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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75058 of 2020

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/97/2019 dated 28.8.2019 passed by the Commissioner of Central Excise & Central Tax (Appeals), Imphal)

M/s. Swami Overseas
(74/1, Utkalmoni Gopabandhu Sarani, Kolkata-700007)

Appellant

VERSUS

Commr. of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, 2nd Floor, Kolkata-700001)

Respondent

APPEARANCE :
Mr. S. C. Ratho, Consultant for the Appellant
Mr. Tariq Suliaman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76945/2024

Date of Hearing : 08 July 2024
Date of Decision:06/09/2024

PER R. MURALIDHAR:

The facts of the case are that the Appellant imported one consignment of 'Bed sheet', declared as made of "100% Polyester" vide Bill-of-Entry No. 8165070 dated 12/01/2017 with the quantity as 22200 pieces.

2. The Revenue is of the view that the said consignment contains "Polyester Woven Fabrics" and the same is classifiable under CTH 5407 whereas the Appellant 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 appellant 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.5,00,000/-, Customs Duty of Rs. 45,34,595 and

equal amount of penalty was also imposed under Section 114A of the Customs Act, 1962. Aggrieved from the said order, the Appellant is before us.

3. The appellant has challenged the impugned order wherein the classification adopted by them has been re-classified by the Revenue under CTH 5407 of the Customs Tariff Act. He draws our attention to the following extracts of the OIO:-

> *2. Based on the above intelligence, the above live consignment was put on hold and examined by officers of Customs in presence of officers of DRI, Kolkata under Panchanama on 24.1.2017 and it was found that there were 370 bales in the consignment imported under Bill of Entry No. 8165070 dated 12.01.2017 Each such bale was found to contain 60 pieces of identical printed textile material (fabrics) which were folded and then stitched on two sides with being the remaining side opened. <u>The stitching on the two sides appear to temporary in nature and uneven which is removable by easy means like pulling. The printed textile materials appear to be made of polyester. After unstitching and unfolding, each such printed textile material is found to be made of one sheet of measuring about 14 ft x7 ft approx.</u> On weighment, total Gross weight (goods including packing material) of the goods found to be 27840 Kg. Representative samples were drawn in triplicate from the said consignment on random basis. Clearance of the consignments was withheld.*
>
> *3. By DRI Kolkata letter dated 02.03.2017, the Commissioner of Customs (Port) was intimated that prima facie <u>it appears that the goods imported under the Bill of Entry No. 8165070 dated 12.01.2017 do not satisfy the conditions required for made-ups as per note 7 to Section XI of the HSN and investigation in respect of the imported</u> consignment may take more time. It was further communicated that DRI Kolkata has no objection if the consignment is warehoused under Section 49 of the Customs Act, 1962 after observing all necessary formalities as per law.*

6. The report sent by Mumbai Textiles Committee appeared to be inconclusive as they could not provide the eight digit CTH. Accordingly, another sample drawn from the said consignment vide panchanma dated 24.01.2017 was also sent to DRI. Ahmedabad Zonal Unit for testing and obtaining opinion from Ahmedabad Textile Industry's Research Association (ATIRA), Ahmedabad, vide DRI letter F. No. DRI/KZU/CF/ENQ-04/2017/861 dated 22.05.2017, as to ascertain proper eight digit classification in respect the said item.

7. AITRA vide their test report No CTD/89 dated 29.05.2017, in respect of the samples drawn from the consignment covered under Bill of Entry no 8165070 dated 12.1.2017 opined that

- *The fabric contains 100% polyester.*
- *The fabric is woven and printed.*
- *The fabric contains all texturized filament yarns in warp and weft. The filaments of weft are getting broken due to peaching process given to the fabric.*
- *As the fabric has been peach finished, the filament yarns are damaged. Hence actual strength of warp and weft yarns used in making the fabric cannot be determined. Generally, high tenacity yarns are not used in home textiles. These are used in industrial fabrics*

8. Statement of Shri Gopal Krishna Bajaj, proprietor of M/s Swami Overseas, Kolkata was recorded on 29.05.2017, under section 108 of the Customs Act, 1962 (RUD-6), wherein he stated inter alia that:

(i) he obtained the IEC (NO. 0216900832) on 03.05.2016 and started importing this item viz. bed sheets and bed covers from China and selling the same in Kolkata. The Instant consignment was his 9th consignment of similar items imported from China.

(ii) he admitted that the items imported by him declaring as Bed/ Mattress coversare not made up according to the criteria of made up given by Note 7 to Section XI of HSN. However, these items are used as bed sheet/ bed cover/mattress cover.

