IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/88581/2018

(Arising out Order-in-Appeal No. 59 (Gr.VII H)/2018 (JNCH)/Appeal-I dated 04.05.2018 passed by the Commissioner of Customs (Appeals-I), JNCH, Nhava Sheva)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Super Sonic Impex — Appellant

Vs.

Commissioner of Customs, Nhava Sheva II — Respondent

Appearance:

Shri Jhaman Singh, Advocate for the appellant
Shri Dharmender Singh, Supdt. (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 19-03-2019
Date of decision : 19-03-2019

O R D E R No: **A/85521 / 2019**

Per: C J Mathew

The dispute in this appeal of M/s Super Sonic Impex, against order-in-appeal no. 59 (Gr.VII H)/2018 (JNCH)/Appeal-I dated 4th May 2018 of Commissioner of Customs (Appeals-I), Jawaharlal Nehru Custom House, Nhava Sheva, pertains to the import of 'needles' which was held to be liable to anti-dumping duty imposed by notification no. 31/2017 (ADD) dated 22nd June 2017.

2. Learned Counsel for the appellant contends that, along with import of parts of 'sewing machines' and of 'embroidery machines', 12400 cartons were also covered by bill of entry no. 3843791/02.11.2017 of which 300 cartons did contain 'sewing machine needles' but that the remaining were 'embroidery needles' which are not subject to anti-dumping duty though proposed otherwise by customs authorities. Explaining the technical difference between the two, he submits that 'embroidery needles' are distinguished from 'sewing machine needles' by dimension of the eye. It was also informed that they had waived the right to be issued with show cause notice following which the original authority enhanced

the value and held the goods liable to anti-dumping duty besides confiscating them under section 111 of Customs Act, 1962 but allowed to be redeemed on payment of fine only for re-export. Penalty under section 112(a) of Customs Act, 1962 was also imposed on them. He further points out that 'embroidery needles' are distinct from 'sewing needles' as the latter finds coverage under heading no. 8452 3090 of First Schedule to Customs Tariff Act, 1975 corresponding to the description 'sewing needles' whereas 'embroidery needles' are parts of 'embroidery needles' and thus under heading no. 8448 5190 of the First Schedule of the Customs Tariff Act, 1975.

3. Concluding to his narration, he submits that the first appellate authority allowed the appeal to the limited extent of setting aside the enhancement of value and reduction of redemption fine and penalties, though, nevertheless, for re-export. He further informs that the impugned order, though acknowledging the distinction between 'embroidery needles' and 'sewing machine needles', did not accept the test reports and opinion of certifying agency and chartered engineer with the finding that the original samples could not be accepted as having been in possession of the importer in the absence of any record of drawal of such samples. Learned Counsel contends that it is the normal practice for customs to return the samples, drawn for satisfaction of the assessing officer, to the importer.

4. Learned Authorised Representative contends that the impugned order, as well as the order of the original authority, have gone into details of the report of examination before revising the classification and that the direction to re-export which was at the instance of the importer.

5. Having considered the rival submissions, it would appear that both Revenue and the assessee are not in disagreement that 'embroidery needles' are distinct from 'sewing machine needles.' From the orders of the lower authorities, we are unable to ascertain the distinction between the two. There is also no reference to any authentic source for the distinction between the two noted by the original authority. Circumstantial evidence, such as stickers on the packing, that part of the consignment declared to be 'embroidery needles' was, admittedly, composed of 'sewing machine needles' and that a different model number designates 'embroidery needles', are not acceptable in a dispute on classification.

6. In these circumstances, we are unable to decide on the appropriate classification. It would have been simplest of tasks on the part of the original authority to have drawn samples for testing by the chemical laboratory or any other competent laboratory for determining if the goods were indeed 'embroidery needles' as claimed by importer or were 'sewing machine needles' as held by lower

authorities. In the light of this lack, we set aside the impugned order and remand the matter back to the original authority for carrying out necessary tests. Thereafter, an opportunity shall be afforded to the importer to respond before a final order is passed.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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