Aadrikaa Law Offices (ALO)- IDT Tax I Arbitration I Litigation

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CESTAT Chennai Sets Aside Misclassification Allegations

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In a significant victory for M/s. Gravity Ventures Pvt. Ltd., the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, has set aside allegations of misclassification and misdeclaration of imported goods. The case revolved around the classification of non-woven interlining materials imported by the company, which were detained by the Customs Department, leading to a prolonged legal battle.

Background of the Case

Gravity Ventures had filed Bill of Entry No. 7384974 dated 02.04.2020 for the import of various non-woven interlining materials. The company classified the goods under specific Customs Tariff Headings (CTH) based on the Country of Origin Certificate and invoices provided by the foreign supplier. The Customs Department, however, disputed the classification and proposed alternative CTHs, leading to demands for differential duty, penalties, and fines.

The department alleged that the company had misdeclared the goods to evade customs duty. This resulted in the detention of the goods and subsequent provisional release only after the company filed writ petitions before the Hon'ble High Court of Madras. The High Court directed the Customs Department to provisionally release the goods upon execution of a bond and bank guarantee.

Key Issues in the Appeal

The Customs Department relied on test reports to reclassify the goods and demanded duty for past imports based on the revised classification. Gravity Ventures argued that the classification was made in good faith, relying on the import documents provided by the supplier. The company contended that there was no evidence of intentional misdeclaration or suppression of facts.

The appellant also highlighted that the First Appellate Authority had previously ruled in its favor in a similar case involving identical goods. Despite this, the Commissioner of Customs (Appeals – II) upheld the demands and penalties, prompting Gravity Ventures to approach the Tribunal.

Tribunal's Observations and Decision

1. **No Evidence of Mens Rea:** The Tribunal noted that there was no evidence of intentional misdeclaration or suppression of facts by Gravity Ventures. It emphasized that relying on import documents for classification does not amount to misdeclaration.
2. **Binding Precedent:** The Tribunal referred to a previous order by the Commissioner (Appeals) in favor of Gravity Ventures, which had not been challenged or overturned. It held that the earlier decision was binding on the Customs Department.
3. **Eligibility for Exemption:** Both the declared and revised classifications of the goods were eligible for exemption under Notification No. 46/2011-Customs, which provides a nil rate of duty for specific goods imported from ASEAN countries. This rendered the allegations of duty evasion baseless.
4. **Improper Reliance on Test Reports:** The Tribunal criticized the Customs Department for relying on test reports from a different consignment to demand duty on past imports. It held that such assumptions and presumptions are not permissible under the law.

Final Verdict

The Tribunal set aside the impugned order and allowed the appeal filed by Gravity Ventures. It ruled that the company was entitled to consequential relief as per law. The decision reaffirmed the principle that bona fide reliance on import documents cannot be penalized as misdeclaration.

Implications of the Ruling

This ruling is a significant win for importers, as it underscores the importance of fair and transparent adjudication in customs disputes. It also highlights the need for the Customs Department to provide concrete evidence before alleging misdeclaration or suppression of facts.

For Gravity Ventures, the decision not only resolves the immediate dispute but also sets a precedent for future cases involving similar issues. The company's reliance on proper documentation and its persistence in pursuing legal remedies have paid off, ensuring justice in the face of regulatory challenges.

Conclusion

The Tribunal's decision in favor of Gravity Ventures is a reminder that importers must be vigilant in maintaining accurate documentation and adhering to customs regulations. At the same time, it calls for greater accountability and fairness in the actions of customs authorities. This case serves as a landmark example of how legal recourse can protect businesses from unwarranted penalties and fines.

Source: CESTAT Chennai

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40622 of 2024

(Arising out of Order in Appeal Seaport C. Cus. II No. 586/2024 dated 27.06.2024 passed by the Commissioner of Customs (Appeals – II) Chennai)

M/s. Gravity Ventures Pvt. Ltd. **Appellant**
96A, A.K. Nagar, Sai Baba Colony
Coimbatore – 641 011.

