

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI**

Customs Appeal No. C/146 of 2010

**Arising out of Order-in-Original No. S/10-31/91GR.7, Dated: 20-6-1991
Passed by the Collector of Customs, Mumbai**

Date of Hearing: 22.01.2019

Date of Decision: 03.06.2019

**VIJAY SILK HOUSE PVT LTD
4/25, KAMAL MANSION, 1ST FLR
ARTHUR BUNDER ROAD, COLABA
MUMBAI - 400005**

Vs

**COMMISSIONER OF CUSTOMS (IMPORT)
MUMBAI, NEW CUSTOMS HOUSE
BALLARD ESTATE, MUMBAI - 400001**

Appellant Rep by: Shri Akhileshwar Sharma, Adv.

**Respondent Rep by: Shri Atul Sharma, AC & Shri Dharmendra Singh,
Supdt. AR**

CORAM: C J Mathew, Member (T)

Suwendu Kumar Pati, Member (J)

Cus - Assessee had imported Mulberry Raw Silk after completion of export obligation and claimed duty exemption for quantity mentioned in advance licence of DEEC - The Collector of Customs denied the duty exemption of duty on full quantity of Raw Materials imported upon segregating Mulberry Dupion Silk fabric from Mulberry Raw Silk fabric and partly allowed exemption of duty that corresponds to Mulberry Raw Silk fabric and not Mulberry Dupion Silk - Assessee challenged the said order on the ground that during relevant time as per public notice dated 6th March 1989 both Mulberry Raw Silk of any grade and Dupion yarn were merged into a single category of raw material - Going by Appendix 13C of Import/Export policy of 1988-91 and public notice, on which heavy reliance is placed by assessee, Mulberry raw silk of any grade (other than dupion yarn) and mulberry dupion which were distinguishable in Appendix 13C got merged by public notice 104-ITC that amended Appendix 13C and brought both categories into one description of raw material - Further, it was contented by assessee even before Collector of Customs that in first schedule to Customs tariff Act, 1975, no distinction is made between mulberry raw silk and mulberry dupion silk and therefore the distinction between two was artificial having no legal basis - He also pointed out that dupion is also a type of mulberry, the only difference between raw silk and dupion yarn was that while raw silk contains fine verity yarn, dupion yarn was not so fine - Further, vide notfn 40/90-93, interchangeability of mulberry raw silk with dupion yarn

was withdrawn and prior to that both were treated as identical, in support of which clarification dt. 19-7-90 of export Commissioner Shri Lakhania concerning permission to importers for import of either mulberry raw silk or dupion silk, was referred to by assessee - Pressing reliance on Supreme Court's judgement in the case of *Titan Medical System Pvt. Ltd. - 2003-TIOL-42-SC-EXIM*, he pointed out that Apex court, while extending benefit of duty exemption, had held that objective of Duty Exemption Scheme and eligibility was for the advancement of export and once advance licence is issued, the Customs authority cannot refuse exemption on an allegation that there was misrepresentation and therefore, it was the licencing authority who can take steps on that behalf and not the Customs authority - Conversely, it is the Commissioner of Customs who hold a finding that benefit of duty exemption cannot be granted to the whole lot of products as exemption notification was not applicable to the imported goods despite the fact that benefit of licence was supposed to be extended as per clarification issued by Commerce Ministry and Export Commissioner concerning interchangeability of both the raw materials and assessee was issued inspection certificate by Central Silk Board that goods exported were 100% natural silk fabrics - Assessee is entitled to duty exemption in full for the whole lot of inputs which is under the dispute: CESTAT

Appeal allowed

Case law cited:

Titan Medical System Pvt. Ltd. v. Collector of Customs New Delhi - 2003-TIOL-42-SC-EXIM... Para 5

FINAL ORDER NO. A/86056/2019

Per: Suvendu Kumar Pati:

1. Refusal to grant duty exemption on import of goods with advance licence of DEEC after export obligation was met on the ground of mismatch between input and output of goods is assailed in this appeal.

2. Brief facts on the appellant's case, as reveals from the appeal memo is that it had imported Mulberry Raw Silk after completion of export obligation and claimed duty exemption for the quantity mentioned in the advance licence of DEEC. The said import took place between 26-02-1990 and 31-07-1990 through four advance licences. Learned Collector of Customs denied the duty exemption of duty on the full quantity of Raw Materials imported upon segregating Mulberry Dupion Silk fabric from Mulberry Raw Silk fabric and partly allowed exemption of duty that corresponds to Mulberry Raw Silk fabric and not Mulberry Dupion Silk. Appellant challenged the said order on the ground that during relevant time as per public notice no. 104- ITC(PM)/88-91 dated 6th March 1989 both Mulberry Raw Silk of any grade and Dupion yarn were merged into a single category of raw material.

3. We have heard Learned Counsel for the appellant Mr. Akhileshwar Sharma and Learned Authorised Representatives Shri Atul Sharma, Asst. Commissioner and Shri Dharmendra Singh, Supdt. for Respondent Department and perused the case record as well as order passed by Collector of Customs, Mumbai. Going by the order of Collector of Customs, it is observed that he placed his reliance on the subsequent notification no. 159/90 dated 30-03-1990 and not on the notification referred above to give his finding that part of import of inputs is allowed for duty exemption and part of it could not be accepted as the same was similar to the output product, though replenishment of material was accepted by him. It is relevant to reproduce last para of his order contained Page 7, that would bring clarity to the dispute.

" This notification in terms provide that replenishment of materials will be provided of those materials which have identical specifications and technical characteristics as of those which were actually used in the manufacture of the products exported. In other words, this new stipulation in notification No. 159/90 which was not there in so many words in the earlier notfn., makes it mandatory for the Customs to give duty free only those inputs which are identical in specifications and technical characteristics with those which were used in the manufacture of the products exported. Even if the Export Commissioner says that during the period 6-3-89 to 16-7-90 they had intended interchangeability of dupion yarn with mulberry raw silk, such a interchangeability would not be available so far as the Customs Notfn. No.159/90 is concerned. Obviously dupion yarn and mulberry raw silk are not the same product in technical specifications and characteristic. In the circumstances the contention of the party that since interchangeability was allowed by the Commerce Ministry and the policy during the period 6-3-89 to 16-7-90, the benefit of such interchangeability should be extended from payment of duty is not acceptable and is rejected. Notfn. No. 159/90 dt. 30-3-90 leaves absolutely no scope for any such interchangeability."

4. On close scrutiny of the order contained above para would reveal that he mistook "identical specification" of product as "same" product with same technical specifications despite the fact that identical can be a synonym of "similar" and not a synonym for "same" product.

5. Going by Appendix 13C of Import/Export policy of 1988-91 and public notice no.104-ITC, on which heavy reliance is placed by Learned Counsel for Appellant, Mulberry raw silk of any grade (other than dupion yarn) and mulberry dupion which were distinguishable in Appendix 13C got merged by public notice 104-ITC that amended Appendix 13C and brought both categories into one description of raw material. Further, it was contented by Learned Counsel for the Appellant even before the Collector of Customs that in the first schedule to the Customs tarrif Act 1975, no distinction is made between mulberry raw silk and mulberry dupion silk and therefore the distinction between two was artificial having no legal basis. He also pointed out that dupion is also a type of mulberry, the only difference

between raw silk and dupion yarn was that while raw silk contains fine verity yarn, dupion yarn was not so fine. Further, vide notification no. 40/90-93 dt. 16-7-1990, interchangeability of mulberry raw silk with dupion yarn was withdrawn and prior to that both were treated as identical, in support of which clarification dt. 19-7-90 of the export Commissioner Shri Lakhania concerning permission to importers for import of either mulberry raw silk or dupion silk, was referred to by Learned Counsel of Appellant. Pressing reliance on the Hon'ble Supreme Court's judgement reported in (2003) 151 E.L.T. 254(SC) in the case of *Titan Medical System Pvt. Ltd. v. Collector of Customs New Delhi* = **2003-TIOL-42-SC-EXIM**, he pointed out that Hon'ble Apex court, while extending benefit of duty exemption, had held that objective of Duty Exemption Scheme and eligibility was for the advancement of export and once advance licence is issued, the Customs authority cannot refuse exemption on an allegation that there was misrepresentation and therefore, it was the licencing authority who can take steps on that behalf and not the Customs authority. Conversely, in the instant case, it is the Commissioner of Customs who hold a finding that benefit of duty exemption cannot be granted to the whole lot of products as exemption notification was not applicable to the imported goods despite the fact that benefit of licence was supposed to be extended as per clarification issued by Commerce Ministry and Export Commissioner concerning interchangeability of both the raw materials and Appellant was issued inspection certificate by the Central Silk Board that goods exported were 100% natural silk fabrics. Hence the order.

6. The appeal is allowed on the order No. S/10-31/91GR.7 dated 20-6-1991 passed by Collector of Customs, Mumbai is hereby set aside. Appellant is entitled to duty exemption in full for the whole lot of inputs which is under the dispute in present appeal.