

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89057 OF 2013

[Arising out of Order-in-Appeal No: 511(Gr.VII-I)/2013(JNCH)/EXP-128 dated 10th June 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Titanium Ten Enterprises Pvt Ltd

1005 Krishna Textiles Market, Ring Road
Surat - 400707

... Appellant

versus

Commissioner of Customs (Export)

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707

...Respondent

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri DS Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87522/2024

DATE OF HEARING:	20/06/2024
DATE OF DECISION:	13/12/2024

PER: C J MATHEW

This appeal of M/s Titanium Ten Enterprises Pvt Ltd challenges the demand for differential duty of ₹ 4,96,186 on, and confiscation thereof of, 29,506 metres of ‘100% cotton fabrics 102 GSM, width

57/53 inch' (29506 meters) valued at ₹ 24,61,046.39 imported *vide* bill of entry no. 5293279/25.11.2011 that had been upheld in order¹ of Commissioner of Customs (Appeals), Mumbai – III. Though the impugned goods, attempted to be cleared against 'duty-free import authorization (DFIA)' scheme of the Foreign Trade Policy (FTP), were confiscated under section 111(d) and 111(m) of Customs Act, 1962, option of redemption on payment of fine of ₹ 3,00,000/- under section 125 of Customs Act, 1962 was allowed while importer was imposed with penalty of ₹ 2,00,000 under section 112 of Customs Act, 1962. The goods were initially allowed benefit of import without payment of duty under the said scheme owing to purported compliance with condition of eligibility upon positive result in test report of Textile Committee which, however, was found to be inadmissible as sample had been drawn from only one of the styles out of the many and testing of different samples from among other styles by Deputy Chief Chemist (DyCC) of Central Revenue Control Laboratory (CRCL) threw up discrepancies with description that scripted denial of 'duty free' imports.

2. On appeal, the first appellate authority, placing reliance on the facts and circumstances as recorded and on the finding of lack of any evidence to the contrary offered by importer, upheld the detriments which are now under challenge before us on the limited plea of further

¹ [order-in-appeal no. 511(Gr.VII-I)/2013(JNCH)/EXP-128 dated 10th June 2013]

tests not having been carried out by the Director, Central Revenue Controlled Laboratory (CRCL) in the light of conflicting test reports and that report against them had not been evaluated for relevancy by subjecting the official concerned to cross-examination. These were elaborated upon by Learned Counsel.

3. We have heard Learned Authorized Representative.

4. The issue is limited to the correctness of tests that had been relied upon and the challenge arises from conflict with test report of the Textile Committee affirming the description as permissible under the said scheme of the Foreign Trade Policy (FTP). Consequently, the acceptance of subsequent report of Central Revenue Control Laboratory (CRCL) for arriving at the impugned decision without ascertaining its unqualified veracity runs contrary to the principles of natural justice. Therefore, we set aside the impugned order and remand the matter back to the original authority for referring the samples to the Director, Central Revenue Control Laboratory (CRCL) for undertaking final and definitive tests before deciding the assessment afresh.

5. Appeal is, thus, allowed by way of remand.

(Order pronounced in the open court on 13/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)