Vs.

Commissioner of customs **Respondent**
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Ms. Punnagai M, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40999/2025

Date of Hearing : 10.03.2025
Date of Decision: 09.09.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal Seaport C. Cus. II No. 586/2024 dated 276.2024 passed by the Commissioner of Customs (Appeals – II) Chennai (impugned order).

2. Brief facts of the case are that the appellant filed bill of entry no 7384974 dated 02.04.2020 for import of goods as described in the Table-I, below. The Proper Officer did not agree to the classification. Table-I shows the imported goods and their classification preferred by the rival parties.

S. No.	Bill of Entry No. / Date	Description of the Item	Declared CTH	CTH Ap per Revenue
1.	7384974 / 02.04.2020	NON-WOVEN INTERLINING CHEMICAL BOND 1025H - 1869 ROL - 40X190M	56039100	56031100
2.		NON WOVEN INTERLINING EMBROIDERY PAPER 50G WHITE - 145 ROL - 4	56039200	48239090
3.		NON WOVEN INTERLINING EMBROIDERY PAPER 20G - 204 ROL - 40X225M	56039100	48239090
4.		NON WOVEN INTERLINING DOUBLE DOT 25G - 12 ROL - 20GSM + 5GSM PES	56039100	56031200

The said classification was made by the appellant based on the country of origin certificate and the invoice issued by the foreign supplier. The appellant-importer claimed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 which provides exemption from payment of custom duties, for specific goods imported from ASEAN countries. The Customs Department detained the subject goods. As there was a delay in clearance of the goods, the appellant filed writ petitions before the Hon'ble High Court of Madras and the Hon'ble High Court directed the authority to consider the request of the appellant for provisional release of the goods. The imported goods were released provisionally after execution of bond and bank guarantee. Thereafter, based on the test reports dated 27.07.2020 with respect to Bill of Entry No. 6929147 dated 18.02.2020 from the same supplier and after following the due process the matter was adjudicated by the Ld. Additional Commissioner demanding duty amounting to Rs. 3,92,245/-, under Section 28(4) of the Customs Act, 1962. Further, an amount of Rs. 5,04,189/-, was demanded as duty short-paid, with respect to thirteen previous Bills of Entry's in which the Appellant had imported goods described as 'Embroidery Paper' along with a redemption fine of

Rs.1,50,000/- and imposed a penalty of Rs. 80,000/- under Section 112(a) and Rs. 1,00,000/-under Section 114AA of the Act has also been imposed. Aggrieved by the said order, the appellant preferred an appeal before Commissioner (Appeals) who upheld the order passed by the learned Adjudicating Authority and rejected the appeal filed by the appellant. Hence this appeal.

3. Ld. Counsel Ms. Punnagai M appeared for the appellant and Shri Harendra Singh Pal, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Counsel for the appellant Ms. Punnagai M submitted that Commissioner (Appeals) has given contradictory orders on the same issue. The First Appellate Authority in Order-in-Appeal Seaport. C. Cus. II No. 617/2024 dated 05.07.2024, while deciding the appeal against the Order-in-Original No. 89541/2022 dated 31.03.2022, involving identical goods imported by the Appellant vide the other bill of entry No. 6929147 dated 18.02.202, had allowed the appeal preferred by the Appellant, primarily on the ground that the subject goods even if re-classified as per the proposition of the Customs Department would fall under the ambit of Notification No. 46/2011-Customs dated 01.06.2011, attracting payment of Nil customs duty. Further the first Appellate Authority in paragraph 8 of the Impugned Order-in-Appeal, has admitted the fact that the Appellant had classified the subject goods as per the country of origin certificate and the invoice issued by the supplier In this regard she submitted that neither the impugned Order-in-Appeal, nor the concerned Order-in-Original had adduced an iota of evidence to support the finding that the Appellant had mis-declared the subject goods. The Respondent had simply passed the

