

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78536 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/47/2018 dated 01.06.2018 passed by the Commissioner of Customs (PORT) Custom House, 15/1, Strand Road, Kolkata-1)

Commissioner of Customs (Port), Kolkata : **Appellant**
15/1, Strand Road, Custom House, Kolkata-1)

VERSUS

M/s. Binod Kumar Agarwal, Siliguri : **Respondent**
Vishal Enterprises, Behind Bidhan Market
Merchant Office, Seth Sreelal Market,
Siliguri, West Bengal-734001.

APPEARANCE:

Shri Subrata Debnath, Authorized Representative for the Appellant

Shri R. K. Kapoor, Advocate for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75861 / 2024

DATE OF HEARING / DECISION: 24.04.2024

ORDER : [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order, wherein proceedings against the respondent have been dropped by the Id. adjudicating authority.

2. The facts of the case are that an intelligence was gathered by DRI that the respondent-importer is of Siliguri and was involved in evasion of Customs duty by way of mis-declaration in description or classification in import of ladies trousers classifying under CTH 61046300 (attracting BCD of 10% or Rs.98 per piece whichever is higher). The said goods were

being imported by mis-declaring their description as "Girls Leggings / Kids Leggings / Girls Pyjama / Half Stockings" and mis-classifying them under CTH 61152990 (Ladies Leggings / Kids Leggings) / under CTH 61083210 (Girls Pyjama) which attracts BCD of 10% ad valorem. Therefore, it was inferred that the respondent was evading payment of applicable Customs duty.

3. On the basis of the said intelligence, residence and business premises were searched and varieties of Half Stockings / Leggings / Pyjama were recovered and detained for further investigation. Samples of the goods were drawn from the import consignments, stored at two premises and forwarded to Joint Director, Textile Committee, Government of India, New Delhi for testing the same with respect to their constituent material, presence of prohibited material and appropriate HS classification.

3.1. The respondent in his statement stated that he has imported all the above mentioned items under Bill of Entry No. 5136884 dated 03.05.2016.

3.2. The Textile Committee forwarded its reports, which indicated that the goods with declared description as (i) Girls Legging (Skin Tight) / Half-Stocking under CTH 61152990 and (ii) Knitted Girls Pyjama under CTH 61083210 in the Bill of Entry were 'Ladies/Girls - Polyester Knitted Trousers' classifiable under HS code 6104.63.

3.3. In view of the report of the Textile Committee, the goods were seized under reasonable belief that same were liable for confiscation. Photographs were also taken and thereafter, a Show Cause Notice was issued to the respondent on 09.06.2016 for reclassification of the imported goods under CTH 61046300, for confiscation of the seized goods, to

demand differential duty and to impose penalty on the respondent.

4. When the matter was adjudicated, the Id. adjudicating authority dropped the proceedings against the respondent.

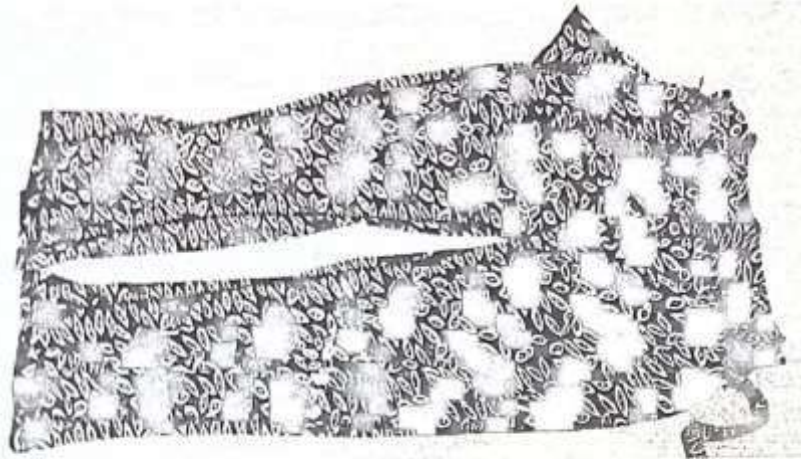
5. Aggrieved from the same, the Revenue is before us.

