IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. C/87732/2017-CU(DB), C/85014/2018-DB

(Arising out of Order-in-Appeal No. 639(Gr.III)2017(JNCH)Appeal-II dated 15.9.2017 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

Eastern Rainwear	**Appellant**
Vs.	
Commissioner of Customs, Nhava Sheva	**Respondent**

AND

Commissioner of Customs, Nhava Sheva	**Appellant**
Vs.	
Eastern Rainwear	**Respondent**

Appearance:

Shri Prakash Shah, Advocate, for assessee
Ms. P.V. Shekhar, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 23.2.2018
Date of Decision: 1.3.2018

ORDER NO……………………………

Per: Ramesh Nair

Both the appeals are directed against order-in-appeal wherein the learned Commissioner (Appeals) decided the valuation issue of imported goods in favour of the assessee against which Revenue filed appeal No. C/85014/2018-DB. The classification issue was decided under CTH 54074230 as claimed by the Revenue, against which the assessee filed appeal No. C/87732/2017-CU(DB).

2. The facts of the case are that the assessee filed a Bill of Entry for clearance of imported goods declared as Nylon Taffeta with PU (Polyurethane) claiming classification under CTH 59031090. As per examination, the examining officer forwarded sample to Textile Committee for testing in order to ascertain the exact position of the goods. The Textile Committee vide the test report declared the composition as 82.8% polymide woven fabric and 17.2% coating. However, the coating material could not be ascertained by them. The matter was again referred to the Textile Committee to ascertain the coating material so as to decide the classification of the fabric. In reply, the Textile Committee reported that during chemical analysis, it was observed that the basic material was found to dissolve the base fabric, leaving the coated layer unaffected thereby clearly evidencing the presence of coating. As such in the instant case, the coated material is found to be chemically separable. Further, it is found that no specific criteria, norms or guidelines are available as to the mention of 0.3 mm of thickness as norms for coated fabric. In view of the above and as per the considered opinion of their expert panel, it is reconfirmed that

it will be appropriate to classify the said sample as coated. Since the Textile Committee could not ascertain the exact coating material, the sample was forwarded to DyCC. The DyCC in reply reported that the sample is a cut piece of woven fabric (black on one side, silver white on other side). It is made of nylon filament yarn coated with polymeric substance (PU type material) on one side. Thereafter the sample was inspected by group officer. On visual inspection, it was noticed that on one side the fabric was dyed with black colour and the other side it was coloured with silver colour. It was noticed that the fabric is merely coloured/dyed with some chemical substance to make it water proof. It was also observed that there is no such PVC/PU coating on it as such indisputably confirmed by testing agency. On this basis, the adjudicating authority rejected the classification claimed by the assessee and reclassified the goods under CTH 54074230 as dyed nylon taffeta fabric. The adjudicating authority also, on the issue of valuation relying on contemporaneous import, enhance the value. Being aggrieved by the order-in-original, the assessee filed appeal before the Commissioner (Appeals) who partly allowed the appeal in favour of the assessee inasmuch as the valuation enhanced by the original authority was rejected. However, in respect of classification, it was decided in favour of the Revenue classifying the goods under CTH 54074230. Therefore, the Revenue as well as the assessee are in appeal.

3. Shri Prakash Shah, learned counsel appearing on behalf of the assessee, submits that as per all the reports called by the Revenue from the Textile Committee as well as DyCC, it is clear that the fabric is coated fabric. The adjudicating authority on his own decided that it cannot be seen with the naked eye. Therefore the goods will not classify under CTH 5903 and since the goods is a nylon fabric, it is appropriately classifiable under CTH 54074230. However, no any expert report shows that the coating of the fabric cannot be seen with naked eye. He submits that it is a black colour dyed fabric and one side it was coated with PU due to which the colour was changed to silver. Therefore, it can be seen with naked eye that which portion is coated. Therefore, the contention of the Revenue is not correct. He also referred to the Board circular No.254/88/96-CX dated 18.10.1996.

4. Ms. P.V. Shekhar, learned Joint Commissioner (AR) appearing on behalf of the Revenue, submits that as regards classification of the goods, the important criteria is that the coating should be seen with naked eye and the adjudicating authority has decided the classification on this basis that the coating of the fabric cannot be seen with naked eye, therefore rightly classified the fabric under CTH 54074230 as dyed nylon taffeta fabric. In this regard, she placed reliance on the following judgments:-

(i) *Bharat Textiles & Proofing Inds. – 2006 (202) ELT 278 (Tri.-Chennai)*;

(ii) *Karnataka Tarpaulin and General Industries – 2016 (339) ELT A209 (SC)*;

(iii) *Punjab Processors Pvt. Ltd. – 2003 (157) ELT 625 (SC)*.

4.1 As regards valuation, she submits that the adjudicating authority has relied upon the contemporaneous import. Accordingly, there is sufficient evidence for enhancing the value. Therefore, the same was wrongly reversed by the learned Commissioner (Appeals). She submitted NIDB data.

5. On careful consideration of the submissions made by both the sides, we find that from all the records, it is evident that the fabric in question though dyed but one side it is coated. The only criteria to be ascertained that whether the coating on the fabric can be seen with naked eye or otherwise. Since this issue is also technical and on this particular aspect, no opinion is available either with the Textile Committee or DyCC. It is premature to decide the classification. Therefore, for this purpose, the matter needs to be remanded to the adjudicating authority to obtain an expert opinion from DyCC that whether the coating can be seen with the naked eye or otherwise. As regards the valuation, the learned Commissioner (Appeals) after observing that the contemporaneous import relied upon by the

adjudicating authority is of different material and quantity is also different, therefore it cannot be said that the contemporaneous import relied upon is relevant for the purpose of valuation of the captioned goods. Accordingly, the learned Commissioner (Appeals) rightly rejected the enhancement of the valuation done by the adjudicating authority. We agree with the learned Commissioner (Appeals) on the valuation issue decided by him.

6. Accordingly, the Revenue's appeal is dismissed. The assessee's appeal is disposed of by way of remand to the adjudicating authority to decide afresh after considering the aforesaid observations.

(Pronounced in court on 1.3.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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