

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

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 85918 of 2024

(Arising out of Order-in-Appeal No. MUM-CUS-MA-IMP-190/2022-23 NCH dated 22.12.2022 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I, Mumbai)

IMFA Trading Company

503, River Heights, Opp. Alvee Row House
New Rander Gorat Road, Adanjan Patiya
Surat - 395 009.

.... Appellants

Versus

Commissioner of Customs (Import)

Mumbai Import-II Customs Commissionerate
New Custom House (NCH)
Ballard Estate, Mumbai – 400 001.

.... Respondent

Appearance:

Shri J.C. Patel, Advocate for the Appellant

Shri Ranjan Kumar,.m, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85263/2025

Date of Hearing: 26.08.2024

Date of Decision: 25.02 .2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s IMFA Trading Company, Surat (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. MUM-CUS-MA-IMP-190/2022-23 NCH dated 22.12.2022 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I, Mumbai.

2.1 The brief facts of the case are that the appellants had imported 'Polyester fabrics' classifying it under Customs Tariff Item (CTI) 5407 6190, by filing two, Bills of Entry (B/Es) No.1007 dated 23.07.2003 and B/E No.378369 dated 05.08.2003 seeking clearance of goods from Customs authorities at the port of import. For assessment of such goods, the imported consignments were subjected to examination on First Check basis and representative samples were taken for testing by the Textile Committee

Laboratory. On the basis of the test reports received from the Textile Committee reporting that the imported goods are fabrics made of Non-texturized Polyester Yarn, the goods were assessed by the department under CTI 5407 6190 charging the Basic Customs Duty (BCD) at the rate of 25% *ad valorem* in terms of Serial No.51 of Notification No.36/2003-Customs and applicable Counter Vailing Duty (CVD). The appellants-importer had paid the duty as assessed by the customs authorities and the imported goods were cleared out of Customs control.

2.2 Subsequent to such clearance, Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit had gathered certain intelligence which indicated that some persons are importing polyester fabrics which attract higher BCD, by mis-declaring its technical characteristics so as to show that these are Non-texturized Polyester yarn which attract lower BCD, thereby attempting to evade customs duty. On the above basis, DRI had taken up the remnant samples of the imported goods in the above case, for re-testing of the same by Central Revenue Control Laboratory of the New Custom House, Mumbai (CRCL). On the basis of CRCL test reports indicating that the imported fabrics were of dyed woven fabrics containing 85% or more by weight of Synthetic Filament Yarn, the DRI had come to a conclusion that the imported goods should have been correctly classified under CTI 5407 7200 and higher amount of customs duty at Rs.24 per square metre should have been paid in terms of Serial No.93 of Notification No.27/2003-Customs, resulting short payment of duty to the extent of Rs.19,48,359/- in respect of the above imports by the appellants.

2.3 On the basis of above investigation, the original authority had adjudicated the case by passing an Order-in-Original dated 17.01.2007 in confirming the differential duty along with interest and imposed penalty on the appellants-importer. In an appeal filed by the appellants against such original order dated 17.01.2007, the Commissioner (Appeals) had remanded the case back to the original authority, since the appellants were not given effective hearing before deciding the case at the original stage, by passing an *vide* Order-in-Appeal dated 02.05.2019. The original authority in the remand proceedings gave personal hearing to the appellants on 06.04.2021, and issued another original order dated 07.06.2021 in confirmation of the duty demand of Rs. 19,48,359/- under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AB *ibid*. Being aggrieved with the above order of the original authority dated 07.06.2021, the

appellants had filed an appeal before the Commissioner (Appeals), who had in disposal of the appeal, upheld the order of the original authority and rejected the appeal by the appellants. Feeling aggrieved with the said Order-in-Appeal dated 22.12.2022, which is impugned herein, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that the imported goods were duly examined by the jurisdictional Customs authorities who had also drawn representative samples of such goods and subjected the same for testing. Upon obtaining test reports of such goods from the laboratory of the Textiles Committee, which has been established under the Textiles Committee Act, 1963, and that the appellants importer had paid the appropriate customs duty, the imported goods were cleared from Customs control.

3.2 Learned Advocate further submitted that subsequent to such clearance of imported goods, on the basis of re-testing undertaken with CRCL laboratory at New Custom House, the imported goods were being re-classified for demand of higher duty, wherein the appellants-importer were not even furnished with such re-test report results. Hence, he stated that the department's views on classification of imported goods are not duly supported by any evidence/document and they had not been given an opportunity to defend their case properly. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In addition to the above, learned Advocate stated that such disputed issues were already addressed by the Tribunal and it was held that such demands are not sustainable. In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Shri Lakshmi Cotsyn Limited Vs. Commissioner of Customs & C.Ex. Kanpur* – 2011 (263) E.L.T. 299 (Tri. - Del.)

(ii) *Commissioner of Customs, Mumbai Vs. Atlas Mercantile Pvt. Ltd.* - 2019 (366) E.L.T. 911 (Tri. - Mumbai)

(iii) *Smart Designer Vs. Commissioner of Customs (Import), Mumbai* - 2019 (367) E.L.T. 299 (Tri. - Mumbai)

(iv) *Commissioner of Customs (Imports), Mumbai Vs. Ramchand Jashanmal Narwani* - Final Order No.A/85857-85858/2019 dated 07.05.2019.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of classification of impugned goods, has been examined by the authorities below based on test reports. Thus, learned AR justified the action in the impugned order, for re-classifying the goods for subjecting them for higher rate of duty and for confirmation of the demand of duty.

5. We have heard the learned Advocates appearing for the appellants and the learned Authorized Representative of the Department and perused the case records.

6. The issue involved herein is to decide whether the demand of duty arising from reclassification of goods on the basis of re-testing report of the imported remnant samples, in context with the present case, where no such re-test report is furnished to the appellants-importer, is sustainable or not?

7.1 On perusal of the case records, it transpires that the customs authorities had send remnant samples of imported goods subsequent to the clearance of such goods, for retesting by CRCL, which is a in-house laboratory of New Custom House. It is fact on record that the Less Charge-Cum-demand notice dated 23.12.2003 gives a reference to such test report as *"the samples is cut piece of dyed (Navy Blue) woven fabric made of non-textured polyester filament yarn (58.4%)..... Textured Polyester filament yarn (balance)..."*, and on this basis the department had gone ahead for re-classification of goods under CTI 5407 7200 for demanding higher customs duty.

