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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75806 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/59/2017 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**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. S.S. Trading **: Respondent**
C/o. Ram Gopal Ashok Bansal,
Agrasen Bhawan Road, Near Sushil Pharmacy, Khalpara,
Siliguri – 734 405 (West Bengal)

APPEARANCE:

Shri Ashwini Kr. Choudhary, Authorized Representative for the Appellant-Revenue

None for the Respondent

CORAM:

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

FINAL ORDER NO. 77172 / 2024

DATE OF HEARING / DECISION: 22.10.2024

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order for non-imposition of penalty under Section 114A of the Customs Act, 1962 on the ground that it is a case of mis-declaration which was detected during the course of investigation. Therefore, it is their case that penalty under Section 114A of the Customs Act, 1962 is to be imposed, which is mandatory.

2. We find that this is a case of import of polyester bed sheet / bed cover imported by the respondent vide Bill-of-Entry No. 2092414 dated 14.06.2017 classifying the said goods under the Chapter

Heading 6304 of the Customs Tariff Act whereas the Revenue sought to classify the same under the Chapter Heading 5407 as "Polyester Woven Fabrics". Accordingly, the impugned goods were detained and proceedings were initiated against the respondent by classifying the same under Chapter Heading 5407. Consequently, duty was demanded and various penalties were also imposed against the respondent by way of the impugned order.

3. Although the respondent did not come in appeal against the impugned order, the Revenue is in appeal for non-imposition of mandatory penalty under Section 114A of the Act.

4. After hearing the Ld. Authorized Representative of the Revenue, we have taken up the appeal for disposal. We have also gone through the records placed before us.

5. It is a case wherein the respondent has declared the goods as polyester bed sheet / bed cover which are in quantity (in pieces) of 22800. The Revenue wants to say that the same are "Polyester Woven Fabrics" and in fact are not "made ups" or cut to size pieces of bed sheets / bed covers. As per the Test Report, these are unstitched fabrics, in size 2.22 metres x 4.4 metres of fabric. The Test Report is not conclusive, which only says that these are not bed covers.

5.1. We observe that in similar types of imports, as in the case of *Commissioner of Customs (Port) v. Silpha Finvest P. Ltd. [Final Order No. 75376 of 2024 dated 29.02.2024 in Customs Appeal No. 75811 of 2018 – CESTAT, Kolkata]*, we have held that the captioned goods fall under CTH 6304 of the Customs

Tariff Act. In these circumstances, we refrain from accepting the Revenue's appeal to impose the mandatory penalty under Section 114A of the Customs Act, 1962.

6. In the result, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd