

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA**

**MA-76221/2018 And
Appeal No. C/75378/2018**

**Arising out of Order-in-Original No.
KOL/CUS/COMMISSIONER/PORT/55/2017, Dated:
29.11.2017**

Passed by the Commissioner of Customs (Port), Kolkata

**Date of Hearing: 13.12.2018
Date of Decision: 24.01.2019**

M/s RUDRA VYAPARCHEM PVT LTD

Vs

**COMMISSIONER OF CUSTOMS (PORT)
KOLKATA**

**Appellant Rep by: Shri R K Choudhari & B N Pal, Advs.
Respondent Rep by: Shri S K Naskar, AC AR**

**CORAM: P K Choudhary, Member (J)
V Padmanabhan, Member (T)**

Cus - The goods imported have been declared as "Polyester Bed sheet" and the classification has been declared under Chapter 63 as 'made up' article - What constitutes a made up article has been specified in Note 7 of Section XI of Chapter 50 - The essential distinguishing feature of made up article is that it should be produced in finished state and ready for use without sewing or other working - The fabric needs to be hemmed and stitched firmly in order to assume the shape of a bed cover/quilt cover/bed sheet - The imported goods, as presented, are in the form of fabrics folded and stitched roughly on two sides - The test report from both the expert agencies to whom samples

were sent have concurrently reported that the goods cannot be classified as "made ups" but are more appropriately classified as "polyester woven fabric" - Further, test report indicates that the fabric is 100% polyester - The imported goods do not satisfy the test laid down in Section XI for 'made ups' - The expert opinion from two independent agencies has further established this fact - Consequently, no infirmity found in the view taken by Lower Authority to change classification from CTH 63041990 to CTH 4075490 - The demand for Customs duty under classification along with interest is also upheld - As regards to the confiscation of imported goods, the Adjudicating Authority has held that the assessee has misdeclared the goods and hence, the goods are liable for confiscation under Section 111(m) but the dispute is one of classification - The assessee has declared the classification of goods as per their understanding - The export invoice indicates the goods as "Polyester bed sheet" - The actual nature of imported goods for purpose of correctly classifying the goods become evident only after examination of goods and obtaining expert opinion - Consequently, the charge of misdeclaration cannot be fastened upon assessee - There is nothing on record to substantiate the view that assessee has intentionally misdeclared the goods - Consequently, the order of confiscation of imported goods - The penalty imposed under Section 112 (a) is also set aside: CESTAT

Appeal partly allowed

**MO/76082/2018 &
FINAL ORDER NO. 77229/2018**

Per: Bench:

The present appeal is against the Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/55/2017 dated 29/11/2017. The Adjudicating Authority, vide the

impugned order, ordered confiscation of the goods imported vide Bill of Entry No.8272855 dated 21/01/2017. He ordered for classification of the imported goods under CTH 54075490 as "Polyester Woven Fabrics" as against the classification declared by the appellant under CTH 63041990 as "Polyester Bed Sheet". In addition to confirming the Customs Duty along with interest, penalty has also been imposed on the appellant. The appellant approached the Hon'ble High Court at Calcutta by filing *Writ Petition No. 236/2018*, seeking an order for interim relief in the form of Provisional Release of the imported goods, pending decision of the appeal filed before this Tribunal. The Hon'ble High Court passed the order dated 15/06/2018, in which it directed the Tribunal to consider and decide the interim Application for grant of Provisional Release of the goods. By filing the Miscellaneous Application, the appellant brought the decision of the High Court to the notice and prayed for Provisional Release of the imported goods.

2. Heard Shri R. K. Choudhary and B. N. Paul, Ld. Advocates on behalf of the appellant and Shri S. K. Naskar, Ld. DR for Revenue.