7.2 It is fact, that there is no legible copy of CRCL re-test report is available on record and no such copy was furnished to the appellants-importer. Inasmuch as the imported goods have been examined by the jurisdictional customs authorities and after subjecting the imported goods for examination on first-check basis, that too after testing by the Textiles Committee Laboratory and on the basis of such test report, the imported goods had been cleared, there appears no ground or evidence for re-testing the same goods under the pretext of alleged mis-declaration of goods by some other person. Further, it is also disputed by the department that the basic evidence of re-test report was not provided to the appellants-importer, except its extract is mentioned in the Less-Charge-Demand Notice dated 23.12.2003. From these factual details, we find that the essential requirements of legal provisions of Section 28 of the Customs Act, 1962

such as service of notice of the basis on which the appellants-importer is being asked to pay the differential duty, reasonable opportunity to be given for enabling them to present their representation for due consideration before passing of the order, have not been carried out by the authorities below. This is evident from the fact that the original order does not even provide the re-test report; but it has gone in detail about the visit of Joint Director of CRCL to the Textiles Committee Laboratory to state that they did not follow the standard testing requirements, to doubt the test report given by them earlier in confirmation of the imported goods as Non-texturized polyester yarn. Therefore, we are of the considered view that the confirmation of the duty demand under Section 28 *ibid* does not stand the scrutiny of law.

8.1 We find that in the case of *Ramchand Jashanmal Narwani* (supra) involving similar set of facts, the Co-ordinate Bench of the Tribunal has held that there is lack of any record to sustain the variation in test reports and dismissed the appeal filed by the department. The relevant paragraphs of the said order is quoted herein below:

"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."

8.2 We further find that in the case of *Shri Lakshmi Cotsyn Limited* (supra), the Tribunal had held though the CRCL report is in favour of the department, the initial report of the Textile Committee were in favour of the importer, and the benefit of doubt has to be given to the importer. The extract of the relevant paragraphs is quoted below:

6.1 We have carefully considered the submissions from both sides. The relevant Chapter Notes of sub-headings relied upon by the Department as follows :

"Sub-heading Explanatory Notes.

Sub-headings 5402.31 to 5402.39

Textured yarns are yarns that have been altered by a mechanical or physical process (e.g. twisting untwisting, false-twisting, compression, ruffling, heat-setting or a combination of several of these processes), which results in individual fibres being set with introduced curls, crimps, loops etc. These distortions may be partially or completely straightened by a stretching force but resume the shape into which they have been set upon being released.

Textured yarns are characterised by having either a high bulk or a very high extensibility. The high elasticity of both types makes them especially suitable for use in the manufacture of stretch garments (e.g. tights, hose, underwear) while the high bulk yarns give fabrics softness and warmth of touch.

Textured yarns may be distinguished from non-textured (flat) filament yarns by the presence of special twist characteristics, small loops or reduced parallel orientation of the filaments in the yarn."

6.2 From a close reading of the same, it is noticed that the said notes contain distinguishing features between textured yarn or non-textured yarn. We do not agree with the contentions of the learned Jt. CDR that the said notes prescribed any method for testing the samples for determining whether the yarn is textured or not.

.....

8.1 The Textile Committee is undisputedly a specialised agency. CRCL is like a general physician and that Textile Committee is like a kind of specialist on matters relating to textile and textile articles. That is why, in our considered opinion, the DGFT prescribed Textile Committee as the nominated agency for testing of textile and textile article for the presence of hazardous chemicals. Under these circumstances, the first report of the Textile Committee given by the Assistant Director cannot be easily brushed aside. The reasoning given by Shri Venkitachalam, Assistant Director during cross-examination that they were under misconception that mingled and tangled yarn cannot be textured and realised the mis-conception after visiting several texturised units looks rather strange. The report of the Director (Laboratory) forwarding the second test report refers to discussion with the Commissioners of Customs. It states that "earlier there was some ambiguity in method adopted for determining whether the yarn is textured/non-textured yarn and this would cause error in our earlier reports referred in this letter. However, the parameter was sorted out after discussion with Commissioners of Customs". It is not revealed as to how the ambiguity in the method for test can be sorted out after discussion with the Commissioner of Customs. Learned Jt. CDR in this context submitted that the discussion referred to was not held with the Commissioner of Customs and Central, Excise, Kanpur. It was perhaps to canvass support to the view that the adjudicating authority was not influenced. Surprisingly, the order of the Commissioner also refers to exchange of correspondence between the Chief Commissioner of Customs and the Member Secretary of Textile Committee. Apparently, the said communication has not been made available to the appellants. The claim by the learned JT. CDR that the correspondence was innocuous and was matters of administration is not appealing to us. If that be the case, the need for reference to the same in

the order of the Commissioner is not appreciated. This is also one reason which has a bearing on the credibility of the second report.

.....

9. *In view of the above, the following emerges :-*

(a) There is no valid explanation as to why the samples were sent simultaneously to three laboratories.

(b) The manner in which the second report was issued after suo motu testing by the Textile Committee after discussion with Commissioner of Customs and after exchanging correspondence between Member Secretary of Textile Committee and Chief Commissioner of Customs does not command our confidence.

(c) Though the report of CRCL is in favour of the Department, initial report of Textile Committee and the report of GCTL, Kanpur were in favour of the party, the benefit of doubt naturally has to be given to the assessee especially when the test is clarified to be subjective. The decisions relied upon by the learned Jt. CDR that the test report of chemical examiner cannot be brushed aside is valid. However, in the present case, confronted with other favourable reports which were also obtained at the instance of the Department, the choice has to be made between one of the said report and the CRCL report. The test reports were on question of facts and the test reports were said to be subjective in nature, Naturally, the assessee should be extended the benefit of doubt."

