IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal No.179/08

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/91/2008 dt.18.03.2008 passed by Commissioner of Customs (Appeals), Kolkata)

M/s Ganges Jute Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Prev.), Kolkata

Respondent (s)

Appearance:

S/Shri S.Bagaria & I.Banerjee, both Adv. for the Appellant (s)
Shri S. N. Mitra, Asstt.Commr. (AR) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 08.06.2018
Date of Pronouncement : 24.09.2018

Final Order No.FO/76666/2018

Per Shri Bijay Kumar :

The appellant is in appeal against the impugned Order-in-Appeal No.Kol/Cus/CKP/91/2008 dt.18.03.2008, wherein the ld.Commissioner (Appeals) has upheld the order passed by the primary adjudicating authority confirming demand of Rs.2,21,524.25 against the appellant.

2. The brief facts of the case are that the appellant has imported six consignments of Raw Jute Cutting (BTC) from Bangladesh and they filed six Bills of Entry for home consumption which are as under :

(i) B/E No.003655/16/05 dated 22.11.2005

(ii) B/E No.003732/16/05 dated 26.11.2005

(iii) B/E No.004132/16/05 dated 22.12.2005

(iv) B/E No.004133/16/05 dated 22.12.2005

(v) B/E No.004131/16/05 dated 22.12.2005

(vi) B/E No.004173/16/05 dated 26.12.2005

The appellant sought clearance of the goods so imported i.e. Raw Jute (BTC). The Bills of Entry were filed for assessment of import duties on the goods imported from Bangladesh. Those were classified under Chapter Tariff Heading 5303.1010 as per declaration supported by relevant invoices etc. the duty liability was Basic Customs Duty @ 2.5% E.Cess on BCD (vide Notification No.21/02-Cus read with 105/99 Cus) for which SAPTA certificates were produced by the importer. The appellant paid duty on the basis of assessment made by the assessing officer. Thereafter, the officers of Petrapole Land Customs Station duly examined the goods physically and allowed clearance of the goods.

3. Subsequent to the clearance of this goods, a show-cause notice was issued proposing to classify the raw jute cutting under sub-heading No.5303.9010 of Customs Tariff Act, 1975 and a show-cause notice was issued under Section 28 (2) of the Customs Act, 1962. After due process of adjudication, a demand of Rs.1,68,069/- was confirmed.

4. Against this order, the appellant filed appeal before the Commissioner (Appeals) and the same was also confirmed and the order of the primary adjudicating authority was confirmed but the imports were made under Bills of Entry Nos.003655/16/05 dated 22.11.2005 & 003732/16/05 dated 26.11.2005. The Commissioner

(Appeals) dropped the demand in respect of the above two Bills of Entry on the ground of limitation. Show-cause notice was issued after the normal period of limitation as envisaged under Section 28 (2) of the Customs Act, 1962.

5. The ld.Advocate appearing on behalf of the appellant, apart from various other submissions, draws our attention to the order passed by the Tribunal in the case of Naffar Chandra Jute Mills Ltd. Vs. CC (Preventive), Kolkata reported in 2014 (310) ELT 177 (Tri.-Kolkata) on the very same issue i.e. about the classification of the raw jute cutting under Tariff Heading 53031010 or 53039010 of the Customs Tariff Act, 1975. Relying on the judgement, he submitted that the issue is settled in favour of the appellant and the classification of the raw jute cutting as held under Tariff Heading 53031010 of the Customs Tariff Act, 1975. As the classification is under Tariff Heading 53031010 of the Customs Tariff Act, 1975, the importer has rightly claimed the benefit of Notification Nos.21/2002-Cus dt.01.03.2002 and 105/99-Cus dt.10.05.1999. Therefore, the orders passed by the primary adjudicating authority as well as the Commissioner (Appeals) are not sustainable and liable to be set aside.

6. the ld.D.R. appearing on behalf of the Revenue, supports the impugned order and states that since the specific entry has been created under new eight digit classification and therefore, raw jute cutting is required to classify under Tariff Heading 53039010 of the Customs Tariff Act, 1975 as jute cutting.

