IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. C/124/2009

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/419/2008 dated 28.11.2008 passed by the Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s. R.V.Fashion

Respondent (s)

<u>Appearance:</u>

Shri S.Guha, AC(AR) for the Appellant (s)
None for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 01.05.2018

ORDER NO. FO/76025/2018

Per Shri V.Padmanabhan

1. The present appeal has been filed against the Order-in-Appeal No.Kol/Cus/CKP/419/2008 dated 28.11.2008.

2. The brief facts of the case are that the respondent has manufactured the "Bonded Fabric Width 58 inch" and declared the same under the heading 59070099. But the department reclassified the same under the heading 54071039. The goods were allowed provisionally clearance on furnishing of full bank guarantee, cash security and also fulfilled the bank guarantee and principal penalty as deem fit. But the option was not exercised by the assessee. So the difference of duty was demanded. But Commissioner

(Appeals) has allowed the claim of the appellant. Being aggrieved the department has filed this appeal.

3. With this background we heard both sides and perused the appeal record.

4. After hearing both sides and perusal of records it appears that the Commissioner (Appeals) observed in its order as follows:

> *" 15. A point that now falls for consideration is whether the appellant provided incorrect information or did the appellant make untrue declaration or provided such document which later was found to be untrue. The answer to this has to come from the impugned order. The lower authority has reassessed the goods on the basis of test reports. The test reports only give detailed composition of the imported bonded fabric. It specifies the composition of the knitted and the woven fabrics, that is, the materials of which these fabrics are made up of and the percentages. But does such detailed determination lead to a conclusion that what was described in the bill of entry by the appellant was untrue. The answer is no. The goods were described in the bill of entry and other documents as bonded fabric and mere determination of its composition does not mean that the goods cease to be bonded fabric. Nor is there any finding to that effect. Thus I find that the appellant has not made any declaration or statement which was later on found to be untrue. In this context it needs to be clarified that the reference to heading 5907 in the bill of entry is merely a claim for classification by the appellant. The classification of the goods is actually the function of the customs. Whether in the bill of entry the tariff heading is mentioned or not, or incorrectly mentioned, has no bearing on the description of goods. What is important is that the imported goods should be correctly described. The investigation carried out by the DRI and the directions issued by the DRI were for pure and simple re-classification of the goods. These would not come within the domain of re-assessment in terms of the wordings used in sub-section.*
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> *(4) The proper course in this case would have been either to provisionally assess the goods under section 18 or issue notice under section 28 for re-assessment and consequently demand of duty for short-levy or else file appeal under section 129 D of the Customs Act, 1962. None of these have been done. Since re-assessment in the facts of the present case, is not permitted, the re-classification done by the lower authority was beyond the scope of the sub-section and thus incorrect. Such re-assessments, for the reasons indicated is set aside.*
>
> *16. For the reasons are stated above, the goods are to be classified under Chapter 60. The appeal is accordingly allowed."*

5. With this discussions we find no reason to interfere with the impugned order the same is hereby sustained.

6. In the result, the appeal is dismissed.

(Dictated and pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(V.Padmanabhan)
MEMBER (Technical)

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