CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86213 OF 2020

[Arising out of Order-in-Original No: 84/2019-20/Commr/NS-III/Gr.III/JNCH dated 3rd January 2020 passed by the Commissioner of Customs (NS-III), Group – III, Nhava Sheva.]

Trishaa Overseas
Shop No. 4, Kripa Heights Building Old Mada
Near Vasant Vihar, Thane (West), …*Appellant*

versus

Commissioner of Customs (NS-III)
Gr. III, Jawaharlal Nehru Custom House
Nhava Sheva, Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri A K Prabhakar, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86425 /2021

DATE OF HEARING:	08/04/2021
DATE OF DECISION:	18/06/2021

PER: C J MATHEW

In this proceeding, M/s Trishaa Overseas assails order-in-original no. 84/2019-20/Commr/NS-III/GrIII/JNCH dated 3rd January

2020 of Commissioner of Customs (NS-III), Nhava Sheva for having enhanced assessable value to ₹ 45,74,066 from ₹ 11,29,709 with consequential demand of ₹ 82,21,792 as duty instead of ₹ 3,17,448 paid on self-assessment along with the determining of fine of ₹ 5,00,000 for redemption of the impugned goods confiscated under section 111(m) of Customs Act, 1962 and the imposition of penalty of ₹ 6,00,000 under section 112 of Customs Act, 1962. The tale began with the appellant filing bill of entry no. 4232332/26.07.2019 with declared value of ₹ 11,29,709 and claimed to contain 'baby garment woolen knitted top' (38100 pieces priced at ₹ 14.49 apiece for value of ₹5,52,069), 'baby garments woolen knitted jacket' (21000 pieces priced at ₹ 20.89 apiece for value of ₹ 4,38,690), 'men's knitted glove' (16800 pairs priced at ₹ 4.59 a pair for value of ₹ 77,112) and 'baby knitted glove' (18000 pairs priced at ₹ 3.13 a pair for value of ₹ 56,340).

2. Their troubles began immediately as the clearance of the consignment, though self-assessed and duty discharged thereon, was put on hold for further investigation. Two occurrences thereafter were to feature prominently in compounding their ill-fortune – physical examination and reference of samples to the inter-ministerial Textile Committee designated, among other things, for ascertainment of prohibited dyes. During inventory, the consignment was found to include 'baby top sets' (360 pieces with value of ₹ 9172.80 at ₹ 25.48

apiece) without corresponding declaration in the bill of entry and there were only 20,700 pieces of ‘baby woolen garment jacket’ for a net excess of 60 pieces over the declaration of 93,900 pieces. Though free of prohibited dyes and conforming to declaration as far as ‘knitted gloves’ was concerned, the samples of ‘baby woolen garment top’ and ‘baby woolen garment jacket’ were found to be composed of ‘polyester yarn’ and for girls/boys which prompted the Textile Committee to advise that the classification be revised from tariff item no. 6111 30 00 to tariff item no. 6106 20 10 and tariff item no. 6203 33 00 of First Schedule to Customs Tariff Act, 1975 respectively. As a consequence of the defect in description, the declared value of both was rejected and subject to re-assessment at ₹ 36.81 apiece and at ₹ 145.32 apiece (₹ 14,02,461 and ₹ 30,08,124 instead of ₹ 5,52,069 and ₹ 4,38,690 respectively) adopted from that of comparable goods, under the authority of rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which, in conjunction with the rate of duty corresponding to the revised description, enhanced duty liability to ₹10,70,248.05 and ₹ 71,05,606.20 from ₹ 1,43,538 and ₹1,12,034 as self-assessed). The importer, though denying any complicity in the consigning of the undeclared goods, acquiesced in the duty liability of ₹ 2577.55 arising thereon.

3. The cavil of the appellant is, thus, limited to the revision in classification. At this stage, it may not be out of place to note that the

gap between the proportion of enhancement of assessable value and that of the increase in duty liability is manifold. That is the effect of the structuring of rates of duty owing to which any re-assessment in which unit price that is less than five times the threshold ₹ 25 and ₹320 at specific rate is of no relevance. Hence, if the re-determination of the tariff item finds justification, the dispute over valuation is academic.

4. Narrating the circumstances culminating in the present proceeding, Learned Counsel for appellant concedes that duty liability on the undeclared goods is not in dispute but questions the finding that the importer had deliberately attempted to evade duties of customs. He contends that the adjudicating authority had been less than diligent in the discharge of his obligation by subordinating his statutory responsibilities to the advisory promptings of the Textile Committee; it was pointed out that even a superficial exercise of perusing the rival descriptions in the tariff had not been undertaking for, if he had, the benchmarking of ‘baby garments’ in note 6 of chapter 61 of First Schedule to Customs Tariff Act, 1975 would have been all too apparent. Though superfluous in the light of our *caveat* above, it was also argued that the importer had not been placed on notice of the evidence, in the form of relevant bills of entry, for adoption of prices in other declarations for enhancement of value of the impugned goods.

5. Learned Authorized Representative drew our attention to the dereliction in declaring the contents of the consignment and pointed out that the collegial expertise of the Textile Committee, entrusted with specific responsibility by the Central Government for that very reason, sufficed for initiation of proceedings. It was argued by her that the appellant had misdeclared the composition of the garments owing to which the revised classification, and rejection of declared value for assessment, was a natural consequence. She exhorted that the appeal deserves dismissal.