7. We have heard both the parties and perused the appeal records. We find that the issue is regarding classification of raw jute cutting grade imported by the appellant from Bangladesh through LCS Petrapole. The present issue is no more *res-integra* in view of the order passed by this Tribunal in the case of Naffar Chandra Jute Mills Ltd. (supra). We feel it appropriate to reproduce the relevant extract from the aforesaid judgement, which are as follows :

> ***"5.2*** *He has further referred to the meaning of cuttings mentioned in HSN as butt ends of the fibre, which are cut off and marketed separately. He submits that in the trade parlance, as is evident from the website and from other jute customers and traders, jute cuttings (BWCA), stands for raw jute cutting of Bangla White Cutting Grade A, which could have cutting range upto 10"; Jute cuttings are low in quality but have commercial value for the paper carded yarn and other fibre processing industry. The lower part is hard fibre, which is called jute cuttings in Bangladesh and India. Regarding the exemption claimed by the Appellant, he submits that the classification cannot be decided by virtue of the exemption Notification. It is his plea that when there is a specific entry for classification for the 'jute cuttings' under the new eight digit code, the classification cannot be made taking recourse to earlier Tariff Heading 5303.10 under six digit code of classification. Regarding the issue of determination of assessable value and benefit of exemption Notification No. 105/99-Cus., dated 10-8-1999, the ld. Commissioner has rightly remanded the matter for re-verification to the adjudicating authority, as he has power to modify/annul the order of the lower authority in the manner he likes.*

6.1 *Heard both sides and perused the records. The principal question for determination is: whether the imported goods described as 'raw jute (BWCB/BTCA)' in the respective Bills of entry are classifiable under chapter subheading 5303 10 10 or under chapter sub-heading 5303 90 10 of the Customs Tariff Act, 1975 and consequently eligible to the benefit of Notification 21/2002-Cus., dated 1-3-2002 read with SAPTA Notification No. 105/99-Cus., dated 10-8-1999.*

6.2 *It is not in dispute that after import of the said goods through patrapole land Customs station, the Department has raised objection on its classification under the sub-heading as 5303 10 10, as declared in the respect bills of entry; the appellants herein had replied to the said objection submitting that the goods imported by them were raw jute of cutting grade. The appellant submitted that earlier they had been importing such raw jute of cutting grade which were classified under chapter sub-heading 5309.10 and not under the residuary entry 5309.90 of CTA, 1975, which was applicable to goods other than raw jute, that is, resultants of processed jute.*

6.3 *The Customs Department, consequently, examined the said consignment of imported goods, in the presence of the representative of the appellants and recorded the result of examination in the respective Bills of entry. For instance, in respect of Bill of Entry No. 000939, dated 25-2-2006 filed by M/s. Nafar Chandra Jute Mills Ltd. for clearance of 833 bales collectively weighing 149.11 MT, it was recorded as follows :*

"opened and examined 20 bales. The goods examined w.r.t party classification letter dated 28-2-2006 and find the goods are jute cuttings correctly classifiable U.T.N. 53090010 (not covered N/F No. 21/2002-Cus.)............"

6.4 *Similar examination reports were recorded on the respective Bills of Entry filed by the other two appellants. On the basis of said physical examination, the adjudicating authority, concluded that the imported goods were 'jute cuttings' and correctly classifiable under the new tariff sub-heading 5303 90 10 of CTA, 1975. Advancing reasons, the adjudicating authority had observed that jute plant is of 2 metre or more in height; the fibre is stripped off after retting the plant and the whole fibre so collected, is the "raw jute bast fibre". It is not continuous throughout length either content wise or quality wise. The lower portion is stronger and contains more fibre. The fibre contents both qualitatively and quantitatively becomes less towards top, hence, the lower portion is costly and more in demand for better commercial use. Further, referring to the meaning of 'cuttings' in the HSN he has observed that 'cuttings' is defined as the butt ends of the fibre which are cut off and marketed separately. And in the present case the imported goods are described as cuttings and the value is admittedly at higher side in comparison to normal jute fibres.*

6.5 *The ld. Commissioner (Appeals) has endorsed the aforesaid reasoning and concluded that the imported goods are rightly classifiable under CTH 5303 90 10 and not under 5303 10 10 CTA, 1975.*

6.6 *Before entering into the discussion on the correct classification of the imported raw jute, under the new eight digit tariff entry, it is necessary for a better understanding, to compare the old and new tariff entry. The old Tariff entry reads as below :*

"Heading	**Sub-heading**	**Description of article**	**Rate of duty**	
			Standard	**Preferential Areas**

