

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 79719 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/58/2017 dated 29.11.2017 passed by the Commissioner of Customs (Port), Custom Huse, 15/1, Strand Road, Kolkata – 700 001)

M/s. Durga Impex

Golden Plaza, 1st Floor, Burdwan Road,
Siliguri – 734 001

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom Huse, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri B.N. Pal, Advocate for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75181 / 2025

DATE OF HEARING / DECISION: 27.01.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the Id. adjudicating authority has rejected the classification of the goods declared by the importer and ordered for confiscation of the goods imported. The Id. adjudicating authority has also confirmed a duty demand of Rs.57,79,727/- against the appellant along with imposition of penalty under Section 112(a) of the Customs Act, 1962.

2. The facts of the case are that M/s. Durga Impex, Golden Plaza, 1st Floor, Burdwan Road, Siliguri, West Bengal – 734 001 (hereinafter referred to as the “appellant”) filed a Bill of Entry No. 8244448 dated

19.01.2017 through their authorized Customs Broker for clearance of goods declared as "Polyester bed sheet" from China, with the quantity declared as 21,600 pcs. and classified the same under Tariff Item No. 6304 1990.

2.1. The Revenue was of the view that the goods imported were "Polyester Woven Fabrics" classifiable under CTH 5407 and the appellant had allegedly mis-declared the goods by classifying the same under CTH 6304. Subsequently, representative sample was drawn and an investigation was initiated against the appellant. Thereafter, upon completion of the investigation, a Show Cause Notice dated 11.08.2017 was issued inter alia alleging that the appellant had mis-declared the impugned goods.

2.2. The matter was adjudicated by the Ld. Commissioner of Customs (Port), Custom House, Kolkata and vide the impugned order, the goods were held to have been mis-declared and ordered to be confiscated under Section 111(m) of the Customs Act, 1962, with an option to redeem the goods on payment of redemption fine of Rs.2,50,000/- under Section 125 of the Act. He also confirmed the demand of duty of Rs.57,79,727/-, along with interest, by classifying the imported goods under CTH 5407 5490; a penalty of Rs.1,00,000/- was also imposed under Section 112(a) of the Act.

2.3. Against the said order, the appellant is before us.

3. At the outset, the Ld. Counsel appearing on behalf of the appellant submits that the issue is no more res integra as this Tribunal has already decided the issue in the case of *Commissioner of Customs*

(Port), Kolkata v. Silpha Finvest P. Ltd. [Final Order No. 75376 of 2024 dated 29.02.2024 in Customs Appeal No. 75811 of 2018 – CESTAT, Kolkata]. He also referred to the decision in the case of Commissioner of Customs (Port), Kolkata v. M/s. Steel Syndicate [Final Order No. 75659 of 2024 dated 22.03.2024 in Customs Appeal No. 75805 of 2018 – CESTAT, Kolkata] wherein the decision in the case of Silpha Finvest P. Ltd. (*supra*) has been followed by this Tribunal.

4. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard the parties.

6. We find that an identical issue had come up for consideration before this Tribunal in the case of Commissioner of Customs (Port), Kolkata v. Silpha Finvest P. Ltd. [Final Order No. 75376 of 2024 dated 29.02.2024 in Customs Appeal No. 75811 of 2018 – CESTAT, Kolkata], wherein it has been observed as under: -

"6. In view of the submissions made by the respondent in their cross-objection, we have to analyze whether the respondent has properly classified the impugned goods or not.

6.1 In the Bill-of-Entry, the respondent has described the goods as "Bed sheet (100% Polyester)" 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 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. 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.*

8. *In view of the above, we dismiss the appeal filed by the Revenue and accordingly dispose of the cross-objection filed by the respondent."*

6.1. Further, the same view was taken by this Tribunal in the case of *Commissioner of Customs (Port), Kolkata v. M/s. Steel Syndicate [Final Order No. 75659 of 2024 dated 22.03.2024 in Customs Appeal No. 75805 of 2018 – CESTAT, Kolkata]*.

7. In view of the above, we find that the issue is no more *res integra*. Therefore, by relying on the decisions cited supra, we hold that the demands confirmed against the appellant are not sustainable. Consequently, no penalty is imposable on the appellants. In these circumstances, the impugned order is not sustainable and accordingly, the same is set aside.

8. In these terms, the appeal is allowed.

(Dictated and pronounced in the open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd