

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
1st Floor, WTC Building, FKCCI Complex, K. G. Road,  
BANGLORE-560009

**COURT-2**

**Customs Appeal No.245 of 2012**

*[Arising out of the Order-in-Appeal No.235/2011 dated  
26.12.2011 passed by the Commissioner of Customs  
(Appeals), Bangalore.]*

**M/s. Lovable Lingerie Ltd.**

No.46/2, Guru Prasanna IDL Area  
Kanakapura Road,  
Daddakalandra Post,  
Bangalore – 560 062.

**....Appellant**

**Vs.**

**The Commissioner of Customs (Appeals)**

C.R. Building, Queens Road  
Bangalore – 560 001.

**....Respondent**

**Appearance:**

Mr. B. V. Kumar, Advocate

**....For Appellant**

Mr. Neeraj Kumar, Superintendent (AR)

**.... For Respondent**

**CORAM:**

**HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)**

**HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Date of Hearing: 19/07/2023**

**Date of Decision: 10/01/2024**

**FINAL ORDER No. 20041 of 2024**

**Per R. BHAGYA DEVI:**

The present appeal is regarding the classification of the goods 'Bra Cups' imported by the appellant during the period from 25.02.2010 to 14.07.2010. The appellant claimed classification under CTH 3926 of the Customs Tariff Act, 1975 as against the

classification by the Revenue in the impugned order under CTH 6212.

2. The learned counsel placed his arguments as follows:

(i) The goods were examined and finally assessed and therefore, the question of reopening the classification does not arise.

(ii) Regarding Classification, it is submitted that the burden of proof lies on the Revenue to prove that the goods are rightly classifiable under 6212 and not under the 3926. It is further claimed that the composition of the imported item as per the Regional Laboratory, Textiles Committee, Bangalore reads as :

“The bra cup consists of Layer I (knitted polyester) 100%, Layer II (knitted polyester) 100%, and Layer III-(foam) polyurethane 100%. The weight of the sample is 10.27 grams out of which the weight of polyester is 4.94 grams and the weight of polyurethane +adhesive is 5.33 grams.”

(iii) The learned counsel also submits that the Central Silk Technological Research Institute, Central Silk Board, Bangalore, test report showed that it composed of three layers of materials i.e., 100% polyester fabric both sides and middle layer composed of sponge. In view of the above test reports, the goods are rightly classifiable under ‘Textiles and Textile articles’ which covers woven, knitted or crocheted fabrics, felt or non-woven, impregnated, coated, covered or laminated with plastics or articles thereof of chapter 39.

(iv) It is further claimed that at the time of importation, the goods were in raw form and cannot be considered as ‘parts of

brassieres' since they had to be further processed to become part of brassier. Therefore the goods are rightly classifiable under Chapter 3926 and not under 6212.

(v) The final argument is that the goods are from Sri Lanka and hence they are liable to 'nil' rate of duty in terms of Notification No. 26/2000 Cus. dated 1.3.2000.

3. The learned AR on behalf of the Revenue reiterating the findings of the Commissioner (Appeals) in the impugned order submits that there is no bar in issuing show-cause notice for reclassification of the goods even though earlier the goods were assessed and already cleared. Relying on various decisions, emphasises that Revenue was right in reclassifying the goods as 'parts of Brassier' under CTH 6212.

4. The issue is 3-fold whether after goods being cleared, the Revenue can issue notice to the appellant for reclassifying the goods and demand differential duty. Secondly, whether the goods are classifiable under CTH 3926 or 6212. Thirdly, whether they are eligible for the benefit of the Notification No. 26/2000 Cus. dated 1.3.2000.

5. In the case of **Union of India vs. Jain Shudh Vanaspati Ltd. in Civil Appeal No. 2360 of 1980, 1996 (86) E.L.T. 460 (S.C.)** dated 8-8-1996 the Hon'ble supreme court held that "

**"5.** It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause

notice thereunder commencing from the “relevant date”; “relevant date” is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130.”

5.1 Similarly in the case of **Signode India Ltd. Versus Collector of Central Excise 2003 (158) E.L.T. 403 (S.C.)**

dated 19-11-2003 the Supreme Court observed as follows:

**“51.** The procedure laid down under Rule 173B of the Rules has specifically been included in the Act. Furthermore, by reason of the amended Act a provision has been made for reopening the approved classification lists. It is a procedural provision in terms whereof statutory authorities are required to determine as to whether the earlier classification was correctly done or not. The said authority upon giving an opportunity of hearing the parties may come to the conclusion that decision on the approval granted need not be reopened and even if the same is reopened, the reasons therefor are to be stated. As the provision of Section 11A is a recovery provision as regards non-levy or non-paid or short-levy or short-paid or erroneously refunded duties by reason of the said amendment the Parliament had merely provided that an approval on the basis of a classification list *inter alia* in case of a short-levy can be recovered if a finding is arrived at that the goods had undergone a short-levy.”

Therefore, it is a settled issue that the Revenue can reopen their own assessments within the time limits prescribed in the Act for the reasons mentioned therein as long as the aggrieved parties are put to notice and a reasonable opportunity is provided to them.

6. The second issue is regarding classification of the imported goods. Let’s examine the relevant entries which reads as:

**CHAPTER 39 Plastics and articles thereof**

3926 - Other Articles of Plastics and Articles of Other Materials of Headings 3901-3914

--- Collar stays, patties, butterfly, shoulder-pads and other stays :

3926 20 41 ---- Of polyurethane foam

3926 20 49 ---- Other

3926 20 91 ---- Of polyurethane foam

The HSN Notes reads as

This heading covers articles, Note 1 to the Chapter) or elsewhere specified or included, of plastics (as defined in of other materials of headings 39.01 to 39.14

They include:

- (1) Articles of apparel and clothing accessories (other than toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong.
- (2) Fittings for furniture, coachwork or the like
- (3) Statuettes and other ornamental articles.
- (4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.
- (5) Paperweights, paper-knives, blotting-pads, pen-rests, bookmarks, etc.
- (6) Screws, bolts, washers and similar fittings of general use.
- (7) Transmission, conveyor or elevator belts, endless, or cut to length and joined end to end, or fitted with fasteners. belts or belting of any kind, presented with the machines or Transmission, conveyor or elevator belts apparatus for which they are designed, whether or not actually mounted, are classified with that machine or or apparatus (eg. conveyor belts Section XVI). In addition, this heading does not cover transmission or or belting, of textile material,

impregnated, coated, covered or laminated with plastics (Section XI, cg, heading 59.10).

(8) Ion-exchange columns filled with polymers of heading 39.14.

(9) Plastic containers filled with carboxymethylcellulose (used as ice-bags).

(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02)

(11) Pacifiers (or "baby's dummies"); ice-bags; douche bags, enema bags, and fittings therefore, invalid and similar nursing cushions; pessaries, sheath contraceptives (prophylactics), bulbs for syringes.

(12) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.) beads, watch "glasses", figures and letters, luggage label-holders.

(13) Artificial fingernails.

The heading excludes household articles such as dustbins and mobile garbage bins (including those for outside use).

As seen from the above description of the articles the question of classifying the bra cups under Chapter 39 is ruled-out. Moreover, the appellant themselves are not clear as to where to classify them and accordingly claim classification under 3 different Headings 39262041 or 39262049 or 39262099.

## **CHAPTER 62 Articles of apparel and clothing accessories, not knitted or crocheted**

1. This Chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted (other than those of heading 6212).

2. This Chapter does not cover :

- (a) worn clothing or other worn articles of heading 6309; or
- (b) orthopaedic appliances, surgical belts, trusses or the like (heading 9021).

15. Subject to Note 1 of Section XI, textiles, garments and other textile articles, incorporating chemical, mechanical or electronic components for additional functionality, whether incorporated as built-in components or within the fibre or fabric, are classified in their respective headings in Section XI provided that they retain the essential character of the goods of this section.

**(h) woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated,**

62.12- Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted.

6212.10 Bras

6212.20 Girdles and panty-girdles

6212.30 Corsets

6212.90 Other

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

The heading includes, inter alia:

- (1) Brassières of all kinds.
- (2) Girdles and panty-girdles.
- (3) Corselettes (combinations of girdles or panty-girdles and brassières).
- (4) Corsets and corset-belts. These are usually reinforced with flexible metallic or plastic stays, and are generally fastened by lacing or by hooks.
- (5) Suspender-belts, hygienic belts, suspensory bandages, suspender jock-straps, braces, suspenders, garters, shirt-sleeve supporting arm-bands and armllets.
- (6) Body belts for men (including those combined with underpants).
- (7) Maternity, post-pregnancy or similar supporting or corrective belts, not being orthopedic appliances of heading 90.21 (see Explanatory Note to that heading).

All the above articles may be furnished with trimmings of various kinds (ribbons, lace, etc.), and may incorporate fittings and accessories of non-textile materials (e.g., metal, rubber, plastics or leather).

The heading also includes knitted or crocheted articles and parts thereof obtained by manufacture directly to shape by increasing or decreasing the number or size of the stitches and designed to be used for the manufacture of articles of this heading, even when presented in the form of a number of items in the length. The heading does not include corsets and belts made wholly of rubber (heading 40.15).

As seen above from the HSN notes, it is absolutely clear that the bra cups are to be classified under 6212. The only contention of the appellant is that since the chapter notes excludes woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, as per clause (h) it should be classified under Chapter 39. This exclusion cannot be read in isolation without all other factors that describe the article. As seen from the General Interpretative Rules (reproduced below), the goods are to be classified as per the terms of the section notes and the Chapter notes. In this case, the Chapter 6212 clearly includes Brassier and when there is a specific description, the goods cannot be classified based on the content of the material used to manufacture the same. The Interpretative Rules reproduced below as seen under clause 2(a) the essential character of the product decides the classification and here the bra cups undoubtedly are used as part of a Brassier and the impugned products are more akin to the description given under 6212 and therefore rightly classifiable under 6212 90 as per clause 4 of the Interpretative Rules.

The General Rules for the Interpretation of Import  
Tariff

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal



purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

7. Regarding the benefit of the Notification, since it was not claimed at the time of import and the conditions therein were not satisfied the question of extending the benefit does not arise.

8. On the question of duty proposed to be charged, it is submitted that duty is to be charged on the value of the pair and not on single piece. The packing list placed before us clearly shows the items were imported in pairs and it is also a fact that a pair of bra cups are used for one brassier. The invoice also shows that the unit price shown is per pair and accordingly the total value is calculated. Therefore, the unit price for the pair should be taken as per unit price (set of 2 pieces) rather than artificially splitting the price for per piece. Section 19 of the Customs Act takes cognisance of articles imported in sets and therefore we find the said goods which are in pairs should be considered as a unit and the rate of duty to be calculated accordingly.

9. In view of the above, we uphold the classification of the imported goods under CTH 6212 and consequently, impugned order is upheld as far as classification is concerned and appeal is remanded to the adjudicating authority to recalculate the duty taking into consideration the unit price for pairs as a single unit price.

10. The appeal is disposed of by way of remand.

*(Order pronounced in open court on 10.01.2024.)*

**(P. A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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