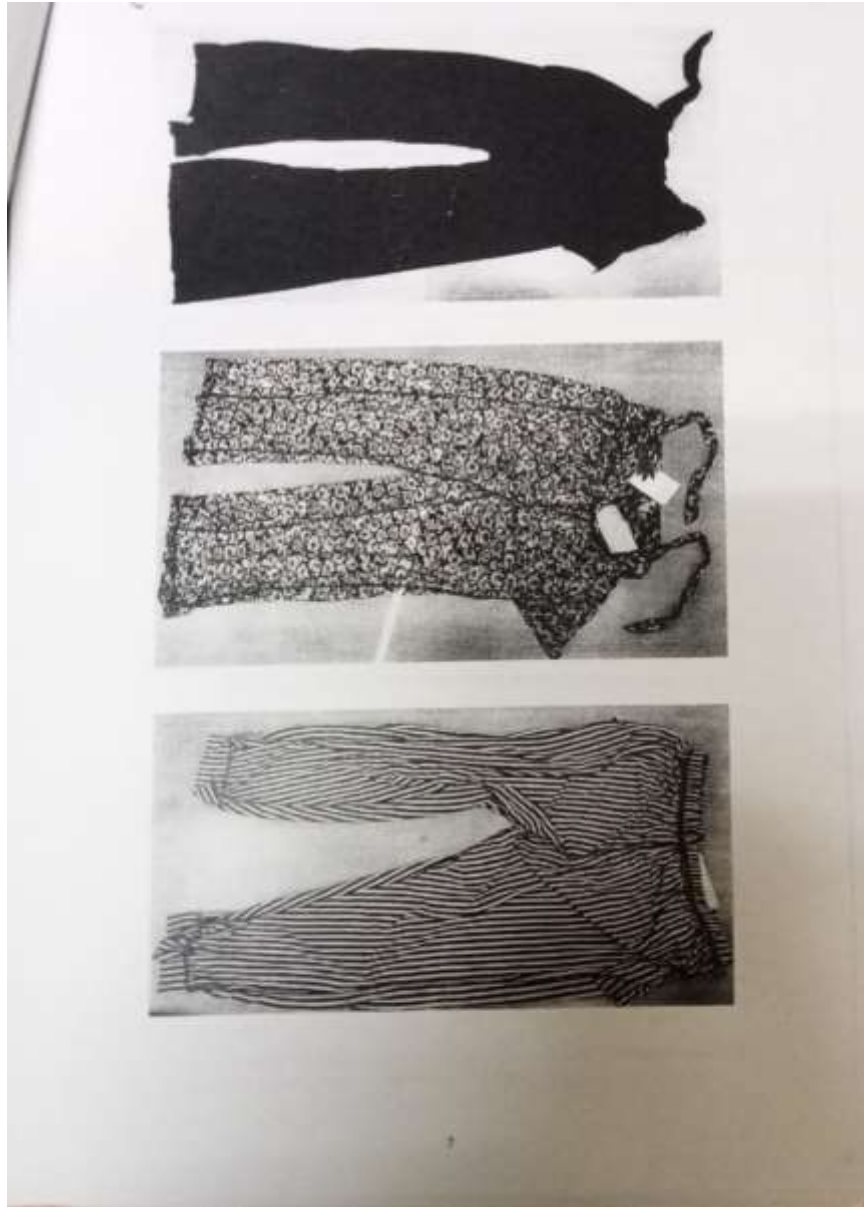
6. The Ld. Authorized Representative appearing on behalf of the revenue submits that as per the report of the Textile Committee, the captioned items are Girls Trousers and therefore the respondent has misclassified the same. Accordingly, he contends that the impugned order is to be set aside.

7. On the other hand, the Ld. Counsel appearing on behalf of the respondent submits that the goods in question are Girls / Ladies Pyjama and Leggings and they have paid appropriate duty thereon; therefore, the impugned order is to be upheld.

8. Heard the parties and considered their submissions.

9. We have seen the samples of the impugned goods. For better appreciation, the same are extracted below: -





10. We have also gone through the report of the Textile Committee and it is observed that the said report is not a conclusive report in saying that the goods in question are Girls Trousers. In fact, the Textile Committee report is also creating a doubt by saying that *"in our opinion the submitted garment may be classified as Polyester/Polyurethane Knitted Girls Trouser under H.S. Heading 6104"*. Hence, the said reports are not conclusive reports. With the naked eyes, the goods in question are in loose shape and informal wear. Nowhere from the pictures of the

goods in question can they be termed as Girls Trousers.

11. However, the Id. adjudicating authority in the impugned order has examined the same and observed as under: -

35. The seized garments are multicoloured and of multi-print which make them more akin to sleeping or night dress or casual wear and not formal wear. The photographs of the Trousers / Pyjamas given in the main body of the DRI SCN is most revealing. These are clearly not seen to be Trousers as known having definitive shapes but are multicoloured, loose fitting meant for casual wear or Pyjama. Even the Textile Committee was also not sure that the seized items would definitely be considered as a Trouser but says that it may be classified as Trouser. In other words, test reports were not conclusive for the items to be treated as Trousers definitely.

36. Further in the Show Cause Notice it has been mentioned that the trouser is a formal wear and stitched to the desired shape. It clearly means that the Trouser/Pant is stitched to the desired shape of the customer, being a formal/party wear. The seized garments however are informal, loose and stretchable. The contention that Pyjamas have to be in 2 pieces as said in the book of Sh. Ajay Kumar Gupta cited in the SCN does not have any basis.

37. The CBEC Instruction No.4-Customs dated 21.03.2017 is regarding classification of leggings. It mentions that the definition of trousers is not conclusive. It also says that trade parlance is a major factor deciding the classification. In other words, the CBEC Instruction is not applicable to this case. The WCO opinion is in the nature of a general opinion as the term indicates. This opinion cannot be relied upon to decide classification in this case in view of clear nature of the garment ascertained, ie, being Pyjama like clothing as said above. In trade parlance and as evident from the photographs of the garments in the SCN, these cannot be said to be Trousers.

38. The essential ingredients of a Trouser are not fulfilled by the seized items. It is true that the general definition of Trouser because of its broad encompass as said in the SCN can be used to cover the seized items but that would be a mere exercise in technicality not representing the true facts. Pyjamas can also have two seams per leg but that will not make them Trousers. Admittedly the importer had imported similar garments in the past. Therefore these, like the live consignment were not Trousers but Pyjamas and correctly classified under Customs Tariff Item No. 61083210. It is pertinent that this Tariff Item Number applies specifically to Night Dress and Pyjamas made of synthetic fibres.

12. We do agree with the observation of the Id. adjudicating authority in the impugned order. As we have already given our opinion that the goods in question cannot be termed as Girls Trousers, therefore, we do not find any infirmity in the impugned order. The same is upheld and the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)