

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

**REGIONAL BENCH – COURT NO. 1
Customs Appeal No. 75809 of 2018**

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/55/2017 dated 29.11.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

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

VERSUS

M/s. Rudra Vyaparchem Private Limited : **Respondent**
21B, B.R. Basu Road, Gr. Floor,
Kolkata – 700 001 (West Bengal)

AND

Customs Appeal No. 75814 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/65/2017 dated 29.11.2017 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

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

VERSUS

M/s. Shanti Trading Co., : **Respondent**
M. G. Road Crossing, Nehru Road,
Khalpar Siliguri-734005, W.B.

APPEARANCE:

Shri Subrata Debnath, Authorized Representative for the Appellant

None for the Respondent(s)

CORAM:

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

FINAL ORDER NOs. 76917-76918/2024

DATE OF HEARING / DECISION: 29.08.2024

Order: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned orders.

2. The facts of the case are that the respondents imported consignments of bed sheets, declared as 'Polyester Bed Sheet' vide Bill-of-Entry No. 8272855 dated 21.01.2017 (in respect of the importer viz. M/s. Rudra Vyaparchem Pvt. Ltd., respondent no. 1 herein) with the quantity as 21,600 pieces and Bill-of-Entry No. 8220682 dated 17.01.2017 (in respect of the importer viz. M/s. Shanti Trading Co., respondent no. 2 herein) with the quantity as 19,200 pieces.

3. The Revenue is of the view that the said consignments contain "Polyester Woven Fabrics" and the same are classifiable under CTH 5407 whereas the respondents had classified the goods under CTH 6304. Therefore, representative samples were drawn and thereafter, after completion of investigation, Show Cause Notices were issued to the respondents herein *inter alia* alleging that the respondent had mis-declared the goods. The matter was adjudicated vide respective Orders-in-Original, both dated 29.11.2017, and the goods were held to be mis-declared and consequently confiscated; demands of duty were confirmed against the respondents by classifying the goods under CTH 5407 along with redemption fine of Rs.2,50,000/- in each case under Section 125 of the Customs Act, 1962, along with interest; penalties of Rs.1,00,000/- and Rs.1,25,000/- were also imposed under Section 112(a) of the Customs Act, 1962 on the respondent no. 1 and respondent no. 2 respectively.

3.1. Aggrieved from the said orders, the Revenue is before us on the ground that as it had been alleged against the respondents that they had wilfully mis-declared the goods, therefore, penalties under

Section 114A of the Customs Act, 1962 should have been imposed on the respondents.

4. The Ld. Authorized Representative appearing on behalf of the appellant/Revenue submits that in this case, it is alleged in the Show Cause Notices that the respondents had suppressed the facts and misclassified the goods deliberately and therefore, he contends that the mandatory penalty under Section 114A of the Act is to be imposed.

5. Heard the Ld. Authorized Representative.

6. In view of the submissions made by the Ld. Authorized Representative, we have to analyze whether the respondents have properly classified the impugned goods or not.

6.1 In the Bills-of-Entry filed, the respondents have described the goods as "Polyester Bed Sheet" 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 respondents 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 respondents. 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 respondents and the same are not liable for confiscation.

7.1. We further hold that the respondents are liable to pay duty by classifying the impugned goods under CTH 6304 of the Customs Tariff Act and no penalty is imposable on the respondents. No redemption fine is payable by the respondents.

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

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp