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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76517 of 2017

(Arising out of Order-in-Appeal No.36/HAL/2017 dated 28.04.2017 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. Piyush Polytex Industries Pvt.Ltd.
(Jalan Complex, Gate No.3, Kolorah, Howrah-711411.)

...Appellant

VERSUS

Commissioner of CGST & CX, Haldia Commissionerate

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri P.K.Ghosh, Authorized Representative for the Revenue

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

FINAL ORDER NO. 77515/2024

DATE OF HEARING : 22.10.2024
DATE OF DECISION : 22.10.2024

Per : RAJEEV TANDON :

The appellant is manufacturer of non-woven fabrics. The were classifying their product under the CET 5603. The Revenue took the view that the product is classifiable under CET 39 and issued the Show Cause Notice by invoking the extended period provisions. After due process, the adjudicating authority confirmed the demand. Being aggrieved, the appellant filed an appeal before the

Commissioner(Appeals), who dismissed the same. Being aggrieved, the appellant is before the Tribunal.

2. The Ld.Counsel appearing on behalf of the appellant submits that the Show Cause Notice is vague and demand has been made by classifying the product under Chapter 39 without giving details of 6 digits/8 digits of Central Excise Tariff under which the product would fall. He submits that on this count itself, the confirmed demand is liable to be set aside.

3. He further submits that the issue is no more *res integra*. The Tribunal in the case of **Tirupathi Nonwoven Pvt.Ltd. v. Commissioner of C.Ex., Nagpur [2016 (340) E.L.T. 240 (Tri.-Mumbai)]** has held that the product is correctly classifiable under CET 5603. He further submits that the Department has not conducted any test to support their claim that the product would call for classification under Chapter 39. Therefore, he prays that the impugned order may be set aside on account of merits.

4. He further submits that the appellant has been carrying on the manufacture and clearance of this product from 2007 onwards and they have been regularly filing their ER-1 Returns showing therein that the product is being classified under CET 5603. All the Returns were being accepted by the Range Officials without any objections being raised at any point of time. Therefore, the Department has not made out any case of suppression on the part of the appellant. Accordingly, he prays that the confirmed demand for the extended period may be set aside on account of limitation also.

5. The Ld.AR for the department reiterates the detailed findings given by the lower authorities. Accordingly, he justifies the confirmed demand and prays that the appeal may be dismissed.

6. Heard both sides and perused the documentary evidence placed before us.

7. On going through the show cause notice dated 04.11.2010 it is seen that the statement of the proprietor has been recorded and mentioned at Page No.2 of the show cause notice, which read as under:-

> *"He also stated in his statement regarding manufacturing processes of non-woven fabrics is as follows:-*
>
> *"Polypropylene granules with master batch are melted and the molten material is extruded through spinnerets in continuous spray which is cooled and deposited on to a conveyor to form a uniform web. A calendar binds randomly lying molten material with the aid of heat and pressure. The wound rolls are cut into predetermined widths. The resultant trim is recycled".*

8. On the other hand, for coming to the conclusion that the product will attract classification under Chapter 39, we find that no corroborative evidence in the form of any test report has been placed by the Revenue. We further find that the classification adopted by the Revenue is a bland statement since the allegation is that the non-woven fabric manufactured by them should be classified under Chapter 39 of CETA, 1985. We find from Section VII of the Central Excise Tariff Act that it deals with Plastic and Articles thereof and Rubber and Articles thereof and Chapter 39 specifically deals with plastic and articles thereof. It consists of various items falling under Central Excise

Tariff 3901 to 3906 with several 6 digits and 8 digits sub-classification. The 6 digits and 8 digit sub-classifications are important to arrive at the correct rate of Duty applicable to a product. In this particular case, the Revenue has not even made any attempt to give the details of 6 digits/8 digits of Chapter 39 under which they feel that the product should be classified.

9. Coming to the case law of **Tirupathi Nonwoven Pvt.Ltd.**, cited by the Appellant, an identical issue has come up before the Mumbai Bench of the Tribunal, wherein the Tribunal has observed as under:-

"3.*The learned Counsel for the appellant argued that Chapter 39.23 where the said fabrics is sought to be classified reads as under :*

3923	*Articles for the conveyance or packing of goods of plastics; stoppers, lids, caps and other closures of plastics*		
3923.10	*- Boxes, cases, crates and similar articles*		
3923 10 10	*Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles*	*Kg.*	*12%*
3923 10 20	*Watch box, jewellery box and similar containers of plastics*	*Kg.*	*12%*
3923 10 30	*Insulated ware*	*Kg.*	*12%*
3923 10 40	*Packing for accommodating connectors*	*Kg.*	*12%*
3023 10 90	*Other*	*Kg.*	*12%*

