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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76597 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus/Port/ks/485/2024 dated 23.08.2024 passed by the Commissioner of Customs (Appeals) 3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001)

M/s. Dinodias, **: Appellant**
6497, Ground Floor, Block 8B,
Shop N Gali 3-4, Devnagar, Karol Bagh,
New Delhi-110005

VERSUS

Commissioner of Customs (Appeals), **: Respondent**
3rd Floor, Customs House,
15/1, Strand Road, Kolkata-700001

APPEARANCE:

Shri S. C. Ratho, Consultant for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76090/2026

DATE OF HEARING / DECISION: 06.08.2026

Order: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that M/S. DINODIAS, (IEC: 0513076816) New Delhi, (herein after referred as the Appellant) has imported a Consignment of 'Polyester Water Resistance fabrics for making bags' from overseas supplier M/S. Blue Union Textile Co. Ltd, China and filed Bill of Entry No: 7859000 dated 16.09.2023 claiming classification of the goods under the CTH 59039090 at a declared value of Rs. 24,34,895.87/-. Admitted duty calculated as per import documents amounting to Rs. 8,92,146/- was also paid.

2. Pursuant to some information, the consignment was examined 100% by the shed officers and SIIB (Port) officers. On examination, PU coated fabric of different thickness were found. Besides, 760 meters of extra fabric was also recovered. Representative samples were drawn and tested by CRCL, wherein the thickness, GSM and percentage of fabric was reported. Further, it was reported that, the samples are in cut piece of white/yard, knitted/woven fabric of polyester coated on one side with polyurethane and coating is visible with naked eye. The goods were seized under section 110(1) of the Customs Act, 1962 on 09.11.2023.

2.1. In the process of investigation, statement of Shri Shiv Kumar Agarwal, representative of the appellant firm, was recorded. The appellant waived issuance of Show cause notice and dispensed Personal hearing since, live consignment was under detention. Finally, the case was adjudicated and Order-In-Original No. KOL/CUS/ADC/PORT/GR.3/140/2023 dated: 27.12.2023, was passed.

2.2. In the order, the allegation of mis-match and mis-declaration of the goods was upheld. The value was directed for enhancement under Rule 9 as per the internal instruction of SIB, vide F. No. CUS/SIIB/MISC/938/2023-GR 3-O/O PR COMMR-CUS-PORT-KOLKATA, wherein price of different coated fabric was decided. The goods were initially claimed classification under the CTH 59039090 and after the test, it was held to be classifiable under the CTH 59032090, which heading attracts Anti-Dumping Duty @ USD 0.46/Mtr., vide Notification No. 14/2022 dated 20.05.2022. The ADD amount worked out to Rs. 24,81,142/-, which was admitted by the appellant. However, on account of arbitrary value enhancement, the total duty stood payable as Rs. 60,89,902/-. After adjustment of Rs. 8,92,146/- being the admitted duty paid by the appellant, the differential duty worked out to Rs. 43,93,126/-. The goods were directed for absolute confiscation u/s 111(l) & 111(m) for which redemption fine of Rs. 9,00,000/- and a penalty of Rs. 5,19,000/- was imposed.

2.3. An appeal was preferred by the Appellant before the Ld. Commissioner of Customs (Appeals). The Ld. Commissioner (Appeals) upheld the demands of customs duty along with interest, fine and penalty confirmed in the Order-in-Original. Aggrieved against the confirmation, the Appellant has filed this appeal.

3. The Appellant submits that the goods were declared as 'Polyester Water Resistance fabrics for making bags' as per trade parlance. In normal course of trade, a merchant importer only looks at the item popularly known in the trade. Cloths for making bag is invariably is required to be water proofing cloth, for which PVC, Latex, Rubber or PU are being used. Till test of the goods, it was not known to the appellant that these are PU coated only, which attracts Anti-Dumping Duty (ADD). Once goods are classified under the CTH 59032090, ADD is leviable in the taxing structure, but there was no such malafide intention on the part of the appellant to evade duty.

3.1. The Appellant submits that, if mis-declaration goods are found, Department is at liberty to re-determine the value as per contemporary evidence of value in terms of Customs Valuation Rule, 2007. But arbitrarily, the valuation was done under Rule 9 to the maximum, on the basis of an instruction of the investigating agency as per the decision made in F. No. CUS/SIIB/MISC/938/2023-GR 3-O/O PR COMMR-CUS-PORT-KOLKATA. The basis of the valuation made in the order, as if, the valuation is being done under section 14(2) of Customs Act, 1962, similar to Tariff value fixed by Board. Neither the Valuation Rule of Section 14 of Customs Act, 1962 validates such arbitrary value enhancement. Moreover, the issue stands settled that, value cannot be enhanced on the basis of a Circular or instructions, which is not in consonance with Valuation Rule, 2007.

