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

Date of Hearing/Order 15.6.2018

Appeal No. C/18/2009-DB

(Arising out of Order-in-Original No. 23/CUS/C(P)/WB/2008 dated 27.10.2008 passed by the Commissioner of Customs (Preventive), Kolkata)

M/s Deys Export International Appellant

Vs.

CC (Prev.)m W.B. Kolkata Respondent

Appearance

None - for the appellant

Shri S.K. Naskar, AC (AR) - for the respondent

CORAM: **Hon'ble Mr. P.K. Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No.FO/A/76867/2018

Per Bijay Kumar :

The appeal is against the Order-in-Original No. 23/CUS/CC(P)/WB/2008 dated 27.10.2008 filed by the appellant. In this case the appellant has imported consignment of readymade garments for men/boys, jackets of various types by six Bills of Entries No. 0424/IMP/Cus/CBD/04 dated 29.9.2004, 0423/IMP/Cus/CBD/04 dated, 29.9.2004, 0341/Imp/Cus/CBD/04 dated 30.8.04, 0342/Imp/Cus/CBD/04 dated 30.8.04, 0515/Imp/Cus/CBD/04 dated 3.11.04, 0521/Imp/Cus/CBD/04 dated 4.11.04 from Bangaldesh which was cleared from the

Changrabandha LCS. During the course of assessment, a proper officer assessed the Bill of Entry as per the declaration filed by the importer. The importer filed the Bill of Entry for the imported goods under Tariff Sub-Heading No. 6201.99.90 availing the benefit of Notification No. 5/2004-Cus dated 8.1.2004 as amended. It was alleged that the Tariff No. 6201.99.90 attracted lower rate of duty and the consignment would have been rightly assessed to under the Tariff Heading 6204.33.00 which attracted the rate of duty below:

Annexure-A (1st Part)

Sl. No.	**B/E No. and date**	**Description of goods**	**Unit price**	**Quantity (in pcs.)**	**Total price as per invoice in U.S. $**
1.	0424/IMP/Cus/CBD/04 dated 29.9.04	Kids Wind-Jacket Half Jacket Wind Jacket	$ 0.75 $0.60 $1.00	1410 751 336	$ 1844.10
2.	0423/IMP/Cus/CBD/04 dated 29.9.04	Wind Jacket Kids Wind-Jacket	$1.00 $0.75	566 601	$1016.75
3.	0341/IMP/Cus/CBD/04 dated 30.8.04	Wind Jacket Kids wind-Jacket	$1.00 $0.75	577 1495	$1678.25
4.	0342/IMP/Cus/CBD/04 dated 30.8.04	Wind Jacket Kids wind-Jacket	$1.00 $0.75	866 236	$1043
5.	0515/IMP/Cus/CBD/04 dated 3.11.04	Kids wind-Jacket	$1.00	740	$740
6.	0342/IMP/Cus/CBD/04 dated 30.8.04	Wind-Jacket	$1.10	433	$176.30
			Total	**8011**	

Annexure-A (2nd Part)

Sl. No.	**Total price in Rs.**	**A.V (invoice value +1.125% INS+1% L.C) (in Rest)**	**Duty Levied/paid @ 20% on A.V. (bcd20%+cvd 8.16%+0.05%+2% (Rs.)**	**Duty should have been paid, i.e @ 20% or Rs.390/- per pcs Whichever is higher (+CVD 8.16%+0.05%+2%)**	**Short levy of duty (Rs)**
1.	85013 ($46.10)	*86529/-*	*26,443/-*	*10,82,173/-*	*10,55,730/-*
2.	*46872 ($46.10)*	*47874/-*	*14,579/-*	*453534/-*	*438955/-*
3.	*78968/- ($46.50)*	*80656/-*	*13880/-*	*363536/-*	*349656/-*
4.	*48900/- ($46.50)*	*49536/-*	*9618/-*	*241342/-*	*231724/-*
5.	*34114/- ($46.10)*	*34843/-*	*10403/-*	*321411/-*	*311008/-*
6.	*21957/- ($46.10)*	*22426/-*	*6530/-*	*188275/-*	*181745/-*
		Total	***Rs.81453/-***	***Rs.26,50,271/-***	***Rs.25,68,818/-***

After the assessment and clearance of goods by the Customs, a show cause notice was issued to the appellant vide F. No. VIII(10)6/Cus./Adj./Audit/2005 dated 24.4.2007 asking them as to why the imported consignment should not have been re-assessed under Tariff 6201.33.00 instead of 6201.99.90. The items under Customs Tariff sub heading 6204.33.00 attracted duty @ 20% on the assessable value by extending the benefit of Notification No. 5/2004-Cus dated 8.1.2004 as amended by Notification No. 68/2004-Cus. dated 9.7.2004. The appellant along with their CHA was asked to show cause as to why the imported consignment which was cleared should not be re-assessed in terms of the above classification and differential duty be not recovered under Section 28 of the Customs Act along with applicable interest under Section 28AB of the Act. The show cause notice also proposed penalty upon the appellants under the provisions of Section 112 and Section 14A of the Act. Against this background, the appellants are in appeal before us.