8.3 We further find that in an identical matter that came up before the Co-ordinate Bench of the Tribunal in the case of Smart Designer (supra), it was held that such report of re-testing by CRCL laboratory as opposed to Textiles Committee report is not acceptable, and the resultant re-classification of goods with consequential denial of benefit of notification is not proper in law. The relevant paragraph in the order passed by the Tribunal is extracted and given below:

"6. *Appellant had, as we find, claimed classification as fabric containing 85% or more by weight of textured polyester filaments. It is seen that the Textile Committee did not find any contrary reason to suggest discrediting this contention. The Customs authorities chose to revise the classification based on a test report generated through the Deputy Chief Chemist after testing of the remnant samples. We do not find any evidence of that test report in the records. Furthermore, as made amply clear in the decisions of the Tribunal In Re : Atlas Mercantile Pvt. Ltd. and In Re : Shri Lakshmi Cotsyn Ltd., that as per Circular No. 23/2004-Cus., dated 15th March 2004, the expertise of the Textile Committee should be relied upon for a single test instead of test being carried out by both authorities. In the face of these decisions, the reliance placed on the results of testing by Deputy Chief Chemist is not acceptable. If at all, the proper procedure would have been for the remnant samples, after due notice to the importer, to be subject to re-test by the Textile Committee. Thus, report of the Deputy Chief Chemist cannot overrule the earlier test results. In view of these circumstances, the re-classification, with consequent disallowance of the benefit of notification, is not proper in law."*

9. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered view that the impugned order dated 22.12.2022 does not stand the scrutiny of law and therefore the same is not legally sustainable.

10. In the result, the impugned order dated 22.12.2022 is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 25.02.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

2011 (263) E.L.T. 299 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. III]

S/Shri M.V. Ravindran, Member (J) and M. Veeraiyan, Member (T)
SHRI LAKSHMI COTSYN LTD.*Versus***COMMISSIONER OF CUS. & C. EX., KANPUR***Final Order No. C/144/2010(PB), dated 30-9-2010 in Appeal No. C/339/2007*

This is an appeal against the order of the Commissioner No. 09/Cus/Commissioner/Adj/2006-07 dated 22-2-2007. The matter is before the Tribunal for the second time, having been remanded for de novo consideration vide Final Order No. 179/06-Cus., and Stay Order No. 182/06-Cus., dated 9-6-06 [[2006 \(203\) E.L.T. 272](#) (T)].

2. *Heard both sides extensively.***3.** *The relevant facts, are as follows :-*

(a) The appellants imported 4 consignments of plain dyed fabrics of Chinese origin. They claimed the same as fabric containing 85% or more by weight of non-textured polyester filament classifiable under Heading 5407 61 90. The clearance was made on provisional basis pending test results.

(b) Thereafter, the Department has drawn samples and sent them for testing to CRCL, Textile Committee, (Ministry of Textile, Government of India) and to Government Central Textile Institute (GCTI).

(c) As per report of CRCL dated 19-8-2003, the samples were composed wholly of textile multi filament yarn polyester. The test report suggested that end-use of samples should be ascertained by executive check. For ascertaining whether the samples contained any hazardous dyes, it was also recommended that the sample should be forwarded to Textile Committee, New Delhi for their opinion. The report of the CRCL was signed by Shri M.D. Mondal, Chemical Examiner.

(d) The test report dated 19-8-03 of the Textile Committee reads as follows :

"1. Identification of fibre*IS 667:1981*

<i>Wrap & Weft</i>	<i>Polyester</i>
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2. Percentage*Composition*

<i>Polyester</i>	<i>100</i>
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3. Whether*staple/filament yarn*

<i>Warp & Weft</i>	<i>Filament yarn</i>
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<i>% Filament yarn</i>	<i>100</i>
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4. Whether texturised*Non-texturised*

<i>Warp & weft</i>	<i>Non- texturised</i>
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<i>% Non-texturised yarn</i>	<i>100</i>
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5. Whether woven/non - woven*woven*

The report was signed by Shri C.R. Venkitachalam, Assistant Director (Laboratories).

(e) The report of GCTI was as follows :-

"Test particulars	Results
1. Any Hazardous dyes	Not detected
2. a. Basic material of warp and weft	100 % polyester filament yarn
b. whether it is made of more than 85% non-texturised filament.	yes
3. End uses	can't be assessed."

(f) The original authority by order dated 29-12-2005 confirmed the duty demand of Rs. 1,13,29,497/- holding that the imported fabric was of textured polyester yarn and liable to be classified under heading 54075290 and not eligible for the benefit of Notification No. 36/2003.

(g) The Tribunal took note of the fact that there were contradicting test reports and held that the cross-examination of the experts, as sought for by the appellants was justified and accordingly, remanded the matter to the adjudicating authority.

(h) The Commissioner, after allowing the cross-examination of experts, has now confirmed the demand of differential duty of Rs. 1,13,29,497/- after classifying the goods under Chapter Heading 5407 52 90.

4.1 Learned Advocate for the appellants submitted that the report of CRCL was against them holding that the imported fabric is made of textured yarn.

4.2 However, the original report dated 19-8-03 signed by the Assistant Director (Laboratories) of Textile Committee clearly mentions the composition as 100% non-texturised yarn. Under these circumstances, the retesting of the sample suo motu by Textile Committee was not at all warranted. It appears from the letter signed by Director (Laboratories) of Textile Committee that certain discussions have been held with the Commissioner of Customs and that a team of Textile Committee officials have visited some units in Gujarat and claimed to have discovered new developments in textile technology. Based on that, the earlier report given by the Assistant Director was sought to be cancelled and the test report of a lower official has been forwarded by the Director (Laboratories). The first report by Textile Committee and the second report are diametrically opposite. The cross-examination of Smt. Anita Hazra, Quality Assurance Officer clearly revealed that "there was no new parameters and there was no change in the parameters for testing". Under these circumstances, the second report deserves to be ignored. Though the test was not personally done by Quality Assurance Officer but only by technicians, no internal documents prepared by said technician were produced. Retest has been done even without the request for retesting from Customs authorities which is not permissible. The order of the Commissioner also refers to certain correspondence between the Member Secretary, Textile Committee, Mumbai and the Chief Commissioner of Customs, Mumbai. The said communication has not been made available. The second report of Textile Committee is, thus, clearly an influenced report and based on extraneous consideration. The Commissioner's reasoning given for rejecting the first report of Textile Committee and accepting the second report of Textile Committee is erroneous.