impugned order by quoting the Order-in-Original. She submitted that it is a settled position of law that if the description mentioned in the bill of entry, is in terms with the details as mentioned in the import documents, then the concerned importer shall not be liable for mis-declaration or mis-classification. The Delhi Bench of the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of **M/s. Shree Ganesh International Vs. CCE, Jaipur,** reported in 2004 (174) ELT 171 (Tri-Del.), had held that the declaration of goods in the bill of entry on the basis of documents received from the foreign supplier shall not amount to mis-declaration and the goods are thereby would not be liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, when there is no mens rea or intentional act or omission to evade payment of duty, the Appellant is not liable for penalty under Section 112(a) or 114AA of the Customs Act. The Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. State of Orissa,** reported in 1978 (2) ELT (J159) (SC), had held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona fide belief of the importer. She submitted that the goods are other than man-made textiles as stated in the import documents, viz. Country of Origin Certificate and Bill of Lading. On merits she stated that the subject goods were rightly classified under the CTH 56039200 and CTH 56039100 respectively, as the said CTH deals with textile fabric such as "non-wovens, whether or not impregnated, coated, covered or laminated". Whereas, CTH 4823, as proposed by the Customs Department, deals with "other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper

pulp, paper, paperboard, cellulose wadding and webs of cellulose fibers". The Ld. Counsel submitted that the subject goods are used solely as backing paper for fabric or garments and are therefore, rightly classified under CTH 5603. She stated that even the test reports of the subject goods, refers to the goods as textile fabrics and therefore, the declaration and classification of the goods was done bonafidely in consonance with the import documents viz. the Country-of-Origin Certificate, Bill of Lading, Packing List and the Invoice issued by the supplier. Further the Impugned Order had upheld the demand of differential duty, due to be paid with respect to the import of goods described as Embroidery Paper, by the Appellant vide thirteen (13) bills of entries in the past five (5) years, preceding the date of show cause notice. The Ld. Counsel submitted that it is a settled principle of law that the test report in respect of a consignment cannot be blindly relied upon in respect of consignments imported in the past, unless it is established by documentary and oral evidences that identical goods have been imported in the past. The Chennai bench of the Hon'ble Tribunal in the case of **Penshibao Wang P. Ltd. Vs. Commissioner of Customs (Sea-Import), Chennai** reported in 2016 (338) ELT 597 (Tri.-Chennai), had held to this effect. As an alternate plea, even if the classification as proposed by the Customs Department is imputed upon the past import of goods described as Embroidery Paper, by the Appellant, the said goods will attract Nil customs duty as it falls under Sl. No. 584 of the Notification No. 046/2011-Customs and resultantly no differential duty arises. She hence prayed that the impugned order may be set aside.

3.2 Shri Harendra Singh Pal, Ld. AR reiterated the findings in the impugned order.

4. We have gone through the appeal papers and have heard the rival parties. We find that a change of classification of the goods based on a test report is not sufficient to support a charge of willful suppression and misdeclaration. Something more is required. The Hon'ble Supreme Court in **Northern Plastic Ltd. Vs Collector of Customs & Central Excise** [1998 (101) E.L.T. 549 (S.C.)] held that claiming an exemption or a certain classification on a bill of entry is not mis-declaration or suppression of facts. If a previous identical consignment was cleared with the same description and exemption, it cannot be said that the appellant tried to evade duty. Further demanding duty on past clearances merely on the basis of the present test report is to base a decision on assumptions and presumptions which is not permissible in law. Hence, we are of the opinion that a demand for duty for the extended period or imposition of fine and penalty, for misdeclaration or suppression of fact cannot be sustained.