6. The appellant had, in the bill of entry, sought coverage under

'of synthetic fibres'

within

> *'Babies' garments and clothing accessories, knitted or crocheted'*

corresponding to tariff item no. 6111 30 00 while, on the expert guidance of the Textile Committee, the adjudicating authority found it appropriate to bring the 'baby garments top' under

'of synthetic fibres'

within

> *'Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted'*

corresponding to tariff item no. 61062010 of the First Schedule to Customs Tariff Act, 1975. Insofar as 'baby garments jackets' is concerned, the adjudicating authority, apparently inspired by the expertise of the Textile Committee, decided that the description

> *'of synthetic fibres'*

under

> *'Jackets and blazers'*

within

> *'Men's or boys' suits, ensembles, jackets, blazers, bib and brace overalls, breeches and shorts (other than swimwear)'*

corresponding to tariff item no. 6203 33 00 of the First Schedule to Customs Tariff Act, 1975 to be more appropriate.

7. One cannot help but recall Alexander Pope rendering that sage caution that

> *'A little learning is a dangerous thing; drink deep, or taste not the Pierian spring; there shallow draughts intoxicate the brain, and drinking largely sobers us again.'*

while conjuring the imagery that William Saroyan intended in penning that

> *'The tax collector's letters are invariably mimeographed, and all they say is that you still haven't paid [your levy]'*

With due deference to the professional competence of the Textile Committee and the vast knowledge that the adjudicating authority has endowed his office with, we wonder if our anguish could find more succinct, and evocative, articulation.

8. Cross-border transactions stand on the bedrock of the certainty assured by statutes that enact, and policies that promulgate, internationally negotiated consensus; and to subject such transactions to proceedings that, donning the mantle of legal authority, care not a whit for legislative sanction is anathema to public interest. Tax, where due, must be collected with no respect to the cost borne by the payer; tax, though rendered unto Caesar, is not for Caesar. The polity would have been well served had the Textile Committee only restricted its advice to its remit and the adjudicating authority summoned sufficient enthusiasm to fit the known, and ascertained facts, within the rubric of the Customs Tariff Act, 1975. We do not propose to further dwell on this abdication of responsibility as we proceed to ascertain the correctness of the advice that was acted upon.

9. The classification for ‘baby woolen tops’ and ‘baby woolen jackets’, adopted by the importer, appeared to have been discountenanced by the Textile Committee for two reasons: that the articles were made of polyester fibre, and not of wool as described in the bill of entry, and that visual examination by the Textile Committee found these to be intended not for babies but for girls and boys. The ‘boys’ jackets’, found not to be knitted, was sought to be fitted within chapter 62 of First Schedule to Customs Tariff Act, 1975. On these bare facts, the defensibility of the conclusions may not offer cause for quarrel. The tariff schedule, however, is no streetside smorgasbord.

10. Chapter 61 and 62 of the First Schedule to Customs Tariff Act, 1975 enumerate groupings of apparels designed for human wear and, under the broad categorisation as 'knitted/crocheted and' those that are not, save for a single exception which is not material to this dispute, as mutually exclusive. In both, distinction of gender is the consistent dichotomy; the stages of human life though, are reduced to three in the interest of eliminating controversy. The physical disparities among the human beings across regions, as well as within, and the tyranny of culture over attire compels the imposition of an artificial construct for universally acceptable categorisation; some benchmark of measurement must separate boys/girls from babies – a distinguishment relevant, and sufficing, for the tariff. Note 6 in chapter 61 of First Schedule to Customs Tariff Act, 1975, intending that, for the purpose of heading 6111;

> '*(a) the expression "babies' garments and clothing accessories" means articles for young children of a body height not exceeding 86 cm;*
>
> *(b) articles which are, prima facie, classifiable both in heading 6111 and in other headings of this Chapter are to be classified in heading 6111.*'

(and replicated as note 4 in chapter 62 of First Schedule to Customs Tariff Act, 1975 in relation to heading 6209) brooks no room for expertise or visual acuity in determining the tax liability on import of 'babies garments'; length is the sole, and exclusive, test for conformity therein. The Textile Committee appears to have glossed over the size of the samples which had been measured for tabulation (Table-III) and well within the prescription of the said note. On the size thus evidenced in the samples, classification could be limited only to heading 6111 or 6209 of the First Schedule to Customs Tariff Act, 1975 and, as the latter had not been proposed ever in the proceedings before the adjudicating authority, we are, as the impugned order should also have been, concerned only with former. In these circumstances, it was also incumbent on the adjudicating authority to disabuse the Textile Committee of the competence to arrive at classification for assessment of duties of customs.

11. The claim of the importer for coverage of the imported goods under tariff item 6111 30 00 may not, necessarily, have been in conformity with the description in the bill of entry. Nevertheless, it is in consonance with the composition as indicated by testing of the samples; the claimed classification pertains to garments made ‘of synthetic fibres’ which, though wool may not be, ‘polyester’ is nothing but. There was, thus, no reason to allege misdeclaration, either on the count of size or of composition, with the detrimental consequences of revising the rate of duty and the assessable value.

12. As the declaration is not in question as far as the goods for which bill of entry had been filed is concerned, the order for recovery

of differential duty and confiscation of goods as well as imposition of penalty does not have the authority of law and must be set aside. Insofar as the 360 pieces of 'baby garments top and bottom pyjama set' is concerned, the numbers are not materially significant and there is no evidence of the involvement of the importer in any attempted smuggling; other than the liability of duty thereon, all other detrimental consequences are not warranted. Consequently, except for the duty liability of ₹ 2557.55, the impugned order a set aside in its entirety.

(Pronounced in Open Court on 18/06/2021)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

***/as*