IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76048 of 2015

(Arising out of Order-in-Appeal No.Kol/Cus.(Port)/AM/065/2015 dated 21.08.2015 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Gurudeo Impex
CK 14/39. Mahalla Nandan Sahu Lane, Rajakatra, Varanasi-221001

Respondent

APPERANCE :

Shri Monish Mohan, Authorized Representative for the Appellant
Shri Amit Kumar, Advocate for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…75354/2023

DATE OF HEARING : 03 .05.2023
DATE OF DECISION : 03 .05.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent filed Bill of Entry for import of 100% Polyester woven fabric among other items and classified the same under CTH-54075290. The said goods were examined on first check basis and samples were drawn. Upon testing by the Regional Laboratory Textiles Committee, Kolkata vide its report dated 22.12.2014, the above items were stated to be 100 % polyster warp pile fabrics and cut. The Revenue is of the view that the said items is classified under CTH 58013711 and the benefit of Notification

No.30/2004-CE dated 09.07.2004 was not available to the respondent. Consequently, the goods were held for liable to confiscation and liable to pay duty thereon. Consequently, redemption fine was also imposed. The said order was challenged before the Commissioner (Appeals), who held that the goods are not classifiable under CTH-58013711, but clearly covered under CTH 58013720. He also held that the respondents are entitled for benefit of Notification No.30/2004-CE dated 09.07.2004. Consequently, no redemption fine was imposable from the respondent. Aggrieved from the said order, the Revenue is before us.

3. The ld.A.R. for the Revenue, draws our attention the test report and as per the test report, he claims that the goods in question is "velvet", therefore, merits classification under CTH 58013711. He also submits that the respondent has failed to show that they have not taken cenvat credit on the inputs, therefore, benefit of Notification No.30/2004-CE dated 09.07.2004, is not available to the respondent. Consequently, it is his prayer that the impugned order is to be set aside.

4. Considered the submissions of the ld.A.R. for the Revenue and gone through the records placed before us. The test report by the Regional Laboratory Textiles Committee, Kolkata dated 22.12.2014, is reproduced below :

Sl.No.	i) Polyester Woven Fabric Dyed and unprinted	Polyester Fabric Woven item no. 4 of B/E
1.	Nature of Fibre	Warp – Polyester Weft-Polyester Pile Thread - Polyester
2.	% Composition	Polyester – 100%
3.a)	Wt/Square mtr in gms	133.6

3.b)	Wt/Linear mtr in gms	151.8
3.c)	Width of fabric in cm	113.6
3.d)	Thickness of fabric in cms	Avg.: 0.76
4.	Whethe knitted/Woven	Woven
5.	Whether Dyed/Undyed & Prined/Without printed	Dyed fabric without printed
6.	Whether Pile Fabrics	Pile Fabric
7.	Whether Warp Pile/Weft Pile Fabric	Wrap Pile Fabric
7.a)	Whether cut/uncut	Cut
7.b)	**Whether velvet**	**Yes**
7.c)	Whether Chenille Fabric	No.

5. We have also gone through the Tariff Heading, which is also reproduced below :

	- Warp pile fabrics:							*Exemption: See Ntfn 14/0 Cus. dated 01.03.200*
	--- Warp pile fabrics, 'epingle' (uncut):							
5801 37 11	---- Velvet	m^2	10.0% or Rs.140 per sq. mtr., whichever is higher	10.0% or Rs.140 per sq. mtr., whichever is higher	---	4	12	Free
5801 37 19	---- Other	m^2	10.0% or Rs.140 per sq. mtr., whichever is higher	10.0% or Rs.140 per sq. mtr., whichever is higher	---	4	12	Free
5801 37 20	--- Warp pile fabrics,cut	m^2	10.0% or Rs.68 per sq. mtr., whichever is higher	10.0% or Rs.68 per sq. mtr., whichever is higher	---	4	12	Free
5801 37 90	--- Other	m^2	10.0% or Rs.140 per sq. mtr., whichever is higher	10.0% or Rs.140 per sq. mtr., whichever is higher	---	4	12	Free
801 90	-- Of other textile materials:							*Exemption: See Ntfn 14/06-Cus. dated 01.03.2006; Sl. No.113*

6. On going through the Heading, we find that the Tariff Heading 58013711 covers Velvet (uncut) and others, but the Tariff Heading covers Warp pile fabrics,cut , which is classifiable under CTH 58013720. As per the test report, the goods qualified under Warp pile fabrics,cut and merits classification under CTH 58013720. Therefore, we do not find any force in the arguments advanced by the ld.A.R. for the

Revenue that the impugned goods merits classification under CTH-58013711.

7. In view of this, we hold that the merit classification of the impugned goods is under CTH 58013720 not under CTH-58013711 sought by the Revenue. Therefore, on this ground, we do not find any infirmity in the impugned order.

8. We further find that as per Notification No.30/2004-CE dated 09.07.2004, the condition is that "nothing contained in the Notification shall apply to the goods in respect of which credit of duty on input or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2002". We find that the goods are imported in India and have been manufactured abroad. In that circumstances, how the respondent can take credit on inputs/capital goods, which are manufactured outside India. If it is alleged that the respondent has taken cenvat credit on input/ capital goods, it is onus on the revenue to prove that they have taken cenvat credit on input/capital goods, which has been used in the manufacture of the impugned goods, which is not on record. In that circumstances, we hold that the respondent is entitled for the benefit of Notification No.30/2004-CE dated 09.07.2004.

9. As the appellants are entitled to take the benefit of the above cited Notification, therefore, the goods are not liable for confiscation. Consequently, no redemption fine and penalty are imposed on the respondent.

10. In view of the above submissions, we do not find any infirmity in the impugned order and accordingly, the same is upheld.

11. In the result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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