5. On merits we find that the Ld. Commissioner Appeals had subsequently examined an identical matter vide O.I.A. Seaport C. Cus II No. 617/2024 dated 05.07.2024 and held in favour of the same appellant. Relevant portion of the Order is extracted below:

> *"5. I have carefully gone through the facts and circumstances of the case, grounds of appeal and the argument put forth before me at the time of personal hearing. First of all it is seen that the order dated 31.03.2022 has been said to have been received on 22.04.2022 in the CA 1 Form. Appeal has been filed on 02.06.2022 which is well within 60 days from the date of receipt of the order, as envisaged in Section 128(1) of the Customs Act, 1962. Hence the appeal is taken up for decision of merits.*
>
> *5. The issue before me is that the Appellant herein M/s. Gravity Ventures Pvt. Ltd., had filed Bill of entry bearing no. 6929147 dated 18.02.2020 for import of Non-Woven Interlining double dot 23 GSM white, Non-Woven Interlining Chemical bond (1025H Crispy*

Tearway). Non-Woven Interlining Embroidery Paper 20G and Non Woven Interlining Embroidery Paper 30G Black. The appellant while filing the Bill of Entry had classified the goods imported under CTH 5603 9100 and 5603 9200 respectively. The said classification was made based on the Country of Origin Certificate and the invoice made by the supplier. Therefore, the appellant based on the classification specified in the Country of Origin Certificate and relying upon the invoice issued by the supplier claimed nil rate of BCD as per Notification No. 046/2011 dated 01.06.2011 (serial no. 742). It is submitted that on the grounds of misclassification of CTH the goods of the appellant was not given clearance by The Assistant Commissioner of Customs (Gr-3); the appellant to get the goods cleared filed Writ Petition No. 7677 & 7680 of 2020 requesting the Hon'ble High Court of Madras to order for the assessment and clearance of the goods. On 27.05.2020 The Hon'ble High Court of Madras ordered The Assistant Commissioner of Customs (Gr 3) to consider the request made by the appellant for provisional assessment. Following this the imported goods were provisionally released after provisional assessment of Bill of Entry No. 6929147 dated 18.02.2020 by taking Band of Rs. 15,04,072/-and Bank Guarantee of Rs. 1,80,489/-

6. Such being the case, the appellant was in receipt, of Show Cause Notice in F. No. S59/30/2020-Gr-3 issued on 16.05.2020. The show cause notice proposed to re-classify the declared CTH based on the textile committee test reports and also revised-the-charges of the duty which are as tabulated below-

Table – I Revised Charges of Duty

Bill of Entry No.	S. No.	Declared CTH	Revised CTH	Assessable Value	Declared Duty	Revised Duty
6929147 18.2.2020	1.	56039100	56031200	11,71,627.00	BCD - Nil SWS - Nil IGST - 12% 1,40,595/-	BCD - 20% SWS - 10% IGST - 12% 4,29,284/-
	2.	56039200	56031200	1,87,981.00	BCD - Nil SWS - Nil IGST - 12% 22,558/-	BCD - 20% SWS - 10% IGST - 12% 68,876/-
	3.	56039100	NA	90,754.59	BCD - Nil SWS - Nil IGST - 12% 10,891/-	BCD - Nil SWS - Nil IGST - 12% 10,891/-
	4.	56039100	NA	53,709.22	BCD - Nil SWS - Nil IGST - 12% 6,445/-/-	BCD - Nil SWS - Nil IGST - 12% 6,445/-
		Total		15,04,472/-	1,80,489/-	5,15,496/-

6.1 Subsequent to the issuance of the Show Cause Notice the appellant's Counsel submitted their reply vide letter dated 14.02.2022 and has also opted for being heard in person. However, the Additional Commissioner of Customs (Gr.III) without rightly appreciating the reply made by the appellant's counsel passed the impugned order on 31.03.2022 in F.No. S59/30/2020-Gr.3 conforming the proposal contained in the show cause notice and imposed penalty of Rs.1,00,000/- under Section 112(a) and 114AA of the Customs Act, 1962.

