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

APPEALS NO: C/658/2009 & C/75/2011

[Arising out of Order-in-Appeal No: 117 & 118/2009/MCH/ADC/ Gr.III/2009 dated 06th May 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri 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?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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

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Commissioner of Customs (Imports)
Mumbai … ***Appellant***

versus

Ramchand Jashanmal Narwani ***…Respondent***

Appearance:

Shri Ramesh Kumar, Assistant Commissioner (AR) for appellant

None for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 14/03/2019
Date of decision: 07/05/2019

ORDER NO: A/85857-85858/2019

Per: C J Mathew

These appeals lie against order-in-appeal no. 117 & 118/2009/MCH/ADC/Gr.III/2009 dated 6th May 2009 of Commissioner of Customs (Appeals), Mumbai – I in which Revenue is aggrieved by the allowing of the appeals of the importer in the matter of procurement of 'polyester fabric made out of non-texturised polyester yarn', classifiable under heading no. 5407 6190 and entitled to notification no. 36/2003 dated 1st March 2003 (serial no. 51). The matter had traversed to the Commissioner (Appeals) twice, consequent upon adjudication by the original authority, for compliance with the directions of the first appellate authority that the importer be placed on notice that the content of the test memos would require revision of the declared assessment.

2. None appeared for the respondent.

3. Learned Authorised Representative points out that, after the import of the goods, on the basis of intelligence that rampant mis-

declaration was observed in the trade, remnant samples were sent for testing to the Deputy Chief Chemist as well as to the Textile Committee. It was informed that the original authority had held that the reports of the two tests confirmed the presence of ‘texturized yarn’ beyond that stipulated in the description pertaining to heading no. 5407 6190 of the First Schedule to the Customs Tariff Act, 1975 thus disentitling them to the benefit of the notification *supra*. In appeal, the first appellate authority, casting doubts on the reliability of test results that were not made available to importer and owing to non-consideration of their claim that the variance in the test results indicated unreliability coupled with the protracted discussions and clarifications that appeared to guide the test report, upheld the original declaration in the bill of entry.

4. The impugned order had disposed off appeals against similar orders pertaining to bill of entry no. 379011/06.08.2003 and 381686/18.08.2003 leading to the present appeal.

5. Learned Authorised Representative contends that the second report should be accepted as it is on record that the first test did not examine the nature of the warp and weft which are essential to texturizing. It is also contended that the variance between the two reports, that of the Textile Committee and of the Central Revenue Control Laboratory (CRCL), was not of material significance as both

indicated non-conformity with the qualities of fabric manufactured from non-texturised yarn. It is pointed out that the reference to Textile Committee was mandated by circular no. 23/2004-Cus dated 15th March 2004.

6. We find that the goods had originally been cleared on the basis of the report of the Textile Committee without any objection. Though the original authority had relied upon a second report from the Textile Committee, as well as from the Joint Director of Central Revenue Control Laboratory (CRCL), we find no evidence of these reports in the records. Moreover, it would appear that the reviewing authorities did not also have access to these reports to come to a conclusion that the first appellate authority had erred in discarding these. It is but natural that justice requires the importer to be placed on notice with specifics of remnant samples that needed re-testing, else, the truthfulness of that sampling remains questionable and the test thereon tainted.

7. In view of the lack of any record to sustain the assertions in the appeal and the variance between the reports of the Textile Committee itself, we find no merit in these appeals which are dismissed.

(Pronounced in Court on 07/05/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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