(iii) he sold it to the wholesalers as well as the retailers who used to cut each such sheet into 2 pieces and after stitching sale it to the ultimate users. To save costing they used to import these items in this manner

(iv) the items bed covers/ mattress covers which they imported are of cheap quality and used by poor class customers

(v) he agreed to the opinion of the report bearing No. 0153031617 9316 dated 18.03.2017 of Textiles Committee Laboratory, Mumbai.

11. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.Chapter 5407 of the Customs Tariff deals with "Woven fabrics of synthetic-filament yarn, including woven fabrics obtained from materials of heading 5404" and Chapter 5512 to chapter 5516 of the Customs Tariff deals with "Woven fabrics of Synthetic Staple Fibre". In the instant case, the fabric is "made out of filament yarn, which is texturized". Hence the said fabrics are appropriately classifiable under chapter 5407 of the Customs Tariff.

4. The Learned Counsel, appearing on behalf of the appellant, submits that the Department has taken the stand that the imported goods are polyester woven fabrics based on Section XI Note No. 7. He submits that the Department has purely gone on the ground that no end stitching/hemming was done on the cloth to make them eligible for "made up" goods. They have failed to note that the bedsheets are of certain size 14 x 7, which is the normal double bedsheet size. Two double bedsheets are stitched loosely so that they can be removed and they can be sold separately as bedsheets. He submits that the same statement was given by the proprietor Gopal Krishna when his statement was recorded on 29 May 2017. He has also stated that

earlier to this, eight consignments had been imported from China on the same line and they were all cleared by the customs officials without any query being raised. The Learned Counsel submits that the report given by the Mumbai Textiles Committee is not clarifying the issue as to whether the same would fall under the category of 'fabric' or under the category of 'bedsheet' and the proprietor has agreed with this Report. The other test report given by AITRA dated 29 May 2017 also does not give any clarification saying that the goods will definitely fall under the category of 'fabrics'. In fact even this Report is inconclusive. They have not determined the actual strength. Hence, they cannot conclude that the imported goods are not useful as home textiles. Therefore, he submits that the Department is in error in placing their reliance on this Test Report to come to a conclusion that they are textile fabrics. He submits that the authorities have ignored the fact that the goods imported can be used only as bedsheets. The size of the product imported would clarify that this is meant to be used as bedsheets as declared by the appellant in the Bill of Entry and in the invoice received by them from the overseas exporters.

5. He submits that the issue is no more *res integra*. Similar issue had come up before this bench in the case of C & F, C, INC and many other importers (as a batch petition) which are all decided by CESTAT, Kolkata. The issue was that of polyester quilt cover received by the importers which has been stitched from two or three sides and one side folder and then these stitches were found to be loosely done on two sides lengthwise making it resemble as quilt cover. In these cases, the Department also raised the issue of valuation and other matters. The Tribunal has held that they should be treated as quilt covers only and not as fabric and allowed all the Appeals. Accordingly, he relies on the Final Order number 75827- 75840/2024 dated 30/04/2024.

6. He submits that this issue also had come up before this Bench wherein Department had filed an Appeal against Shilpha Finevest Pvt. Ltd. in Customs Appeal No. 75811 of 2018. The Tribunal held as under:

2. The facts of the case are that the respondent imported one consignment of 'Bed sheet', declared as made of "100% Polyester" vide Bill-of-Entry No. 9383329 dated 20.04.2017 with the quantity as 22,100 pieces.

6.1 <u>In the Bill-of-Entry, the respondent has described the goods as "Bed sheet (100% Polyester)" and that too in numbers.</u> 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 : …"*
>
> *<u>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.</u>*

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. <u>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.</u> 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.

In view of the submissions, he prays that the present appeal may be allowed.

7. The Learned AR submits that the criteria given under Section 7, for made up articles of textile is not satisfied. Here in this case, both the sides of the fabrics are not stitched or hemmed. Therefore, these cannot be treated as made-up fabrics. Therefore, this will fall correctly under the category of 'polyester woven fabrics' under CTH 5407. He justifies the Adjudicating Authority's findings. Accordingly, he prays that the appeal may be dismissed.

8. Heard both sides and perused all the relevant documents and the appeal papers.

9. It would be relevant to go through the extracts of the OIO reproduced in the foregoing paragrpahs. From the extracts given above, it is seen that one bale is measuring 14 feet x 7 feet. Two such sheets are loosely stitched and they can be simply pulled apart to make two different sheets each measuring 14 feet x 7 feet approximately. Admittedly, the end portion is neither hemmed nor stitched but the size and look of the material would clarify that these are meant to be sold in the market as bed sheet only. The same point has been reiterated by the proprietor of the firm when he was questioned by the Department officials.