3.2. In the case of CC vs Bharti Rubber Lining and Allied Services Pvt Ltd -2013 (287) ELT 124 (Tri-Mum), it was held that the DGOV circular cannot override the provisions of Valuation Rules. Hence, the value enhancement done on the basis of a Circular/Instruction is bad in law and legally not sustainable.

3.3. Further, the Appellant submits that similar goods are being cleared at a much lower value vide Bills of Entry Nos. 1009234 dated 26.05.2023, 1007451 dated 03.05.2023, 1004800 dated 22.03.2023 and 1008819 dated 22.05.2023, copies of which are annexed to the appeal memorandum. But, Ld. Commissioner (Appeals) in para-8 of his order, on the basis of the finding in para-13.8 of the lower authority held that, "reasons being no import data/identical goods of same thickness, patter in comparable commercial quantity was available, rightly the valuation was done under Rule 9 of CVR, 2007",.

3.4. Further, in respect of the evidence submitted before the Ld. Commissioner (Appeals), it was observed in para-9 of the order that, "since the appellant failed to provide copy of the referred Bills of entry, therefore, authenticity of these Bills of entry is doubtful and cannot be relied upon". In this regard, the Appellant submits that the finding and order of the Ld. Commissioner (Appeals) is totally misplaced since, all the copy of the Bills of entry relied by the appellant was annexed to the appeal memorandum as annexure F. Thus, the Appellant submits that the confiscation of the goods under section 111(l) and 111(m) of Customs Act, 1962 and the redemption fine and penalty imposed in the impugned order is legally not sustainable. Thus, the Appellant prayed for setting aside the impugned Order-In-Appeal No. KOL/CUS/PORT/KS/485/2024 Dated 23.08.2024, and remand the matter back to the adjudicating authority for redetermination of the value as per the established principles of Valuation Rules.

4. The Ld. A.R. reiterated the findings in the impugned order. He submits that the Appellant has mis-declared the classification of the goods and hence the goods have been rightly re-classified and the value enhances. Thus, he supports the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the Appellant imported the goods and filed Bill of Entry declaring the goods as 'Polyester Water Resistance fabrics for making bags' as per trade parlance. In normal course of trade, a merchant importer only looks at the item popularly known in the trade. Cloths for making bag is

invariably is required to be water proofing cloth, for which PVC, Latex, Rubber or PU are being used. Till test of the goods, it was not known to the appellant that these are PU coated only, which attracts Anti-Dumping Duty (ADD). Once the goods are tested and it was found to be PU coated, the Appellant accepted the same and accordingly they have accepted the re-classification of the impugned goods under the CTH 59032090, for which ADD is payable. We find that the Appellant has admitted the ADD payable also. Thus, we do not find any malafide intention on the part of the appellant to evade duty.

6.1. Once the goods are found to be PU coated, then the valuation of the goods is also required to be re-determined. We find that the Appellant has agreed for re-determination of the goods as per contemporary evidence of value in terms of Customs Valuation Rules, 2007. In the present case, we find that re-determination of value was done on the basis of an instruction issued by the department in F. No. CUS/SIIB/MISC/938/2023-GR 3-O/O PR COMMR-CUS-PORT-KOLKATA. We find that basis of the valuation made in the order is legally not permissible. We observe that the Valuation Rule of Section 14 of Customs Act, 1962 does not validate such arbitrary value enhancement. Moreover, the issue stands settled that value cannot be enhanced on the basis of a Circular or internal instructions issued by the department, which is not in consonance with Valuation Rules, 2007.

6.2. As per the Valuation Rules, re-determination of value can be done on the basis of the value of contemporary imports of similar goods. In this regard, we find that the Ld. Commissioner (Appeals) failed to recognize the evidence of contemporary imports submitted by the Appellant vide Bills of Entry Nos. 1009234 dated 26.05.2023, 1007451 dated 03.05.2023, 1004800 dated: 22.03.2023 and 1008819 dated 22.05.2023. We find that the lower authorities have ignored the evidence of contemporary import submitted by the Appellant and re-determined the value arbitrarily, based on the highest possible value available, whereas the guidelines on valuation suggest adaptation of the lowest among the value of similar goods of the contemporary imports. To this extent, we find that the method of valuation adopted by the lower authorities are legally not sustainable, as they have re-determined the value contrary to the circular/guidelines available on the subject. Thus, we hold that the method of valuation adopted for re-determining the value is not correct and hence the same are set aside. We hold that the value is to be re-determined on the basis of lowest among the value of similar goods available on the contemporary imports. For this purpose, the issue is remanded back to the Assessing Officer for the purpose of re-determination of the value on the basis of the observations made supra.

6.3. Regarding the allegation of mis-declaration and the excess quantity found during examination, warranting confiscation of the goods, the Appellant submitted that the mistake has occurred due to mistake of the overseas supplier, which was beyond the control of the appellant. Further, the submission of the Appellant is that the goods were negotiated and purchased based on the GSM. The goods were declared of different GSM, viz., 450 GSM, 400 GSM and 320 GSM and on test also the goods were found within this GSM only being within the range of 276 GSM to 366.2 GSM. We find that the submission of the Appellant are factually correct. There is only minor variation in the thickness, which is well within the GSM range declared by the Appellant. Thus, we agree with the submission of the Appellant that there was no malafide intention established on the part of the appellant. However, we find that there are excess quantity of goods found and there are some minor variations in the thickness declared. Thus, we hold that the goods are liable for confiscation and the Appellant should be given the option to redeem the goods on payment of Redemption fine. The redemption fine liable to be imposed should be as per the value re-determined on the basis of the observations made in this order.

6.4. In this regard, we have perused the CRCL test report. The reported thickness vis-à-vis thickness as per evidence and the duty arrived at by the lower authorities as per re-ascertained value, is as below;

B/E tem no.	Thickness found as per CRCL report	Unit price ascertained by Department (USD)	Total duty arrived (Rs.)	Thickness as per evidence	Unit price assessed	Duty	Differential duty
1	0.72mm	1.79	3062361	0.70mm	0.80	2113791	948570
2	0.39mm	1.28	739475	0.40mm	0.78	601827	137648
3.	0.42mm	1.28	173508	0.40mm	0.78	141211	32297
4.	0.62mm	1.53	600580	0.60mm	0.80	491276	109304
5.	0.72mm	1.79	324423	0.70mm	0.80	223932	100491

6.	0.68mm	1.79	761904	0.70mm	0.80	525903	236001
7.	0.71mm	1.79	162212	0.70mm	0.80	111967	50245
8.	0.7mm	1.79	265437	0.70mm	0.80	183217	82220
		Total	**6089902**			**1696776**	**4393126**

6.5. The Appellant submitted that if the value is enhanced as per the lowest available value of the contemporary imports, the differential duty of Rs. 51,94,127/- worked out by the lower authorities would be reduced to Rs.35,02,980/- (ie, Rs. 43,95,126 – Rs. 8,92,146 (duty paid) = Rs.35,02,980/). This calculation needs to be verified by the Assessing officer and the value is to be re-determined. We observe that the redemption fine is liable to be imposed on the basis of the re-determined value.

6.6. Regarding the penalty imposable on the Appellant, we find that there is an excess quantity found during examination. The Appellant submitted that the mistake has occurred due to mistake of the overseas supplier, which was beyond the control of the appellant. Regarding the minor variations in the GSM, declared, we find that the goods were negotiated and purchased based on the GSM. From the test report also the goods were found to be within the range of 276 GSM to 366.2 GSM. We find that the submission of the Appellant are factually correct. There is only minor variation in the thickness, which is well within the GSM range declared by the Appellant. Thus, we agree with the submission of the Appellant that there was no malafide intention established on the part of the appellant. We agree with the submission of the Appellant that when the intention to evade payment of duty is not established, the penalty, if any, to be imposed for the minor variations in the declarations, should commensurate with the offence committed. In the present case, we find that the redemption fine and penalty imposed is disproportionate to the involvement of the appellant in the present import.

6.7. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs State of Orissa reported in AIR 1970 SC 253 held that no penalty should be imposed if there is technical or venial breach of any statuary provision. Penalty could not ordinarily be imposed unless the party obliged was acting deliberately in defense of law. Penalty will also not be imposed merely because it is lawful to do so. Thus, observe that the redemption fine and penalty, if any, to be imposed should be proportionate to the involvement of the appellant in the present import and based on the re-determined value as per the observations in this order.

7. In view of the above findings, we pass the following order:

(i) The issue of valuation of the impugned goods is remanded back to the Assessing Officer for the purpose of re-determination of the value on the basis of the observations made supra.

(ii) The redemption fine and penalty should be reduced proportionate to the involvement of the appellant in the present import and based on the re-determined value as per the observations in this order.

(iii) The impugned order is modified to the above extent and remanded back to the Assessing Officers for re-determination of value and to determine the redemption fine and penalty.

(iv) The appeal filed by the Appellant is disposed by way of remand.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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