4.3 He also submits that the report of GCTI, Kanpur which was in their favour has not been controverted.

4.5 Further, the Explanatory Notes to HSN does not prescribe any methodology for ascertaining as to whether the fabric is made of non-texturised filament yarn or texturised yarn. It does not prescribe any methodology for testing. The distinguishing criteria prescribed in Explanatory Notes to HSN like whether there are loops, parallel orientation, curls, crimps are ascertainable by visual examination or through microscope.

5.1 Learned Jt. CDR has strongly supports the order of the Commissioner. He draws our attention to the fact that fabric made out of textured yarn attracted higher rates of duty than the fabrics manufactured of non-textured yarn.

5.2 CRCL is the Government Laboratory specifically authorised to test sample for Excise and Customs purposes and their reports are to be respected. He also submits that opinion of the CRCL will prevail over any other expert in matters relating to classification of the products resulting from chemical process as held by the Tribunal in the case of Rane Brake Linings v. C.C.E., Chennai reported in [2007 \(215\) E.L.T. 144](#).

5.3 Regarding the controversy relating to two different reports of the Customs Textile Committee, he submits that the first report was sent by the Assistant Director. The second report though signed by the Quality Assurance Officer, it has been forwarded by the Director (Laboratory), the senior most person in-charge of the Laboratories. The Director has clearly explained the technological developments in relation to texturising of yarn. He has also enclosed the methodology involved in identifying the processes like heat setting so as to ascertain whether the yarn is textured or not. Since the Director has clearly held that the first report is cancelled, it should be held that he has applied his mind and endorsed the second report.

5.4 As regards the report from Kanpur based GCTL, the institute is basically a training institute and it has been clarified that the laboratory was not equipped to conduct the modern testing following national and international method. They have merely followed the surgical method which is conventional method to ascertain whether the fabric was made out of texturised yarn or non-texturised yarn. The Kanpur report should be ignored.

5.5 As the report of CRCL is clearly in favour of the Department, the first report of Textile Committee having been cancelled and the second report of Textile Committee being favourable to the Department, the Kanpur report being from an ill-equipped institute, the Commissioner has correctly come to the conclusion on the classification by adopting the report of CRCL and the second report of the Textile Committee.

5.6 Taking us through the cross-examinations of Venkitachalam, Assistant Director and that Smt. Anita Hazra, he submits that the first report of Textile Committee went on mis-conception that mingled and tangled yarn was not considered as texturised yarn as it was felt that the said yarn could not be texturised. Whereas subsequent to visit by a team of officers to several texturising units in Gurajart, the technological developments came to the notice and therefore, the retest was conducted suo motu and the first report was cancelled and the second report was sent to the Department.

5.7 He also submits that subsequent to visit by a team of officials of Textile Committee, revised guidelines have been issued on matters relating to testing of yarn as to whether the same is textured yarn or otherwise.

5.8 Taking us through to the Explanatory Notes to HSN of textured yarn relating to sub-heading 5402.31 to 5402.39, he claims that advance testing is required to distinguish the textured yarn from non-textured yarn and the second report of Textile Committee is following such method. The second report of Textile Committee is on the lines of report given by CRCL. These reports require to be accepted in preference to reports from Kanpur

Laboratory which is basically a training institute and not being equipped to conduct the modern test.

5.9 He also submits that as the multi textured/textured article, they are required to be tested for presence of hazardous dyes and since the Textile Committee Laboratory is the designated laboratory of DGFT, the officers have sent the samples to more than one laboratory simultaneously. Only in the said context, the Board has issued a Circular No. 23/2004-Cus, dated 15-3-2004 directing that in all the cases, where samples are required to be sent for testing hazardous dyes to Textile Committee Laboratory under the Ministry of Commerce, the testing for composition i.e. texturised/non-texturised should also be done at Textile Committee to avoid duplication of work. It was also directed in the said Circular that if only for testing of composition i.e. texturised or non-texturised yarn is required then the same should be got done at the CRCL.

5.10 Learned JT.CDR also relies on the decision of the Hon'ble Supreme Court in the case of *Quinn India Ltd. v. C.C.E., Hyderabad* reported in [2006 \(198\) E.L.T. 326 \(S.C.\)](#) and submits that the test report of CRCL should be accepted unless demonstrated to be erroneous and the said report can not be brushed aside.

6.1 We have carefully considered the submissions from both sides. The relevant Chapter Notes of sub-headings relied upon by the Department as follows :

"Sub-heading Explanatory Notes.

Sub-headings 5402.31 to 5402.39

Textured yarns are yarns that have been altered by a mechanical or physical process (e.g. twisting untwisting, false-twisting, compression, ruffling, heat-setting or a combination of several of these processes), which results in individual fibres being set with introduced curls, crimps, loops etc. These distortions may be partially or completely straightened by a stretching force but resume the shape into which they have been set upon being released.

Textured yarns are characterised by having either a high bulk or a very high extensibility. The high elasticity of both types makes them especially suitable for use in the manufacture of stretch garments (e.g. tights, hose, underwear) while the high bulk yarns give fabrics softness and warmth of touch.

Textured yarns may be distinguished from non-textured (flat) filament yarns by the presence of special twist characteristics, small loops or reduced parallel orientation of the filaments in the yarn."

6.2 From a close reading of the same, it is noticed that the said notes contain distinguishing features between textured yarn or non-textured yarn. We do not agree with the contentions of the learned Jt. CDR that the said notes prescribed any method for testing the samples for determining whether the yarn is textured or not.

7. The submission of the learned Jt. CDR that the Textile Committee was a nominated agency for testing hazardous dyes and therefore, the samples sent to the said laboratory is understandable. Still, there is no explanation forthcoming as to why the samples were also sent to GCTL, Kanpur by the officers. The submission that the samples were sent to Kanpur Laboratory on the request of the party is not substantiated. Having chosen to send the samples to three different laboratories for testing, valid reason should be adduced for rejecting any report of the laboratories which is in favour of the party.