53.03		Jute and other textile bast Fibres (excluding flax, true Hemp and ramie), raw or Processed but not spun; tow and waste of these fibres (including yarn waste and Garneted stock)		
	5303.10	Jute and other textile bast fibres, raw or retted	30%	------
	5303.90	Other	30%	------

6.6 The changed new eight digit tariff entry introduced with effect from 18-5-2003 reads as follows :

Tariff Item	**Description of goods**	**Unit**	**Rate of duty**
5303	Jute and other textile bast fibres (excluding flax, True hemp and raraic), processed but not spun Tow and waste of these fibres (including yarn Waste and garneted stock)		
5303 10	Jute and other textile bast fibres, raw or retted		
5303 10 10	Jute, raw or retted	Kg.	15%
5303 10 90	Other	Kg.	15%
5303 90	Other		
5303 90	Jute cutting	Kg.	15%

10			
5303 90 90	Other	Kg.	15%

6.7 *On a preliminary analysis of the old tariff entry, it is clear that, the Heading 5303, in its domain include jute and other textile bast fibres raw or processed but not Spun; tow and waste of these fibres (including yarn waste and garneted stock). This heading was divided into two sub-headings. Under sub-heading 5303.10 jute and other textile bast fibres, raw or retted were specified, whereas, the second sub-heading 5303.90 was meant for 'other'.*

6.8 *It is the claim of the appellant that the sub-heading 5303.10 includes only raw jute and other textile bast fibres, and not the processed ones. The processed fibres and wastes were correctly classifiable under the subheading 5303.90. It is their submission that when the raw jute is cut into different length, it cannot be considered as processed one, but continues to remain as raw jute only, but of cutting grade. It is their further contention that the jute cuttings which emerge during the course of processing of raw jute, are covered under this residuary entry.*

6.9 *We find that the claim on the classification of the goods by the appellant under the old tariff entry is not disputed by the revenue. The revenue's contention is that after restructuring of the said tariff entry under the new 8 digit code, the subheading 5303.10 is further divided into two., namely, 5303 10 10, which covered jute, raw or retted and entry 5303 10 90 for 'other'. Similarly, the residuary entry 5303.90 has also been divided into two, namely, 5303 90 10 'jute cutting' and 5303 90 90 for 'other'. In other words, the contention of the revenue is that when there is a specific entry for jute cutting, irrespective of processed or raw, the same should be classifiable under the specific heading 5303 90 10.*

6.10 *Thus, the moot point, precisely in this case is, whether, after the introduction of 8 digit classification, the raw jute of cutting grade, imported earlier by the appellant, assesses under chapter sub-heading 5309.10, would continue to be classifiable under the restructured comparable entry, namely, 5303 10 10 or be shifted to the new entry 5303 90 10.*

6.11 *To advance their argument, the ld. AR for the revenue, heavily relied upon the meaning of 'cuttings' explained in the HSN. The explanation under Chapter Heading 53.03 reads as :*

"The Heading covers :

(I) Raw fibrous materials (in stalks, not yet retted or stripped) : retted fibres; stripped fibres (extracted by machine), i.e. the fibres, sometime 2 m or more in length, as extracted from the plant by retting and stripping : "cutting" (the butt ends of the fibres which are cut off and marketed separately). However, vegetable materials, which when raw or in certain forms fall in Chapter 14 (for example, stalks of broom), are classified here only when they have undergone treatment indicating their use as textile materials (e.g. when they have been crushed, carded or combed in preparation for spinning).

(II) Fibres carded or combed or otherwise prepared for spinning, usually in the form of slivers.

(III) Fibrous tow and waste obtained mainly during the carding or combing of bast fibres; bast fibre yarn waste left during spinning, weaving etc. and garneted stock obtained from rags or scrap rope or cordage. Tow and waste are classified here whether suitable for spinning into yarns (whether or not in the form of slivers) or suitable only for use as caulking materials, padding or stuffing or in felt-making, paper-making, etc.

Bleaching or dyeing does not affect the classification of the products covered by this Heading.

