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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 1082 of 2009

(Arising out of Order-in-Appeal No. 440(GR. VII R/H/I)/2009(JNCH)/IMP-85 dated 21.08.2009 passed by Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs (Export) .....Appellant
Nhavasheva
Jawaharlal Nehru Custom House,
Post Uran, Dist: Raigad,
Pin-400707

VERSUS

M/s Madura Industrial Textiles .....Respondent
Branch Serial No:1, 60/1, 60/2,
Village Demni, Dadra:
Dadra and Nagar Haveli

Appearance:

Shri Bhushan Kamble, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88520 / 2018

Date of Hearing: 20.11.2018
Date of Decision: 20.11.2018

Per: S.K. MOHANTY

Revenue has filed this appeal against the impugned order dated 21.08.2009 passed by the learned Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the facts of the case are that the respondent herein had imported "N-6 Tire Cord Grade Spin Drawn Filament / Nylon-6 High tenacity Nylon Filament yarn" and filed the Bills of Entry before the jurisdictional customs authorities for clearance of the same. The imported nylon yarns were of 840/1260/1680

deniers. The appellant had claimed the benefit of Notification No. 5/2006-C.E., dated 01.03.2006 as amended by No. 58/2008-C.E., dated 07.12.2008 for concessional rate of 4% of duty. The adjudicating authority had rejected the claim of benefit under the said notification vide order dated 08.04.2009. On appeal, the learned Commissioner (Appeals) has allowed the appeal in favour of the respondent, holding that arithmetic formula for determination of the multiples for classification of the goods under a different chapter, than as claimed by the respondent cannot be adopted. In support of allowing the appeal in favour of the respondent herein, the learned Commissioner (Appeals) has relied upon the order dated 26.08.2008 passed by the learned Commissioner of Customs (Appeals), Cochin in the case of M/s Baliga Fishnets.

3. Heard both sides and perused the records.

4. The aforesaid notifications grant concessional rate of duty of 4% in respect of all goods, other than nylon filament yarn of 210 deniers or in the multiples thereof, with tolerance of 6%. The issue is not in dispute that the imported nylon yarns are not of 210 deniers and thus, by referring to the definition of the said goods as per the HSN, the benefit of concessional rate of duty was extended by the learned Commissioner (Appeals) in favour of the respondent. Further, we also do not find any specific submissions being made by Revenue in support of denial of the benefit of concessional rate of duty claimed by the respondent. Thus, we are in agreement with the impugned order passed by the learned Commissioner (Appeals) that the subject goods should merit for concessional rate of duty of 4%. Furthermore, Revenue has not submitted any record to show that the order dated 26.08.2008 passed by the learned Commissioner of Customs (Appeals), Cochin (supra) has been appealed against and operation of such order has been stayed or overruled by the higher judicial forums.

5. In view of above, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Accordingly, appeal filed by Revenue is dismissed.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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