8.1 The Textile Committee is undisputedly a specialised agency. CRCL is like a general physician and that Textile Committee is like a kind of specialist on matters relating to textile and textile articles. That is why, in our considered opinion, the DGFT prescribed Textile Committee as the nominated agency for testing of textile and textile article for the presence of

hazardous chemicals. Under these circumstances, the first report of the Textile Committee given by the Assistant Director cannot be easily brushed aside. The reasoning given by Shri Venkitachalam, Assistant Director during cross-examination that they were under misconception that mingled and tangled yarn cannot be textured and realised the mis-conception after visiting several texturised units looks rather strange. The report of the Director (Laboratory) forwarding the second test report refers to discussion with the Commissioners of Customs. It states that "earlier there was some ambiguity in method adopted for determining whether the yarn is textured/non-textured yarn and this would cause error in our earlier reports referred in this letter. However, the parameter was sorted out after discussion with Commissioners of Customs". It is not revealed as to how the ambiguity in the method for test can be sorted out after discussion with the Commissioner of Customs. Learned Jt. CDR in this context submitted that the discussion referred to was not held with the Commissioner of Customs and Central, Excise, Kanpur. It was perhaps to canvass support to the view that the adjudicating authority was not influenced. Surprisingly, the order of the Commissioner also refers to exchange of correspondence between the Chief Commissioner of Customs and the Member Secretary of Textile Committee. Apparently, the said communication has not been made available to the appellants. The claim by the learned JT. CDR that the correspondence was innocuous and was matters of administration is not appealing to us. If that be the case, the need for reference to the same in the order of the Commissioner is not appreciated. This is also one reason which has a bearing on the credibility of the second report.

8.2 The second report has been prepared after test by the technicians of Textile Committee and has been endorsed by Quality Assurance Officer. She, in her cross-examination, clearly submitted that she did not do the test personally but the same was being done by technicians. When the first report is to be discarded, it has not been shown that the second test was done by any other of higher rank than the one who conducted on first occasion or by team of officers. The endorsement of the Quality Assurance Officer, the Director (Laboratory) of the second report cannot automatically invalidate the first report. Further, it is noticed that the first report of the Textile Committee the samples as 100% non-textured and the second report is diametrically opposite stating that the sample as 100% textured. Such a view in this particular case throws serious doubt about medical in which the test has been done by the Textile Committee. Notwithstanding the eminent status of the Textile Committee in matters relating to textile and textile articles, in the present case, the second report given by them do not instil our confidence in us.

8.3 Having held that the relied portions of HSN Notes have not prescribed methods for determining whether yarn is textured or non-textured yarn, we do not find any valid reason to disregard the report of GCTL which is in favour of the assessee. We have not been shown any reliable evidence that advance test is mandatory to decide whether the yarn is textured yarn or not. The cross-examination of the experts namely, Shri C.R. Venkitachalam, Assistant Director, Shri M.D. Mondal, Chemical Examiner, Shri R.B. Saxena and Professor Shri H.D. Dixit do not show that such test by sophisticated machinery is required to be ascertained whether the textured yarn is textured or not. It is clearly coming out the test is subjective. In a subjective test, the benefit of doubt has to necessarily be extended to the assessee.

9. In view of the above, the following emerges :-

- (a) There is no valid explanation as to why the samples were sent simultaneously to three laboratories.
- (b) The manner in which the second report was issued after suo motu testing by the Textile Committee after discussion with Commissioner of

Customs and after exchanging correspondence between Member Secretary of Textile Committee and Chief Commissioner of Customs does not command our confidence.

(c) Though the report of CRCL is in favour of the Department, initial report of Textile Committee and the report of GCTL, Kanpur were in favour of the party, the benefit of doubt naturally has to be given to the assessee especially when the test is clarified to be subjective. The decisions relied upon by the learned Jt. CDR that the test report of chemical examiner cannot be brushed aside is valid. However, in the present case, confronted with other favourable reports which were also obtained at the instance of the Department, the choice has to be made between one of the said report and the CRCL report. The test reports were on question of facts and the test reports were said to be subjective in nature, Naturally, the assessee should be extended the benefit of doubt.

10. The order of the Commissioner is, therefore, set aside and the appeal is allowed with consequential relief, as per law.

019 (366) E.L.T. 911 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

[COURT NO. I]

Ms. Archana Wadhwa, Member (J) and Shri Raju, Member (T)

COMMISSIONER OF CUSTOMS, MUMBAI

Versus

ATLAS MERCANTILE PVT. LTD.

Final Order No. 85682/2018-WZB, dated 20-3-2018 in Appeal No. C/1118/2008

[Order per : Archana Wadhwa, Member (J)]. - Being aggrieved by the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard Shri R. Kapoor, Learned Commissioner (AR) appearing for the Revenue and Shri Prasad Paranjape, Learned Counsel for the respondent.

3. As per facts on record, the respondent is engaged in the import of synthetic polyester fabrics. During the period July/August 2003, they filed seven Bills of Entry for the import of the said goods, which were classified by them under Heading 5407.61 as woven fabrics containing 85% or more by weight of non texturised polyester filament yarn, charging basic customs duty @ 25% ad valorem in terms of serial No. 51 of Notification No. 36/2003-Cus. + CVD and cess as applicable. The samples drawn from the said consignments were sent by the Revenue to Textile Committee indicating that the fabrics in question are made out of non-texturised polyester filament yarn. On that basis, the Bills of Entry were assessed and the goods were cleared.

4. Subsequently an intelligence was gathered that a number of importers, during the said period, imported polyester fabrics by misdeclaring the technical characteristics that the fabrics were made out of non-texturised yarn whereas the same were made out of texturised yarn, attracting higher rates of duties. Accordingly the remnant samples drawn at the time of examination and earlier tested by the Textile Committee, Mumbai were forwarded to the Joint Director, New Custom House Laboratory, NCH, Mumbai for retesting. As per the test reports of the Joint Director, New Custom House Laboratory, it was observed that the fabrics in question were containing 85% or more polyester yarn, composed of texturised filament yarn and are properly classifiable under Chapter Heading 5407 72 00 and attracts the higher rate of duty. Accordingly, less charge notices were issued

to the importers in terms of the provisions of Section 28(1) of the Customs Act demanding differential duties.

5. The said notices culminated into an order passed by the original adjudicating authority, confirming the demands. The order of the original adjudicating authority was upheld by the Commissioner (Appeals) and the matter travelled up to Tribunal. Vide order No. A/550/2007/C-II/CSTB, dated 24-9-2007 and vide order No. A/428/2007/C-I/CSTB, dated 3-8-2007, the matters were remanded with directions to supply the copies of all the test reports and the other relied upon documents.

6. During the de novo proceedings, the test reports as also relied upon documents were supplied to the importer and as requested by them, the whole modalities and methodology adopted by CRCK and Textile Committee were explained to them, The original adjudicating authority by opining that since NCHL test reports are based on the modalities and methodology decided by the experts of two agencies including the Textile Committee representatives, the same are authentic and relevant for the purpose of classification under Customs Tariff Act and the same would prevail over the Textile Committee reports issued at the time of original examination of the goods. He accordingly confirmed the demands raised against the assessee.

7. The said order of the original adjudicating authority was challenged by the assessee before the Commissioner (Appeals). It was specifically contended by the respondent that textured/non-textured yarn content in a fabric is to be ascertained by visual examination and does not involve any chemical test and therefore the report of Dy. Chief Chemist could not be held to be of any credence; that the only test possible for differentiating between textured and non-textured yarn was visual examination; that even non-textured yarn, when woven-into fabric would undergo the process of weaving, scouring, bleaching, High Temperature and High Pressure Dyeing, Stentering and further finishing etc., whereby the original appearance of yarn would get distorted and natural crimp etc. would appear in the yarn due to such processes and therefore this could result in the visual test being distorted or vague regarding the nature of yarn; that the methodology adopted by the Dy. Chief Chemist for his testing was not at all disclosed; that it is not disclosed as to whether the constituent polyester filament yarn in any of the seven representative samples in the instant case was found with any such bulkiness or stretchability or crimps or separate curls or loops or nodes or with disturbed parallel orientation or special twist characteristics, so as to arrive at the conclusion that the same were textured yarn; that it was an admitted position that there was no standard method like IS & ASTM in the literature available for determining the yarn as texturised or otherwise; that it has not been shown that the methodology given for distinguishing the non-textured and textured yarn in the fabric' was adopted by the DyCC; that moreover the methodology shown does not take into account the effect of various mechanical, physical and chemical processes such as scouring, bleaching, High Temperature and High Pressure Dyeing, heat setting, calendaring, Stentering and further finishing etc., whereby the original appearance of the constituent yarns in the fabric gets distorted. The Hon'ble Tribunal's decision in the case of Raja Imports and Exports v. Collector of Customs, Bombay, reported in [2000 \(119\) E.L.T. 346](#) (Tribunal), was relied upon to show that where no chemical test was conducted and only visual examination was done, there was no reason to disagree with the report of Textile Committee. Board's Circular No. 23/2004-Cus., dated 15-3-2004 issued in F. No. 450/105/2003-Cus.IV was referred to assert that the Textile Committee Laboratory was the competent authority for testing hazardous dyes and for testing the composition of fabrics, i.e. textured/non-textured and that such test shall be carried out at the Textile Committee laboratory. The personal hearing was rounded up with

the plea that even otherwise it was settled law that when there was no conclusive test report, free from any doubt, the decision should be in favour of the assessee. They also contended as under :-

"6. The appellants have further contended in the written submissions that the impugned Order was beyond the scope of the Less Charge Demand Notices in as much as the interest u/s 28AB was also confirmed despite there being no proposal for the same in the Demand Notices; that the Order-in-Original was passed in gross violation of principles of Natural Justice, and several documents were relied upon in the impugned order which were neither disclosed in the Demand Notice, nor made available to the Appellant, such as; (1) Test reports from the DyCC referred in the Demand notices and in para 5(a), 5(b), 14 of the impugned order; (2) Test Reports from the Jt. Director, New Customs House laboratory, Mumbai - NCHL (in-house laboratory of CRCL, New Delhi) vide letters dated 10-2-2004 and 13-2-2004 relied in para 3 of the impugned order; (3) Test reports by the Committee constituted at the request of the Association of Importers and Exporters of Manmade Textiles, after conflict in test reports of DyCC and Textile Committee, relied in para 15 of the impugned Order; (4) Request letter issued to textile Committee for forwarding remnant samples, referred in para 8(iii) of letter dated 26-5-2008 which is relied in para 5 of the impugned Order; (5) 2nd TC reports concerning the appellant, as mentioned in the letter dated 20-6-2005 addressed by the Department to the Director, Textile Committee; and (6) Results of the seven samples under consideration rechecked for nature of yarn and results/comments stated to be in Annexure to letter dated 19-7-2005 issued by the Textile Committee which is relied in para 16 of the Impugned order, and similar Re-Test reports in the appellants case; that the goods were allowed clearance by the proper officer after satisfying himself about the description thereof by testing it through the Textile Committee, a Govt. organization under Ministry of Commerce and Industry, and has not been withdrawn/cancelled; that the test reports of the Dy.CC are based on alleged remnant samples re-tested behind the back of the Appellant, by persons whose names are also not disclosed and that even the source of the remnant samples tested by them was uncertain, and that therefore the Appellants could not be saddled with duty demand on those bases thereof"

8. The Commissioner (Appeals) vide his impugned order accepted the assessee's stand by observing as under :-

"7. On a careful perusal of the records and the submissions of the appellant it is seen that there is considerable force in the case of the appellant. It is an accepted position as seen from the impugned order that the test for ascertaining the textured or non-textured nature of the constituent filament yarn content of any fabric is only by visual examination without involving any chemical test. The impugned order also shows that it is also to be ascertained by visual examination that presence of curls, crimps and loops in the individual filament are not due to interlacing of warp and weft in case of woven fabric or de-knitting of the knitted fabric. Moreover, it is also seen that the modalities and methodology for testing as adopted by the Committee, formed after the DyCC test reports, and supplied to the appellant, does not show that the examiner had taking into account the effect of various mechanical, physical and chemical processes to which a fabric is subjected to such as scouring, bleaching, High Temperature and High Pressure Dyeing, heat setting, calendaring, Stentering and further finishing etc. which may result in distorting the original appearance of the yarn under scrutiny. In such circumstances it is but obvious that the scope of human error cannot be ruled out in such cases as in the instant one. Even if it is to be assumed that the Chief Chemist of DyCC had adopted the same methodology for testing the sample as decided by the said Committee and

conveyed to the appellant, it cannot be presumed that the same therefore would be free from any doubt. It is further seen that the reason for holding out the constituent yam as "textured yam" is also not disclosed in any test report i.e. it is not disclosed as to whether any of the seven representative samples in the instant case was found with any such bulkiness or stretchability or crimps or separate curls or loops or nodes or with disturbed parallel orientation or special twist characteristics, so as to arrive at the conclusion that the same were textured yam. It is seen that the original Adjudicating authority admits that there was no standard method like IS & ASTM in the literature available for determining the yam as texturised or otherwise. The decision of the Hon'ble Tribunal in the case of *Raja Imports and Exports v. Collector of Customs, Bombay* (supra) cited by the appellant is also binding on the case. Moreover, the Board's Circular No. 23/2004-Cus., dated 15-3-2004 stipulates that the Textile Committee Laboratory is the competent authority for testing hazardous dyes and the test for composition, i.e. textured/non-textured and that such test shall be carried out at the Textile Committee Laboratory. In the light of this undisputed position it would be improper for the initial report of Textile Committee to be discarded offhand and without even the flimsiest of bases. If anything, It is seen that the appellant is entitled for a benefit of doubt in the instant case especially in the absence of any conclusive test report, free from any doubt, and thereby the instant less charge demand notices cannot sustain. Even otherwise, in not providing the appellant the complete set of documents relied upon in the impugned order even as implicit in the remand order of the Hon'ble Tribunal, there is a clear case of violation of the principles of natural justice. Regardless of this however, and in view of the above undisputed position and the facts and circumstances of the case as available on records it is clear that there cannot be any question of liability towards any differential duty or interest. The stay application and the appeal therefore are allowed and the impugned order is set aside. "

Hence the present appeal by the Revenue.

9. After going through the impugned order and after carefully considering the submissions made by both the sides, we find that admittedly the initial report of the Textile Committee was in favour of the assessee and based upon the same, their imported consignments were cleared. It is only thereafter the remnant samples were sent to Chief Chemist, who adopted a diametrical opposite view. The appellate authority has gone into details of the test conducted by the Deputy Chief Chemist and has observed that it is nowhere shown in the said test reports that the examiner has taken into account the effect of various processes under which the fabric is subjected to. As such by relying upon the decision of the Tribunal in the case of *Raja Imports and Exports v. CC, Bombay* - [2000 \(119\) E.L.T. 346](#) (Tribunal) wherein it was held that Textile Committee, being an authority required to certify the contents of knitwear before permitting exports has to be adopted and cannot be disregarded in the face of the Deputy Chief Chemist and SASMIRA reports pointing out to the contrary and extended the benefit to the respondent. He also observed that even if there are two contrary reports, the one which is in favour of the assessee has to be adopted and the benefit of doubt has to be extended. Accordingly, he set aside the order of the lower authorities.

10. We find that there is no dispute about the factual position. Admittedly, the first report of the Textile Committee was in favour of the assessee. It is also seen that there were number of importers identically situate and the dispute arose in the case of number of them. The matter was taken up at the Association level and it was requested that a committee be formed to test the presence of texturised yarn in the fabrics. It is only thereafter a committee was formed and methodology was laid down for the purpose of

testing the presence of the texturised yarn, the result of such reports went against the assessee.

11. An identical matter came before the Tribunal in one of the other importers identically placed and was dealt with the Tribunal in the case of *Shri Lakshmi Cotsyn Ltd. v. CCE, Kanpur* - [2011 \(263\) E.L.T. 299](#) (Tri.-Del.) in the wake of identical facts and circumstances, where the first report of the Textile Committee was in favour of the assessee and the subsequent retest by the Chief Chemist was against them, the Tribunal granted relief to the importers by observing as under :-

"4.2 However, the original report dated 19-8-03 signed by the Assistant Director (Laboratories) of Textile Committee clearly mentions the composition as 100% non-texturised yarn. Under these circumstances, the retesting of the sample suo motu by Textile Committee was not at all warranted. It appears from the letter signed by Director (Laboratories) of Textile Committee that certain discussions have been held with the Commissioner of Customs and that a team of Textile Committee officials have visited some units in Gujarat and claimed to have discovered new developments in textile technology. Based on that, the earlier report given by the Assistant Director was sought to be cancelled and the test report of a lower official has been forwarded by the Director (Laboratories). The first report by Textile Committee and the second report are diametrically opposite. The cross-examination of Smt. Anita Hazra, Quality Assurance Officer clearly revealed that" there was no new parameters and there was no change in the parameters for testing". Under these circumstances, the second report deserves to be ignored. Though the test was not personally done by Quality Assurance Officer but only by technicians, no internal documents prepared by said technician were produced. Retest has been done even without the request for retesting from Customs authorities which is not permissible. The order of the Commissioner also refers to certain correspondence between the Member Secretary, Textile Committee, Mumbai and the Chief Commissioner of Customs, Mumbai. The said communication has not been made available. The second report of Textile Committee is, thus, clearly an influenced report and based on extraneous consideration. The Commissioner's reasoning given for rejecting the first report of Textile Committee and accepting the second report of Textile Committee is erroneous.

8.1 The Textile Committee is undisputedly a specialised agency. CRCL is like a general physician and that Textile Committee is like a kind of specialist on matters relating to textile and textile articles. That is why, in our considered opinion, the DGFT prescribed Textile Committee as the nominated agency for testing of textile and textile article for the presence of hazardous chemicals. Under these circumstances, the first report of the Textile Committee given by the Assistant Director cannot be easily brushed aside. The reasoning given by Shri Venkitachalam, Assistant Director during cross-examination that they were under misconception that mingled and tangled yam cannot be textured and realised the mis-conception after visiting several texturised units looks rather strange. The report of the Director (Laboratory) forwarding the second test report refers to discussion with the Commissioners of Customs. It states that "earlier there was some ambiguity in method adopted for determining whether the yarn is textured/non-textured yam and this would cause error in our earlier reports referred in this letter. However, the parameter was sorted out after discussion with Commissioners of Customs". It is not revealed as to how the ambiguity in the method for test can be sorted out after discussion with the Commissioner of Customs. Learned Jt. CDK in this context submitted that the discussion referred to was not held with the Commissioner of Customs and Central, Excise, Kanpur. It was perhaps to convass support to the view

that the adjudicating authority was not influenced. Surprisingly, the order of the Commissioner also refers to exchange of correspondence between the Chief Commissioner of Customs and the Member Secretary of Textile Committee. Apparently, the said communication has not been made available to the appellants. The claim by the Learned JT. CDK that the correspondence was innocuous and was matters of administration is not appealing to us. If that be the case, the need for reference to the same in the order of the Commissioner is not appreciated. This is also one reason which has a bearing on the credibility of the second report.

8.3 Having held that the relied portions of HSN Notes have not prescribed methods for determining whether yarn is textured or non-textured yarn, we do not find any valid reason to disregard the report of GCTL which is in favour of the assessee. We have not been shown any reliable evidence that advance test is mandatory to decide whether the yarn is textured yarn or not. The cross-examination of the experts namely, Shri C.K. Venkitachalam, Assistant Director, Shri M.D. Mondal, Chemical Examiner, Shri R.B. Saxena and Professor Shri H.D. Dixit do not show that such test by sophisticated machinery is required to be ascertained whether the textured yarn is textured or not. It is clearly coming out the test is subjective. In a subjective test, the benefit of doubt has to necessarily be extended to the assessee. "

12. Inasmuch as the identical facts and circumstances are the subject matter of the present appeal of the Revenue, which already stands taken note of by the Tribunal in the said referred decision, we find no justifiable reason to take a different view. Accordingly, by following the above judgment, we find no merits in the Revenue's appeal and reject the same.

2019 (367) E.L.T. 299 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

S/Shri C.J. Mathew, Member (T) and Ajay Sharma, Member (J)

SMART DESIGNER

Versus

COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI

Final Order Nos. A/85803-85805/2019-WZB, dated 14-3-2019 in Appeal Nos. C/240-242/2011

[Order per : C.J. Mathew, Member (T)]. - These three appeals of M/s. Smart Designer pertain to the controversy arising from import of goods declared as 'polyester texturised fabric' which, upon detailed examination, was found to be incompatible with the description in the Heading No. 5407 61 90 of the First Schedule to the Customs Tariff Act, 1975 and coverage sought under Notification No. 36/2003-Cus., dated 1st March 2003.

2. Narrating the background, Learned Counsel informs that goods declared in Bills of Entry No. 439/11-8-2003, 435/11-8-2003 and 432/10-8-2003 had been subject to the test for conformity with the description 'fabric manufactured out of non-texturised polyester yarn' by the Textile Committee but proceedings were initiated very much later after the remnant samples were tested by the Deputy Chief Chemist at the Customs House. Both the original authority and the first appellate authority have confirmed the ineligibility for classification under the claimed heading consequent denial of benefit in Notification No. 36/2003-Cus., dated 1st March 2003.

3. Learned Counsel for the appellant draws attention to the decision of the Tribunal in Commissioner of Customs, Mumbai v. Atlas Mercantile Pvt. Ltd. [2018 (4) TMI 490 - CESTAT MUMBAI = [2019 \(366\) E.L.T. 911](#) (Tri.-Mum.)] and Shri Lakshmi Cotsyn Ltd. v. Commissioner of Customs & Central Excise, Kanpur [[2011 \(263\) E.L.T. 299 \(Tri.-Del.\)](#)] to contend that the second test conducted with the Deputy Chief Chemist should not be

accepted being contrary to the directions of Central Board of Excise & Customs in such matters.

4. *We have heard Learned Authorised Representative.*

5. *We find that the benefit of the exemption notification claimed by the appellant is available to goods classifiable under sub-heading 5407 61 whereas the classification adopted by the lower authorities is that of 5407 69 of the First Schedule to the Customs Tariff Act, 1975. At the instance of Learned Counsel, we have perused the original records and find that the show cause notice, although dated 12th August 2003, is based upon a test report that, admittedly, pertains to 2004-05, which is inconceivable. Learned Authorised Representative submits that the date in the show cause notice appears to be erroneous and such discrepancy does not make any difference to the proceedings. We do find some merit in the submission as it would have been impossible to issue a show cause notice just a day after the bill of entry was filed; it would appear that the show cause notice was authored on some other date.*

6. *Appellant had, as we find, claimed classification as fabric containing 85% or more by weight of textured polyester filaments. It is seen that the Textile Committee did not find any contrary reason to suggest discrediting this contention. The Customs authorities chose to revise the classification based on a test report generated through the Deputy Chief Chemist after testing of the remnant samples. We do not find any evidence of that test report in the records. Furthermore, as made amply clear in the decisions of the Tribunal In Re : Atlas Mercantile Pvt. Ltd. and In Re : Shri Lakshmi Cotsyn Ltd., that as per Circular No. 23/2004-Cus., dated 15th March 2004, the expertise of the Textile Committee should be relied upon for a single test instead of test being carried out by both authorities. In the face of these decisions, the reliance placed on the results of testing by Deputy Chief Chemist is not acceptable. If at all, the proper procedure would have been for the remnant samples, after due notice to the importer, to be subject to re-test by the Textile Committee. Thus, report of the Deputy Chief Chemist cannot overrule the earlier test results. In view of these circumstances, the re-classification, with consequent disallowance of the benefit of notification, is not proper in law.*

7. *Accordingly, we set aside the impugned orders and allow the appeals.*

11. We further find from the order passed by the Tribunal in the case of *CIPLA Limited* (supra) that it was held that aerosol valves containing medicament is a type of non-return valve and decided the classification of goods under chapter sub-heading 8481 ibid and not under Chapter 96. Further, in the case of *Perfect Valves* (supra) it was held that classification of 'aerosol valve components', are classifiable under heading 8481 and are not covered under CTH 9616 1020. Therefore, it is clear that the Tribunal has consistently held that the valves, pumps and other similar appliances are correctly classifiable under chapter 84 and not under chapter 96.

12. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under CTH 8413 50 and further depending upon the type of liquid dispensed under CTI 8413 5010, 8413 5090 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 30.05.2023 classifying imported goods under heading 9616 1020 does not stand the scrutiny of law and therefore is not legally sustainable.

13. In the result, the appeal is allowed by setting aside the impugned order dated 30.05.2023.

(Order pronounced in open court on 25.02.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)