6.12 *We find that the sub-heading 53.03 of CTA, 1975 broadly enumerates the items, that is, jute and other textile based fibers in raw stage or processed ones; also the waste generated. To explain the said heading, the Explanatory Notes under the HSN are also designed accordingly, mentioning the items that are covered under the said heading. Under the 1st category, of the quoted explanation different types of raw fibers are considered, under category II the processed goods are covered and under category III, waste materials of the fibers have been included. The meaning of 'cuttings' appears under category I and it is referred in the contest while explaining different types of raw fibers that are covered under the said sub-heading. It is explained to mean the butt-ends of the fibers which are cut off and marketed separately.*

6.13 *This meaning of 'cuttings' mentioned under the category of raw fibers, in our opinion, has been misunderstood by the authorities below. The authorities had observed that on adopting the meaning of 'cuttings', to the raw jute of cutting grade imported by the Appellant, the same are classifiable under Chapter Heading 5303 90 10 of restructured eight digit tariff entry. During the course of arguments, the ld. AR for the Revenue while referring to the information contained in the websites submitted that varieties of raw jute are available in the market including the jute cuttings that are bought and sold in the market, hence the items imported by the Appellant are classifiable as 'jute cuttings' under CSH 5303 90 10 being the specific entry.*

6.14 *On going through the said literature, we find that it has been mentioned that jute cuttings are lower in quality, but have commercial value for the paper, carded yarn, and other fiber* *processing industries; the lower part is hard fiber which is called jute cuttings in Bangladesh and India (commonly called jute butts or jute tops elsewhere). It further mentions that available raw jute cutting grades are as follows :-*

Bangla Tossa

BTCA - Bangla Tossa Cuttings A

BTB - Bangla Tossa Cuttings B

Bangla White

BWCA - Bangla White Cuttings A

BWCB - Bangla White Cuttings B

6.15 *Therefore, it is clear from the above that the raw 'jute cuttings' are of different grades and are available in the market. It supports the contention of the Appellant that what they have imported are raw jute cuttings of different grades. No contrary evidence has been produced by the Revenue to establish that what the Appellant had imported, were not raw jute of cutting grades, but processed 'jute cuttings'.*

6.16 *In view of above, we have no hesitation to arrive at the conclusion, keeping in view the legislative history and practice of assessment under the old tariff entry, that under the re-structured eight digit new tariff entry, the raw jute of cutting grades are not classifiable under CSH 5303 90 10, as the 'jute cuttings' mentioned in the said entry does not refer to raw jute of cutting grade. On the other hand, in view of the items covered under the broad Heading 53.03, along with the explanation of inclusion of various items covered under the said heading as mentioned in the HSN, undoubtedly, the inference goes in favour of the assessee that what they had imported, were raw jute of* *cutting grade and correctly classifiable under sub-heading 5303 10 10 of CTA, 1975.*

6.17 *Regarding the other argument of the Appellants that they were enjoying the benefit of exemption Notification No. 21/2002-Cus., dated 1-3-2002 under Serial No. 170, being applicable to 'raw jute' under the six digit code of classification and the same should not be denied to them under the new eight digit code of classification by virtue of Notification No. 16/2003-Cus., dated 24-1-2003, we find force in the contention of the assessee. However, since we have observed that the goods imported by the appellant, be considered as raw jute of cutting grade, therefore the benefit of the said notification automatically flows as it continued to be applicable to raw jute only and we do not see any necessity to delve into this aspect as it would be a mere academic exercise.*

6.18 *Further it is pleaded on behalf of the Appellant that even though on the issue of valuation and admissibility of Notification No. 105/99-Cus., dated 10-8-1999, the adjudicating authority had decided the issue in their favour, in absence of a challenge to the said order either by the appellant or the revenue, the order of the ld. Commissioner (Appeals) in remanding these issues to adjudicating authority, for deciding the same afresh, is de hors the record/appeal filed before him, and hence bad in law. We agree with the contention of the appellant on this aspect also. In the result, the impugned orders passed by the ld. Commissioner (Appeals) are set aside and all the three appeals are allowed with consequential relief, if any admissible, as per law."*

8. In view of the above, we hold that the appellant has appropriately classified the imported goods i.e. raw jute cutting grade under Tariff Heading 53039010 of the Customs Tariff Act, 1975 and

has rightly claimed the benefit of Notification Nos.21/2002-Cus dt.01.03.2002 and 105/99-Cus dt.10.05.1999. Accordingly, we allow the appeal with consequential relief to the appellants, if any.

(Pronounced in the open Court on 24.09.2018)

Sd/

Sd/

(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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