3.1 *He argued that the product manufactured is a flexible products which is cleared in roll form and cannot be treated as an article for conveyance or packing of goods. He argued that the said Heading 39.23 is intended to cover articles like, boxes, cases, crates, etc. The goods manufactured by the appellant cannot be compared with such goods. The learned Counsel explained that the said non-woven fabrics is manufactured from the polypropylene chips procured by them. He explained that the polypropylene chips is melted and passed through spinnerets and filament yarn is made out of the polypropylene chips. The said filament yarn is spread thinly and pressed under heat to manufacture the finished goods. He argued that the Heading 56.03 covers such non-woven fabrics. The Heading 56.03 reads as under :*

5603	*Non-woven, whether or not impregnated, coated, covered or laminated -* *Of man-made filaments*	*Kg.*	*12%*

3.2 *He pointed out that the process of the manufacture of the non-woven fabrics is the same as explained in the HSN explanatory notes. He pointed out that HSN explanatory notes explain the various stages in manufacture of non-woven as web formation, bonding and finishing. In their case after spinning the yarn they are doing web formation by randomly lying the fibers. Then they do the bonding using the neat and mechanical bonding. Thus their products are squarely covered under the Heading 5603 as non-woven fabrics. The appellant also relies on the clarification of non-woven spun fabrics issued by the HMRC.*

4.*The learned AR relies on the impugned order and submitted written submissions. It was argued by the learned AR that material which is predominant in the said product is plastic as it is manufactured out of granule of Chapter 39 and therefore it should be classified under Chapter 39. He also relied on the decision of the*

Hon'ble Supreme Court in the case of Shree Baidyanath Ayurved Bhawan Ltd., reported in 2009 (237) E.L.T. 225 (S.C.) to assert that common parlance test is very important and not scientific or technical meaning, while deciding the classification of the product. He argued that the product is used as a packing material for conveyance of goods. Therefore, it should be under Heading 3923. He argued that the appellant's contention that the product is used in manufacture of sanitary napkins as it only provides a leak proof covering of the napkins and not the absorbent material.

5.*We have gone through the rival submissions. We find that the show cause notice is based on the following observations of Hon'ble Supreme Court in the case of Porritts & Spencer (Asia) Ltd. - 1983 (13) E.L.T. 1607 (S.C.). Apex Court concluded taking note of dictionary meaning of the textile as follows :*

> *The word 'textiles' is derived from the Latin 'texere' which means 'to weave' and it means any woven fabric. When yarn, whether cotton, silk, woollen, rayon, nylon or of any other description or made out of any other material is woven into a fabric, what comes into being is a 'textile' and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other kind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric.*

> *The judgment was given while interpreting classified under Punjab General Sales Tax. While the manner of classification in the Punjab General Sales Tax Act was not the same as the manner of classification adopted in the Central Excise Tariff. The said Central Excise tariff is a very advanced scientific method of classification. The said tariff is backed by the explanatory notes which explain the scope of each heading. <u>We find that the HSN explanatory notes to Chapter Heading 5603 specifically covered non-woven fabrics. We find that Heading 5602 of the Central Excise Tariff specifically covers felt. The decision in the case of Porritts & Spencer (Asia) Ltd. (supra) was given in respect of felt. Felt is clearly classifiable under Heading 5602. Thus, we find that the reliance placed on the said decision in the show cause notice is totally irrelevant</u>. We find that the HSN clearly recognize non-woven textile manufactured by thermal/mechanical bonding of yarn as textile falling under Chapter 56. In view of the above, we set aside the impugned order and allow the appeal. Miscellaneous application is also disposed of."*

10. We find that the ratio laid down in the above case law is squarely applicable to the facts of the present case. The manufacturing details recorded in the Show Cause Notice tallies with the details coming up in the above cited case law. Therefore, following the ratio laid down in the cited case law, we allow the appeal on merits.

11. We also find force in the appellant's arguments that the Revenue has not made out any case of suppression on the part of the appellant. The appellants have been classifying their product under CET 5603 and filing their Returns. Based on the Returns filed by them, the differential Excise Duty has been quantified in the present Show Cause Notice. Therefore, we hold that the confirmed demand for the extended period is not legally sustainable. We set aside the confirmed demand for the extended period on account of limitation also.

12. Thus, the appeal stands allowed. Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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