3. With concurrence of both sides, the appeal itself is taken up for decision.

4. The brief facts leading to this appeal are summarized below:-

(i) The appellant filed Bill of Entry No. 8272855 dated 21/01/2017 and declared the imported goods as follows:

SI No.	Bill of Entry No. & Date	Description of the goods	Qty. (in Pcs)	CIF value in USD	A/V in Rs.
1	8272855 dated 21/01/2017	Polyester Bed Sheet	21600	32400/-	22,61,228/-

When the goods were examined on first check basis it was noticed that the goods declared as "Bed Sheet" were in the form of textile materials which were folded and stitched on two sides with one side open. The stitching on the sides was rough and uneven. Since there were doubts regarding the classification of the imported goods as made up textile articles which are claimed for classification under CTH 63041990, samples of the imported goods were withdrawn and sent to the Textile Committee, Mumbai as well as Ahmadabad Textile Industry's Research Association. The report received from both the agencies was considered and the Customs authorities were of the opinion that the imported goods cannot be considered under the category of "made up" Textile articles. Accordingly, keeping in view the nature of the fabrics used, the goods were proposed for classification under CTH 54075490.

5. The appellant was issued a Show Cause Notice and on completion of process of Adjudication, the impugned order was passed.

6. The order has been challenged on the following main grounds as explained by the Ld. Advocates appearing for the appellants.

(i) Similar goods are being allowed all over India as made up articles under Chapter 63 of the Customs Tariff Act.

(ii) The imported goods, in common parlance, are more known as "Bed covers" and are nothing but made up articles.

(iii) It is also submitted that the appellant cannot be penalized, if the Customs Department takes the view that goods were held classifiable differently from the classification declared by the appellant.

7. The Ld. DR justified the impugned order. He referred to the report given by the Textile Committee, Mumbai as well as Ahmadabad Textile Industry's Research Association.

These expert bodies have reported that the goods cannot be classified as "made ups" but are appropriately classified as "Polyester Woven Fabrics". On the basis of the expert opinion, the Adjudicating Authority has finalized the classification. As such, it was prayed that the impugned order merits no interference.

8. Heard both sides and perused the record.

9. The goods imported have been declared as "Polyester Bed sheet" and the classification has been declared under Chapter 63 as 'made up' article. What constitutes a made up article has been specified in Note 7 of Section XI of Chapter 50. As per Note 7 of Section XI of Chapter 50, the expression "made up" means:

"(a) Cut otherwise than into squares or rectangles;

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares; blankets);

(c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other sub-clause of this Note, but excluding fabrics the cut edges of which have been prevented from unraveling by hot cutting or by other simple means;

(d) hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;

(e) cut to size and having undergone a process of drawn thread work;"

(f) assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of

identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

(g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

10. The essential distinguishing feature of made up article is that it should be produced in finished state and ready for use without sewing or other working. The fabric needs to be hemmed and stitched firmly in order to assume the shape of a bed cover/quilt cover/bed sheet. The imported goods, as presented, are in the form of fabrics folded and stitched roughly on two sides. The test report from both the expert agencies to whom samples were sent have concurrently reported that the goods cannot be classified as "made ups" but are more appropriately classified as "polyester woven fabric". Further, test report indicates that the fabric is 100% polyester. It is seen from above that the imported goods do not satisfy the test laid down in Section XI for 'made ups'. The expert opinion from two independent agencies has further established this fact. Consequently, we find no infirmity in the view taken by the Lower Authority to change the classification from CTH 63041990 to CTH 4075490. The demand for Customs duty under the above classification along with interest is also upheld.

11. Next we turn to the order for confiscation of the imported goods. The Adjudicating Authority has held that the appellant has mis-declared the goods and hence, the goods are liable for confiscation under Section 111(m) but we note that the dispute is one of classification. The appellant has declared the classification of goods as per their understanding. The export invoice indicates the goods as "Polyester bed sheet". The actual nature of the imported goods for the purpose of correctly classifying the

goods become evident only after examination of the goods and obtaining expert opinion. Consequently, we are of the view that the charge of misdeclaration cannot be fastened upon the appellant. There is nothing on record to substantiate the view that the appellant has intentionally misdeclared the goods. Consequently, we set aside the order of confiscation of the imported goods. The penalty imposed under Section 112 (a) is also set aside.

12. In the result, the impugned order is modified and appeal is partly allowed.

(Dictated and Pronounced in the Open Court on 24.01.2019)