10. On the other hand, if we go through the Test Report given by the Mumbai Textile Committee, in the OIO, the Adjudicating Authority himself has recorded that the Report is inconclusive. As can be seen from the above paragraphs, it is clear that the Mumbai Textiles Committee failed to provide the eight digit CTH. The Adjudicating Authority relied on the second Test Report of AITRA. But as per the details brought out in the OIO, we find that even this Report is not conclusive in its findings. In fact, it states that wefts are getting broken and weft yarns used in making the fabric cannot be determined. The Report says that the fabric contains 100% polyester

but they are not even denying the fact that this cannot be a made-up bed sheet product. Overall, both the Test Reports are not conclusive and they do not give any definitive idea that the imported goods will fall under the category of fabrics under CTH 5407. On the other hand, the overall nature and size of the goods would clarify that this can be sold as bed sheet. Admittedly, all the corners are not stitched or hemmed but this itself cannot take away the fact that as per the common parlance test, this can be sold in the market as bed sheet which has also been confirmed by the proprietor of the firm. He has stated that the balance stitching is done by the traders themselves, if required.

11. Coming to the issue of Section XI, Note 7 while the Revenue relying on (d), it is also possible to take the view that (b) would be applicable in view of the usage of the impugned goods. The relevant provisions are extracted below:-

> *7. For the purposes of this Section, the expression "made up" means:*
>
> *(b) produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);*
>
> *(d) hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;*

12. The Delhi Tribunal in the case of **CCE, Madras Vs. Binny Ltd. [B & C] Mills-2003 (158) ELT 835 (Tri.-Delhi)** has held as under:-

> ***4.*** *We have considered the submissions of both the sides. We observe that the product in question manufactured by the respondent does have a dividing thread and as contended by the ld. Advocate, a predetermined towel of a particular size and shape could be seen. It has a cross border and it cannot be used for any other purposes other than as towels. Note 5 to Section XI makes it very clear that if any product is separated by*

> *cutting, dividing threads, it will remain within the ambit of made up articles classifiable under Chapter 63 of the Tariff. We are not convinced by the submission of ld. DR that the dividing thread in the product of the manufacturer is not a dividing thread but it is a continuous fabrics. We also observe that by cutting the dividing thread, the towel is, therefore, ready for use. If it is hemmed, it will not take it away from the purview of made up article because it can be used as a towel without such sewing. In these facts and circumstances, we do not find any reason to interfere with the impugned order in appeal. Accordingly, the appeal filed by the Department is rejected.*

Since by usage, the goods have the contours of bedsheet, we take the view that Note 7 (b) of Section XI would be applicable.

13. On going through the case file of C & F. INC which has been decided by this Bench, we find that several factors are common. In that case also, the fabric was loosely stitched which could be pulled out to make two quilts, and the imported item was claimed to be quilt covers. In that case, further additional allegations were made on account of valuation issues. The relevant portion of the OIO in their case is reproduced below:

> *25. The classification of the goods has been claimed under CTH 63041990. On examination of the samples, drawn from the consignment and forwarded by the Dock officers, it is seen that the samples consist of a folded polyster sheet of fabric of size 235CMx 230 CM. The two sides of the folded sheet have been temporarily stitched i.e. with long stitch intended to be removed. <u>It appears from the sample as if the fabric has been temporarily stitched to give it a look of a cover and it has been stitched in such a manner that stitch can be removed easily without any difficulty. In fact, these are two double bed sheets of polyester of size 235 CM x 230 CM each. Accordingly</u>, it appears that the importer have mis-declared the description of the goods.*

14. Thus, in both the cases, the issue is more or less similar though not identical. The Tribunal in the case of C. F. Inc., A Unit of Surinder Kumar & Sons (HUF) vide its Final Order Number 75827-75840/2024 dated 30/04/2024 has come to the following conclusion:-

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 'Polyster Quilt Cover'.

15. Going by the factual details above, particularly keeping in view the common parlance usage of the material as bed sheets which can be deduced from their size and the decided case laws discussed above, we take the view that the goods are classifiable under CTA 6304 as contended by the appellant and not under CTA 54.07 as has been held by the Revenue.

16. Therefore, we allow the appeal with consequential relief, if any, as per law.

(Pronounced in the open court on 06.09.2024)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja