on 10th February 2006, 4th July 2006 and 10th May 2007 whereas the show cause notice was issued on 8th November 2007 which is clearly beyond the normal period of limitation. On perusal of the bills of entry, we find that the appellant has declared the goods to be 'billiard cloth'; 'billiard cloth' is not a specific entry in the First Schedule to the Customs Tariff Act, 1975 and is, conceivably, nothing but fabric even though claimed to be for specific use as fitment on sports equipment. No diligent assessing authority could have entertained any doubts about the nature of the goods and there was no justifiable reason to exclude the goods from appropriate checks before accepting the classification. Accordingly, there is no cause for a finding of wilful misdeclaration or suppression of material fact that would empower the adjudicating authority to invoke the extended period prescribed in section 28 of Customs Act, 1962. Therefore, we have no hesitation in holding that the differential duty on goods imported under the

earlier bills of entry is not recoverable. For this reason, the demands pertaining to the earlier bills of entry are set aside.

7. As the differential duty arising from re-classification is limited to ` 5,907/-, and without the taint of misdeclaration on the part of the importer, the goods are not liable for confiscation, under section 111 of Central Excise Act, 1962, and, therefore, penalty under section 112 of the Customs Act, 1962 does not also lie.

8. For the above reason, the impugned order is set aside except to the extent of upholding the classification but limiting the recovery to the differential duty in bill of entry No. 706238/05.10.2007.

(Pronounced in Open Court on 03/04/2008_)

(M V Ravindran)
Member (Judicial)

(C J Mathew)
Member (Technical)

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