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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78855 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/1237/2018 dated 02.07.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Indra Fab **: Appellant**
113/114, Jem Vihar Colony,
Sanganar, Jaipur – 302 029

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,Kolkata – 700 001

APPEARANCE:

Shri S.C. Ratho, Consultant for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76493 / 2024

DATE OF HEARING / DECISION: 26.07.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant-importer imported a consignment declared as "Polyester Quilt Cover Size 230 x 235 cm" consisting of 19200 pieces and filed an EDI B/E No. 6477459 dated 19.08.2014 through their authorised CHA M/s. Krishna Shipping Agency, Kolkata, for clearance of the same. The unit price of the subject goods have been declared as USD 1.3(CF). The total CIF value of the consignment has been declared as Rs.15,61,143/- or A/V Rs.15,76,754.91/- and duty payable being Rs.4,54,923/-.

3. The Revenue was of the view that the appellant had imported polyester fabrics and therefore, the appellant had wilfully mis-classified the impugned goods. Accordingly, proceedings were initiated against the appellant and the declared value of the imported goods was rejected, thereby re-determining the same under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14(1) of the Customs Act, 1962. The appellant was held liable for payment of duty under Section 28(4) of the Act, along with applicable interest; the goods were also confiscated under Section 111(m) of the Customs Act, 1962, along with imposition of redemption fine and penalty. The Ld. Commissioner (Appeals) vide the impugned order has upheld the order passed by the lower authority.

4. Aggrieved from the said order, the appellant is before us.

5. The Ld. Consultant appearing on behalf of the appellant has made the following submissions: -

(i) As per the General Rule of Interpretation of Tariff, the goods imported are to be classified as they are presented and not on the presumption that another item could be emerged after further process. This contention finds support also in Board's Circular No. 39/2005 dated 03.09.2005, clarifying that goods are to be assessed as presented.

(ii) On a similar issue of classification, Ld. Commissioner (Appeals) vide his order-in-appeal no. CUS/RPM/002/2015 dated: 18.01.2015, set aside the order of the lower authority for value enhancement and held that the goods are rightly classifiable under CTH 6304.

(iii) In case of 14 consignments, goods were declared as 'Quilt cover' but the Revenue held that these are double bed sheets once the stitches are removed. Accordingly, value was enhanced and fine and penalty was imposed by different orders of Additional Commissioner of Customs. Separate appeals were preferred against these orders before the Ld. Commissioner (Appeals), Kolkata. Ld. Commissioner (Appeals) in his 3 (three) consolidated orders, upheld the order passed by the lower authority against which 14 appeals were filed before this Bench. In their Final Order, the Division Bench of this Tribunal set aside the orders of the Ld. Commissioner (Appeals), Kolkata and upheld the classification of Quilt covers/Bed Sheet (as declared) under CTH 6304 and waived the fine and penalty vide *Final order Nos. 75827-75840 of 2024 dated 30.04.2024 in Customs Appeal Nos. 78658 of 2018 & ors.* Therefore, the issue being similar to the above cases, remains covered by the order of this Tribunal.

6. On the other hand, the Ld. Authorized Representative appearing for the Revenue supported the impugned order.

7. Heard the parties.

8. In this case, the claim of the appellant is that they have correctly classified the impugned goods as "Polyester Quilt Cover" having merit classification under CTH 6304 of the Customs Tariff Act. We

observe that the same issue came up before this Tribunal in the case of *C.F. Inc., A Unit of Surinder Kumar & Sons (HUF) v. Commissioner of Customs (Port), Kolkata [Final order Nos. 75827-75840 of 2024 dated 30.04.2024 in Customs Appeal Nos. 78658 of 2018 & ors.]* wherein this Tribunal has examined the issue and observed as under: -

> *"7. As per the said opinion, it is clearly stated that appropriate classification of the said goods is Polyester woven printed quilts and the imported goods have been presented by the appellants as 'Polyester woven Quilt Cover'. If the same are detached then it will look like bed sheet, which is not the correct view of the Revenue and in similar set of facts, this Tribunal has examined the issue in the case of M/s. Annapurna Industries & Others vide Final Order No.FO/77308- 77315/2017 dated 30.08.2017 and held the goods in question are to be classified as Polyester woven printed quilts. Therefore, we hold that the goods imported by the appellants are only 'Polyester Quilt Cover' and accordingly the appellants have paid duty.*
>
> *8. In that circumstances, the allegations of mis-classification and under-valuation are not sustainable in the eyes of law.*
>
> *9. Accordingly, we do not find any merits in the impugned orders and the same are set aside."*

9. As the said issue has already been decided by this Tribunal, we hold that the goods imported by the appellant have been rightly declared as "Polyester Quilt Cover" and therefore, the demands raised against the appellant are not sustainable.

9.1. Accordingly, we do not find any merit in the impugned order and hence, the same is set aside.

10. Consequently, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd