

Chandra Impex Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-2003

Reported in : (2004)(92)ECC772

Judge : A T V.K., P Chacko

Appellant : Chandra Impex

Respondent : Commissioner of Customs

Judgement :

1. The appellants imported 192 bales (34,319 metres) of fabric and filed Bill of Entry dated 2941-2000 at CFS, Ludhiana for clearance thereof, declaring the goods as 100% polyester warp knitted fabric falling under sub-heading 6002.43 of the First Schedule to the Customs Tariff Act. The declared CIF value of the goods was US \$ 0.65 per metre on the basis of invoice dated 2-11-2000 issued by the foreign supplier, namely, M/s. ACE Trading, Dubai (UAE). The goods were examined by the DRI staff on 8-12-2000 and two representative samples were drawn from bale Nos. 96 and 185. The Chemical Examiner's report on the test samples read thus :- "The sample is a cut piece of (khaki/navy blue) coloured knitted looped pile fabric having ribbed surface on one side. It is wholly composed of polyester texturised multi-filament yarn." 2. The importer contested this test report by producing a report from the Textile Commissioner, Ministry of Textiles, Government of India, which certified the goods to be "warp knitted polyester fabric giving the cord effect (running longitudinally) on the surface and not a pile fabric". However, the Department exclusively relied on the Chemical Examiner's report

and held the goods to be classifiable as knitted looped pile fabric under sub-heading 6001.22 of the CTA Schedule. They also held that the importer had misdeclared the goods rendering them liable to confiscation under Section 111 of the Customs Act. The goods were accordingly seized under Section 110 of the Act but, on the request of the importer, provisionally released, subject to certain conditions.

3. Goods falling under SH 6001.22 were restricted for import as per Exim Code 60012200 of ITC (HS) Classification of Import and Export Items 1997-2002 and could be imported only under specific licence. Such goods also attracted basic customs duty at the rate of 35% ad valorem.

On the other hand, goods classifiable under sub-heading 6002.43 of the CTA Schedule were in the OGL category and hence freely importable.

These goods attracted basic customs duty at the rate of 30% ad valorem.

4. From the aforesaid facts and circumstances, it appeared to the department that the importer had deliberately misdeclared knitted looped pile fabric as knitted fabric with intention to get over the above Exim Policy restriction as well as to evade customs duty to the extent of 5% ad valorem. The Department held the goods liable to confiscation under Section 111(d) and (m) of the Customs Act and the importer liable to penalty under Sections 112 and/or 114A of the Act.

They also felt that, under a Standing Order dated 4-2-2000 of the Chief Commissioner of Customs, Mumbai, the goods required to be assessed to duty on the basis of a minimum value of US \$ 1.00 per metre.

Accordingly, show cause notice dated 9-8-2001 was issued to the importer. Upon receipt of this notice, the importer requested for a retest of the samples, which was acceded to by the jurisdictional Commissioner of Customs. The retest report dated 26-11-2002 of the Director (Revenue Laboratories), Central Revenue Control Laboratory, New Delhi read as under :- "Each of the two samples is cut-piece of coloured fabric having ribbed surface. Each is composed of multi-filament yarn of polyester.

Each of the two samples have been further tested keeping in view the construction and characteristics of different types of knitted fabric (warp knits, weft knits and pile fabrics of different types) as described in the literature and also in the HSN under Chapter 60.

Studies on the observations as above and also on the basis of the observations as obtained on the microscopic study with the help of Projection Microscope on the samples reveal that the samples have the characteristics of warp knitted type of fabric without having free loops or cut piles." 5. Upon receipt of a copy of the above report, the importer, by letter dated 1-1-2003, replied in detail to the show cause notice. They claimed support from the retest report to their stand that the subject goods had no loops and was not a pile fabric as claimed by the Department. They also produced test reports of the Textile Committee, National Test House (Ghaziabad) and Northern India Textile Research Association to show that their fabric was warp knitted and not piled.

The importer denied the allegations in the show cause notice and claimed classification of the goods under SH 6002.43 and consequent reliefs. In adjudication of the dispute, the Commissioner ordered as under :- "1. I hold the goods to be Polyester Knitted looped Pile Fabric classifiable under tariff sub-heading 6001.22 of the First Schedule to the Customs Tariff Act, 1975.

2. I order the assessable value to be taken as Rs. 10,49,918/- as declared by the importer for the assessment purpose.

3. I confiscate 34,319 metres of the Polyester Knitted looped Pile Fabric under Section 111(d) and 111(m) of the Customs Act, 1962 but since the goods have already been released provisionally to the importer I adjudge the fine of Rs 1,00,000/- (Rupees One lakh only) in lieu of confiscation under Section 125 ibid, besides duty leviable and other charges, if any.

4. I impose personal penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on M/s. Chandra Impex, 33 Green Avenue, Amritsar under Section 112(a) of the Customs Act, 1962." 6. We have examined the records and heard both the sides. Reiterating the grounds of appeal, the learned Counsel for the appellants

submitted that the retest report of the Director (Revenue Laboratories) had been misconstrued by the Commissioner; that the report had clearly stated that the fabric was of the warp knitted type without loops or piles; that the earlier report of the Chemical Examiner had been superseded by the retest report and hence had no credence; that the Commissioner had given his own erroneous interpretation to the expressions used in the retest report without caring to seek clarification from the Director (Revenue Laboratories); that, had the Commissioner any doubt regarding the retest report, he could have obtained requisite clarification from the Director who issued the report; that the Textile Commissioner's report and other reports produced by the party were unreasonably discarded by the Commissioner; that the adjudicating authority should have noted that the test reports, invoice, etc., produced by the importer supported the declaration made in the Bill of Entry and, therefore, there was no mala fides on their part in the matter of description and classification of the goods; that the Tribunal's decision in DCP Impex Pvt. Ltd. v. CC, Chennai [2003 (152) E.L.T. 368] relied on by the Commissioner was distinguishable and that there was no good factual or legal basis for his decision. The learned DR reiterated the findings of the Commissioner.

7. We have considered the records and the submissions. Heading 60.01 covers Pile fabrics, including "long pile" fabrics and tery fabrics, knitted or crocheted. SH 6001.22 covers looped pile fabrics of man-made fibres. According to the Department, this is the appropriate classification for the subject goods. For this classification, the Department and the adjudicating authority have relied exclusively on the retest report of the Director (Revenue Laboratories). The rival Heading is 60.02 which covers other knitted or crocheted fabrics. SH 6002.43 covers other fabrics (of man-made fibres), warp knit (including those made on galloon knitting machines). The appellants want their fabric to be classified under this entry.

8. The retest of the samples was ordered at the instance of the importer who had complained that the initial report of the Chemical Examiner was vague and incomplete. In effect the importer's objections against the Chemical Examiner's report were sustained and the same stood superseded by the retest report of the Director (Revenue Laboratories). Therefore, we accept the learned Counsel's

contention that the Chemical Examiner's report cannot be relied on. The sole basis of the impugned order is the retest report of the Central Revenue Control Laboratory, which we have already extracted in this order. It is interesting to note that both the sides in this case have relied on the retest report to substantiate their respective positions. In other words, any decision in this case would rest largely on the correct interpretation of the retest report. The retest report says that the sample is composed of multi-filament yarn of polyester. This part of the report is not in controversy. The report further says, in view of the relevant literature and HSN notes and on the basis of the results of examination of the samples with Projection Microscope, that the samples have the characteristics of warp knitted fabric without having free loops or cut piles. The learned Commissioner has inferred from this part of the report that the fabric is a looped pile fabric. By no stretch of imagination are we able to persuade ourselves to endorse this inference. We are rather impressed by the interpretation given by the learned Counsel for the appellants. He has rationally contended that there cannot be any 'free loop' in the sense of a 'loop free from the fabric' as any loop has necessarily got to be a part of the fabric and, therefore, the expression 'fabric without having free loops' should mean 'fabric without having loops'. In a similar reasoning, the learned Counsel has argued that the expression 'fabric without having cut piles' means 'fabric without piles'. We have to accept these arguments in the absence of any contra clarification of the Director (Revenue Laboratories). The interpretation of the retest report, as stated in the impugned order, does not appeal to our prudence. We, therefore, hold that, as certified by the Director (Revenue Laboratories) in his retest report, the subject goods are warp knitted fabric of polyester yarn, without loops or piles. The goods, therefore, would not attract the description 'looped pile fabrics of man-made fibres, under SH 6001.22. But they can appropriately be classified as warp knitted fabrics of man-made fibres under SH 6002.43 as claimed by the assessee.

9. In the case of DCP Impex (supra) referred to in the impugned order this Tribunal has classified certain polyester warp knitted fabrics under Heading 60.01. In that case, there was no dispute that there was pile on the fabric. In the instant case, on the other hand, the dispute is whether the fabric in question is piled or not and the Director (Revenue Laboratories) has certified the fabric to be warp knitted fabric

without pile. The cited decision is thus clearly distinguishable as rightly pointed out by the Counsel.

10. In the light of the findings which we have already recorded, we reject the classification held by the Commissioner and uphold the classification as claimed by the assessee. Consequently, there is no misdeclaration in this case and the order of confiscation and penalty is not sustainable. We therefore set aside the Commissioner's order, except in respect of valuation of the goods. The appeal is allowed.

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