

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75808 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/58/2017 dated 29.11.2017 passed by Commissioner of Customs (Port), Kolkata.)

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

...Appellant

VERSUS

M/s. Durga Impex

.....Respondent

(Golden Plaza, 1st Floor, Burdwan Road, Siliguri, West Bengal.)

APPEARANCE

Shri S.Debnath, Authorized Representative for the Revenue

Shri S.C. Ratho, Consultant for the Respondent

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75566/2024

DATE OF HEARING : 19.03.2024
DATE OF DECISION : 19.03.2024

Per : ASHOK JINDAL :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent imported one consignment of 'Bed sheet', declared as Polyester Bed sheet vide Bill of Entry No.8244448 dated 19.01.2017 with the quantity as 21,600 pieces.

3. The Revenue is of the view that the said consignment contains "Polyester Woven Fabrics" and the same is classifiable under CTH 5407 whereas the respondent had classified the goods under CTH 6304. Therefore, representative samples were drawn and thereafter, after completion of investigation, a show cause notice was issued alleging that the respondent had mis-declared the goods. The matter was adjudicated and the goods were held to be mis-declared and consequently confiscated; demand of duty was confirmed against the respondent by classifying the goods under CTH 5407 along with redemption fine of Rs.2,50,000/-; along with interest; a penalty of Rs.1,00,000/- was also imposed under section 112(a) of the Customs Act, 1962. Aggrieved from the said order, the Revenue is before us on the ground that as it is alleged against the respondent had willfully mis-declared the goods, therefore, penalty under Section 114A of the Customs Act, 1962 should have been imposed on the respondent.

4. The Ld.Authorized Representative appearing on behalf of the appellant/Revenue submits that in this case, it is alleged in the show cause notice that the respondent had suppressed the facts and classified the goods deliberately and therefore, the mandatory penalty under section 114A of the Act is to be imposed.

5. We find that a similar issue has been dealt by this Tribunal in the case Commissioner of Customs (Port) vs. M/s. Silpha Finvest P. Limited vide Final Order No.75376/2024 dated 29.02.2024, wherein this Tribunal has observed as under:-

"5. On the other hand, the respondent through their cross-objection has challenged the impugned order wherein the classification adopted by the respondent has been re-classified by the Revenue under CTH 5407 of the Customs Tariff Act.

6. In view of the submissions made by the respondent in their cross-objection, we have to analyze whether the respondent has properly classified the impugned goods or not.

6.1 In the Bills of Entry, the respondent has described the goods as "Bed sheet (100% Polyester)" and that too in numbers. Chapter 63 deals with the following goods:-

"Other made up textile articles; sets; worn clothing and worn textile articles; rags"

while Chapter Heading 6304 deals with :-

"63.04 – Other furnishing articles, excluding those of heading 94.04.

- Bedspreads:

..."

Admittedly, the goods in question are Bed spreads i.e., Bed sheets. Although made of 100% polyester yarn, it does not mean that the article loses its identity as Bed spreads/ Bed sheets, which are properly classifiable under Customs Tariff Heading 6304.

6.2 However, the Revenue has sought to re-classify the above goods under Customs Tariff Heading 5407, which classifies:-

"54.07 - Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 54.04"

7. We admit that the articles which have been imported by the respondent are woven fabric of synthetic filament yarn, but they are Bed spreads/Bed sheets and quantity of the goods in numbers has been described by the respondent. In the circumstances, the merit classification of the impugned goods is under CTH 6304 of the Customs Tariff Act. Therefore, we classify the impugned goods as 'Bed spreads' (Bed sheets) classifiable under CTH 6304 of the Customs Tariff Act. In view of this, we hold that the impugned goods have been correctly classified by the respondent and the same are not liable for confiscation. We further hold that the respondent is liable to pay duty by classifying the impugned goods under CTH 6304 of the Customs Tariff Act and no penalty is imposable on the respondent. No redemption fine is payable by the respondent.

8. In view of the above, we dismiss the appeal filed by the Revenue."

6. We find that a similar issue has been examined by this Tribunal and it was held that merit classification of impugned goods is under CTH 6304 whereas the Revenue wants to classify the same under CTH 5407. As the classification adopted by the adjudicating authority is not sustainable, therefore, we do not find any merits in the impugned order. Consequently, no penalty under section 114A of the Customs Act, 1962 is warranted against the respondent.

7. Therefore, we dismiss the appeal filed by the Revenue.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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