

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH, COURT NO. I

E-HEARING

CUSTOMS APPEAL NO. 50957 OF 2021

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/Prev./NCH/205/2021-2022 dated 21/06/2021 passed by The Commissioner of Customs (Appeal), New Customs House, New Delhi – 110 037.]

M/s Benetton India Private Limited
Plot No. 25, Infocity, Sector – 34,
Gurgaon, Haryana – 122 001.

Appellant

**Additional Commissioner,
Customs (Preventive),**
New Customs House,
New Delhi.

Respondent

APPEARANCE

Shri Ayush A. Mehrotra, Shri Upkar Aggarwal, Advocates – for the appellant.
Shri Girijesh Kumar, Authorized Representative (DR) – for the Department

**CORAM : HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 56047/2024

DATE OF HEARING/DECISION : 11.07.2024

JUSTICE DILIP GUPTA

This appeal filed by M/s Benetton India Private Limited¹ seeks to assail the order dated 21.06.2021 passed by the Commissioner of Customs (Appeals²) by which the order dated 07.11.2019 passed by the Additional Commissioner has been

- 1. the appellant**
- 2. the Commissioner (Appeals)**

upheld and the appeal has been dismissed. The Additional Commissioner by the order dated 07.11.2019 classified the goods imported by the appellant under Customs Tariff Item³ 6102 30 10, CTI 6202 9390 and CTI 6210 5000 of the First Schedule to the Customs Tariff Act, 1975⁴ and confirmed the demand of differential duty of Rs. 12,71,462/- under section 28 (4) of the Customs Act, 1962⁵ with penalty. The Additional Commissioner also confiscated the goods under section 111 (m) of the Customs Act, but gave an option to the appellant to redeem the confiscated goods on payment of fine of Rs. 1.50 lakhs.

2. The appellant is engaged in the business of manufacture and distribution of apparel, footwear and accessories in India. It imported a consignment of goods containing women's 100% Polyester Knitted Jackets, 100% Polyester Woven Jackets and 100% PU Woven Jackets for which a Bill of Entry dated 14 September 2019 was filed. The goods were classified in the following manner :-

- (a) Knitted Jackets under HSN Code 6104 33 00; and
- (b) Woven Jackets and PU Jackets under HSN Code 6204 33 00.

3. However, the Officers of the Customs detained the consignment of the goods and on examination it was noted by

3. CTI

4. the Tariff Act

5. the Customs Act

them that the goods had a full opening front with a zipper fastener and, therefore, were required to be reclassified as :

- (a) Knitted Jackets under HSN (T) 6102 3010 instead of HSN Code 6104 3300 ;
- (b) Woven Jackets under HSN (T) 6202 9390 instead of HSN Code 6204 3300 ; and
- (c) PU Jackets under HSN Code (T) 6210 5000 instead of HSN Code 6204 3300.

4. The appellant paid the differential duty amount and requested for clearance of goods and the goods were cleared. Thereafter, the appellant also requested for waiver of show cause notice.

5. On 07.11.2019, the Additional Commissioner passed the order under section 28 (4) of the Customs Act. This order was assailed by the appellant before the Commissioner (Appeals). The appeal has been dismissed by an order dated 21.06.2021.

6. It is this order dated 21.06.2021 that has been assailed in this appeal.

7. Shri Ayush A. Mehrotra, learned counsel for the appellant assisted by Shri Upkar Aggarwal submitted that in the facts and circumstances of the case, the provisions of section 28 (4) of the Customs Act could not have been invoked. Elaborating this submission, learned counsel pointed out that the error in the classification of subject goods was a bonafide mistake and as

soon as this was pointed, the appellant accepted the classification suggested by the department and paid the differential duty amount. To support this contention that the provisions of section 28 (4) of the Customs Act could not have been invoked, learned counsel relied upon an order passed by the Commissioner in respect of a similar matter where a categorical finding has been recorded that the provisions of section 28 (4) of the Customs Act could not have been invoked.

8. Shri Girijesh Kumar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

10. The contention that has been advanced by the learned counsel for the appellant is that the term "jacket" has not been defined in Chapter 61 or Chapter 62 of the First Schedule to the Tariff Act. However, the Explanatory Notes for Chapter 61, which have also been made applicable to Chapter 62, do define 'jackets' and 'Blazers' and it is on the basis of the Explanatory Notes that the department proposed re-classification of the goods. Once the department suggested this classification, it was accepted by the appellant and the differential duty amount was paid.

11. It is, therefore, clearly a case of interpretation of the Tariff entries and willful suppression of facts cannot be attributed in such a situation for section 28 (4) of the Customs Act to be applicable. The appellant had declared the details of the imported goods which were also physically examined. It is also stated that earlier the Customs Authorities had also examined the previous classification of subject goods on several occasions and permitted clearance under the classification adopted by the appellant.

12. The appellant has placed on record the order dated 24.02.2023 passed by the Commissioner in respect of a show cause notice dated 01.10.2022 issued to the appellant for the past consignment of goods imported from September 2015 in which invoking the provisions of section 28 (4) of the Customs Act were also invoked.

13. The Commissioner, however, not only held that the provisions of section 28 (4) could not have been invoked, but also held that sections 111 and 114A could also has not been invoked. The relevant portion of the order dated 24.02.2023 passed by the Commissioner is reproduced below :-

"41. Consistent with the acceptance regarding mis-classification, Shri Abhik Saha undertook that they would pay the differential duty, along with fine and penalty which arises due to mis-classification. On this issue, during the personal hearing held before me on 23.01.2023, it was submitted that they have accepted the change in classification, discharged the differential duty liability and interest on delayed payment thereof.

42. In view of the above, it is evident that the impugned goods were mis-classified even during the past period of five years covered by this SCN. Based on the HSN Notes, the impugned goods merit re-classification under CTH 6101, instead of 6103 and 6104, as was done during the self-assessment. The noticee has accepted the proposed re-classification.

43. As highlighted earlier, the critical factor resulting in the proposed reclassification is the fact of the impugned jackets having full front opening with a closure of slide fastening (zipper). It is a fact that the presence of the zipper was not mentioned in the bills of entry filed by the noticee. However, it has been submitted by the noticee that the Company's error in classification of goods was inadvertent and technical in nature in light of the Explanatory Notes to the HSN classification issued by World Customs Organization, which do not form part of the First Schedule to the Tariff Act and was without any intention to evade the payment of Customs duty. **I find merit in the submission made by the noticee, that there is nothing available on file to suggest that the presence of zipper was required to be disclosed by the noticee, and failure to do so could be considered as willful suppression of fact, required to invoke extended period under section 28 (4). In coming to this conclusion, I also take note of the fact that atleast select consignments were physically examined by the department during the cargo clearance process and the precise nature of the jackets, including presence of zipper would have become evident during the said examination.** I observe that upon being informed of the correct classification as per the HSN, the noticee have accepted the same and discharged the differential liabilities promptly, thereby supporting the position that non-disclosure of the presence of zipper was not a willful suppression of fact. **Therefore, this is a simple case of mis-classification, wherein provisions of section 28 (4) cannot be invoked.**

.....

48. **Since this is a simple case of mis-classification, with no mis-declaration and willful suppression of fact with intent to evade the duty, the impugned goods are not liable for confiscation, also noting that these relate to past clearances** and are not available for confiscation under section 111 (m) as proposed in the SCN.

49. Since the impugned goods are not liable for confiscation under provisions of section 111, no penalty can be imposed on the noticee either under section 114A in case of section 28 (4) invocable or under section 112, this being a simple case of mis-classification".

(emphasis supplied)

14. The Commissioner has noted in the aforesaid order that there was nothing to suggest presence of willful suppression of facts so as to enable the department to take recourse to the provisions of section 28 (4) of the Customs Act as it was a case of mis-classification only. The Commissioner also noted that once informed, the correct classification was accepted and the differential duty was paid.

15. In view of the findings recorded by the Commissioner in the order dated 24.02.2023, which findings would be applicable in the present case, the impugned order dated 21.06.2021 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is accordingly allowed.

(Dictated and pronounced in open court.)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**