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

Appeal No. C/123/2009

(Arising out of Order-in-Appeal No. KOL/CUS/CKP/420/08 dated 26/11/2008 passed by the Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata Appellant (s)
Vs.
M/s. Praman International
Respondent (S)

Appearance:
Shri S. K. Naskar, A. C. (A. R.) for the Revenue
None, for the Respondent (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing: -28.09.2018
Order No. FO/76719/2018

PER SHRI V. PADMANABHAN

The present appeal is filed by the Revenue against the Order-in-Appeal No. KOL/CUS/CKP/420/08 dated 26/11/2008.

2. The facts of the case are that the respondent imported certain goods and declared the same as "Bonded Fabric Width 58". They sought the classification of the Goods under CTH 5907 00 99. The goods were assessed to duty on 2nd cheque basis and accordingly, the appellant paid the duty. Before the clearance of the goods, on the basis of letter received from DRI, Kolkata, some samples were drawn from the imported goods and sent to Customs House Laboratory, Kolkata for test. The test reports indicated that the imported goods were composed of two layers of fabric pressed together. The lower layer was made up of knitted fabrics and the upper layer being

composed of Woven fabrics. The test reports also indicated the details of the percentage of knitted and woven parts. The opinion of the Textile Committee, Mumbai was also taken, which was indicated that the fabric was neither coated nor impregnated. After considering the test reports, the Original Authority passed the assessment order dated 12/08/2008. He took the view that the goods are not classifiable under Chapter CTH 5907 00 99, as claimed by the importer, since the fabric was neither coated nor impregnated. Further for deciding the classification, the Original Authority went by the fact that the percentage of Woven fabric in the imported goods was more than the percentage of knitted fabric by weight. Accordingly, he ordered for assessment of the goods under CTH 5407 10 39, considering the imported goods to have the essential character of woven fabrics in terms of Rule 3(b) of the General Rules for interpretation of the Tariff.

3. The classification was challenged by the importer by filing appeal before the Commissioner (Appeals). The Commissioner (Appeals) took the view that the imported fabrics were made up of woven fabrics as well as the knitted fabrics. He was of the opinion that neither knitted nor woven fabrics can be considered as the essential character of the imported goods. Hence, he took the view that the classification cannot be decided on the basis of Rule 3 (b) ibid. He followed Rule 3 (c) and ordered classification of the goods under CTH 6006 32 00, being the chapter appearing last among the two competing tariff entries; viz., chapter 54 and Chapter 60. Against such classification of goods in the impugned order, Revenue has filed the present appeal. In the present

appeal, Revenue has sought assessment of the imported goods as per the decision of the Original Authority.

4. When the appeal was called today, the Revenue is represented by S. K. Naskar, Ld. DR. None appeared on behalf of the Respondent. It is also seen that none appeared on behalf of the respondent in the numerous earlier hearings fixed by this Tribunal. As such we are of the view that this long pending appeal can be taken up and decided on merit.

5. After hearing the Ld. DR for Revenue as well as the perusal of record, it is seen that the imported goods were in the form of bonded fabrics made up of two layers- the bottom layer comprising of knitted fabric and the top layer made up of woven fabrics. The two have been bonded together to form the imported goods. The classification claimed by the importer is under Chapter 59 as fabrics which are impregnated or coated. This classification is clearly in-correct in view of the opinion given by the Textile Committee, Mumbai to the effect that the imported goods are neither coated nor impregnated. Thereby, we rule out the classification under Chapter 59, claimed by the importer.

6. In the circumstances, the classification is required to be decided on the basis of the General Rules for Interpretation of Import Tariff. Rule 3 provides for classification when the imported goods are prima facie classifiable under two or more headings. The imported goods are composite goods made up of knitted (Chapter 60) as well as woven (Chapter 54) fabrics. In terms of Rule 3 (b), the essential character will decide such classification. Original Authority has decided the

classification under Chapter 54 considering the imported goods to have the essential character of woven fabrics. For this purpose, he has gone by the percentage of weight of imported goods. The woven fabrics comprise approximately 51 % by weight and the knitted fabrics accounts for roughly 49%.

The details of the percentages of knitted and woven parts of the imported composite fabrics as per the said test report are tabulated below:-

Colour of the fabrics	Percentage of knitted fabric by wt.	Percentage of woven fabric by wt.	Composition of woven fabric	
			Percentage of polyster filament by wt.	Percentage of blended yarn by wt.
Light Brown	49.0	51.0	43.0	54.4
Blackish Grey	48.4	51.6	43.0	57.0
Grey	49.6	50.4	43.1	56.9
Black	46.5	53.5	42.5	57.7

7. On the other hand, the ld. Commissioner (Appeals) in his impugned order has taken the view that neither of the two components can be said to have the essential character of the imported goods. Looking at the percentages by weight of knitted as well as woven fabrics, we agree with the view of Commissioner (Appeals) that neither

knitted nor woven can be considered to be the essential character of the imported goods. In that case, Rule 3 (c) has to be resorted to whereby classification has to be decided as per the heading occurring last in numerical order among those which equally merit classification. The most appropriate classification would thus be under CTH 6006 32 00.

8. In view of the above discussion, we find no infirmity in the order passed by the Commissioner (Appeals), which is sustained. In the result, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

Sd/-	Sd/-
(P. K. CHOUDHARY)	**(V. PADMANABHAN)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

Pooja