7. Perusal of the submissions as the Deputy/Assistant Commissioner of Customs (Gr.3) was not giving permission the clear the goods on the declared CTH and was keeping the Bill of Entry under hold, the appellant had approached the Court vide Writ Petition No. 7677 & 7680 of 2020 requesting the Hon'ble High Court of Madras to order for the assessment and clearance of the goods and on 27.05.2020 The Hon'ble High Court of Madras ordered the Assistant Commissioner of Customs (Gr 3) to consider the request made by the appellant for provisional assessment and following the order of the Court the imported goods were provisionally released after provisional assessment of Bill of Entry No. 6929147 dated 18.02.2020 by taking Bond of Rs. 15,04,072/-and Bank Guarantee of Rs 180,489) So pods were given provisional release due to provisional assessment, when such being the case, and in accordance with the Regulation 5(b) of the Customs (Finalization of Provisional Assessment) Regulation 2018, the Proper Officer shall finalize the provisional assessment within two months from the receipt of the test report, going by the above table in the GOA, para B. the test report has been received on 02.03.2020. so the provisional assessment was aught to be finalized on or before 04.05.2020, whereas here in this case, provisional release of the said Bill of Entry was accorded only based on the High Court order dated 27.05.2020, which is in a way non-compliance of time-limit prescribed in the regulations by the department.

8. Similarly it is the contention of the appellant that, as per paragraph 20 to 25 of the impugned order, department implicates that the appellant has wantonly classified the goods pertaining to the impugned Bill of Entry No.6929147 dated 18.02.2020 under CTH 56039100, 56039200,56039100, 56039200 in order to evade applicable customs duty and to avail ASEAN FTA Benefit vide Notification No. 46/2011 dated 01.06.2011, but it is the appellant that re-classified goods 56031200,56031200,56039100,56039200 based on the test report, the said goods would contention of the the under CTH still be entitled to the Notification Benefit under S.No.740 of Notification No.46/2011 dated 01.06.2011. The portion of the table to Notification No.46/2011- Cus dated 01.06.2011 is reproduced verbatim for S.No. 740 to 745 for CTH 5603 as below:

S. No.	Chapter, heading, Sub-heading and Tariff Item	Description	Rate (in percentage unless otherwise specified)	
(1)	(2)	(3)	(4)	(5)
740	560311 to 560312	All goods	0.0	0.0
741	560313 to 560314	All goods	0.0	0.0
742	560391	All goods	0.0	0.0
743	560392	All goods	0.0	0.0
744	560393	All goods	0.0	0.0
745	560394 to 560410	All goods	0.0	0.0

Going by the above table, it can be seen that the appellant has classified the goods pertaining to the impugned Bill of Entry No.6929147 dated 18.02.2020 under CTH 56039100, 56039200, 56039100, 56039200 and accordingly they had availed the Sl.No 742 and 743, which is also showing 0.0% and department had issued SCN and proposed to re classified goods under CTH 56031200, 56031200, 56039100, 56039200 based on the test report. From the

table above All goods under 560311 to 560312 are also eligible for Notification benefit under S.No. 740 of the said Notification.

Such being the scenario, the allegation of mis-declaration or mis-classification falls flat. So in the present case evidently there is no mens rea, as both the classification, i.e, the one declared by the appellant and the one proposed to classify by the department, are eligible for Nil rate of BCD as per No. 742, 743 & 740 of the Notification No.46/2011 dated 01.06.2011 respectively. And moreover, the Bill of Entry was given release provisionally and any dispute could have been solved at the time of finalization of the Bill of Entry.

9. Hence, in view of the same, I am of the inclined opinion that the issuance of Show Cause Notice under Section 124 of the Customs Act, 1962 and confirmation of the same vide issuance of impugned order is unwarranted when the subject bill of entry was provisionally assessed and the test reports based on which the goods have been re-classified, were readily available with the department at the time of provisional release, and the same could have been finalized based on that instead of issuance of SCN and impugned order.

10. Hence, in view of the above, I set aside the impugned order."

6. Revenue nor the appellant have brought to our notice that the above order has been set aside or modified or has been appealed before us. Hence the same is binding on revenue.

7. Considering the discussions above, we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 09.09.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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