2. Ld. Advocate, on behalf of the appellant, submitted that the consignment was imported at the strength of the aforesaid bills of entry after examination by the proper officer at the LCS. The examination of the various bills of entry indicated that there was no mis-declaration of imported goods with respect of the quantity and value. Accordingly, the assessments were completed by the 'proper officer' and a consignment was released to the importer. It was also

argued that the proper officer had correctly classified the subject imported consignment of wind cheater and wind jacket under Heading 6201.99.90 if they are meant for boys and for girls those were classified 6202 of the first schedule to the Tariff Customs Act, 1985. If they were made of the other textile material than cotton or manmade fibres, they were covered either under Heading 6201.99 or under Heading 6202. The contention of the adjudicating authority that the wind jacket and wind cheater imported by the appellant is classifiable under Tariff Heading No. 6204.37.00 is wrong as the woven fabrics such as the jackets were made of other textile material. The said consignment was supported by the commercial invoice and the same was physical examination by the Custom officers. It was further submitted by the ld. Advocate that in the order-in-original, it is stated that the goods imported by the appellant vide the various bills of entries are meant for women's / girls'. In support of that the adjudicating authority has referred Chapter Note 8 of Chapter 62 of the Customs Tariff Act, 1975. The Note 8 of Chapter 62 reads as under:

> *"Garments of this Chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes."*

Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the heading covered women's or girls' garments. From reading of the above, it is clear that the classification of garment as to whether the same is meant for boys' or girl's or for men's or for women's, physical examination of the garments on the basis of design or cut is required. However, from the examination report of the Custom officer appearing on the various bills of entry, it is seen that before accepting classification of the goods, such identification was to be made by the concerned officer who assessed the bill of entry. As the consignment after examination was found to be wind cheater and wind jacket and hence clearly classifiable under Chapter Heading 6201.99.90. It needs to be presumed as correct on the basis of visual inspection by the Assessing Officer.

3. The adjudicating authority has issued show cause notice after lapse of about two years of importation and has failed to adduce any evidence to the fact that the wind cheaters and jackets was meant for women or girls. Without having the tangible evidence in the show cause notice to that effect the inference drawn in the show cause notice to that effect is without any basis and therefore legally not sustainable. It was also stated by the ld. Advocate that the adjudicating authority has passed the impugned order without following the provisions of sub-section 2 of Section 129 D of the Customs Act. It is well settled principle that the order passed on the bills of entry is appealable order and therefore, without setting aside

the same in review proceeding, the demand of duty and imposition of penalty is not permissible. In this regard, ld. Advocate relied upon the decision of Hon'ble Supreme Court in the case of ***Priya Blue Industries Ltd. Vs. CCE -*** 2004 (172) ELT 145 (SC). The ld. Advocate further referred and relied upon the case of ***M/s Vittesse Export Import Vs. CC*** – 2008 (224) ELT 241 (Tri.-Mumbai). The Hon'ble Tribunal has held in that case; "once assessment is not challenged by Revenue by way of filing an appeal, it attained finality and cannot be challenged by alleging mis-declaration of nature of goods". Also in this case, the show cause notice, demand of duty was issued on 24.4.2007 for the assessment done in the month of Sept., Oct. and Nov. 2004; which is after the lapse of more than two years and accordingly the demand is time-barred in terms of sub-section 1(B) of Section 28 of the Customs Act. The proviso to the said section cannot be invoked in this case because the appellant has made full and complete disclosure of the goods imported by them, by appending commercial invoice, Bill of Lading, Packing List etc. along with Bill of Entry filed under Section 46 of Customs Act. There was no mis-declaration by the appellant in this case. The ld. Advocate further submitted that the impugned order has been passed in violation of principles of natural justice.

4. Ld. AR on the other hand reiterated the grounds contained in the impugned order and on the grounds mentioned therein.

5. We have heard the rival contention and gone through the appeal papers.

6. In this case, the appellant has imported the readymade garments during the period from 30.8.2004 to 4.11.2004 declaring the goods claiming classification thereof under specific tariff heading and the goods were duly examined and found to be as per the declaration and appropriate duty also was paid and the goods were allowed to be cleared. The show cause notice was issued to the importer on 20.7.2007 alleging the suppression on the ground that the appellant has not declared the full description of the readymade garment. The contention of the appellant is that the invoice covering the imported goods were declared as the readymade garment, wind cheater for boys and girls under the appropriate classification. It was the opinion of the Revenue that the readymade garments i.e jacket and girls jacket are appropriately classifiable under sub heading 6204.33.00 of the tariff against the claim made by the appellant under 6201.99.900 of the Customs Tariff. The contention of the appellant is that the full description of goods by claiming and appropriate heading were duly declared in the Bills of Entry and therefore, no suppression can be alleged against the applicant.

7. We find in this case the import was made in the year 2004. The applicant filed the bill of entry along with the invoices and

related documents claiming appropriate tariff heading as per their appreciation. The same was not disputed by the Customs department at the time of importation of the goods. Further, the goods were examined and the samples were also drawn, which is evident from the examination report on the bills of entry. As the goods were examined before the clearance and the same was found as per the declaration, no allegation of suppression of fact can be made against the appellant. It is also fact that the department has not appealed against the assessment order which was done at the time of clearance of goods by filing the bills of entry. As no appeal was filed against the assessed bill of entry, the same cannot be reopened after period of more than three years. Our views are fortified in view of the Hon'ble Supreme Court decision in the case of ***Vittesse Export Import*** (supra) and ***Priya Blue*** (supra) Accordingly, we set aside the impugned order and allow appeal with consequential benefit, if any.

(Pronounced in Court)

Sd/	Sd/
(P.K. Choudhary)	(Bijay Kumar)
Member (Judicial)	Member (Technical)

RM