CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 352 OF 2010

[Arising out of the Order-in-Original No. 18/2010 dated 21/04/2010 passed by Commissioner of Customs, New Delhi.]

M/s Sarvatra International, **……Appellant**
B-64, Defence Colony,
New Delhi – 110 024
Through its Proprietor
Shri Sudhir Manchanda.

Versus

Commissioner of Customs, **….Respondent**
ICD Tughlakabad,
New Delhi.

APPEARANCE:
Shri Prem Ranjan Kumar, Advocate for the appellant.
Shri Nikhil Mohan Goyal, Authorized Representative for the Department

AND
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APPEARANCE:
Shri Nikhil Mohan Goyal, Authorized Representative for the Department
Shri Prem Ranjan Kumar, Advocate for the respondent.

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

FINAL ORDER NO's. 50760-50761/2026

DATE OF HEARING : 20.02.2026
DATE OF DECISION: 21.04.2026

P.V. SUBBA RAO

These two appeals assail the order-in-original dated 21.04.2010 passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi[1] by Sarvatra International[2] and the Revenue.

2. The importer imported fabrics described as 100% polyester knitted fabric in two Bills of Entry and classified them under Customs Tariff Item[3] 6005 90 00 attracting customs duty @ 10% ad-valorem. Gathering intelligence, the officers of Special Intelligence and Investigation Branch[4] of the Commissionerate examined the goods and sent samples to the Textile Committee for testing. The test report categorically showed that they were polyester cut pile fabrics. Statement of the proprietor of the importer was recorded and he was shown the test report which he acknowledged. On his request, the goods were provisionally released on execution of a bond with a bank guarantee.

3. Thereafter, a show cause notice dated 27.07.2009[5] was issued proposing to reclassify the goods, confiscate them,

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1. **impugned order**
2. **the importer**
3. **CTI**
4. **SIIB**
5. **SCN**

demand differential duty and impose penalties under section 112/114A of the Customs Act, 1962[6].

4. The Commissioner adjudicated this show cause notice and passed the following order :-

> "(i) I order classification of "Polyester Cut Pile Fabric" under Chapter Sub Heading 6001 92 00 of the Customs Tariff Act, 1975 attracting Customs Duty @ 10% Adv. Or Rs. 100/- per kg. whichever is higher.
>
> (ii) I order confiscation of 42,600 kgs. of "Polyester Cut Pile Fabric" totally valued at Rs. 52,03,499/- imported vide Bill of Entry Nos. 769991 dated 21.02.2009 and 13,870 kgs. of "Polyester Cut Pile Fabric" totally valued at Rs. 14,98,639/- imported vide Bill of Entry No. 776711 dated 24.03.2009 under section 111 (m) of the Customs Act, 1962. As the goods are not available, I impose a redemption fine of Rs. 1,50,000.00 (Rupees One Lakh Fifty Thousand only).
>
> (iii) I confirm demand of Customs duty of Rs. 47,89,393/- pertaining to the Bill of Entry No. 769991 dated 21.02.2009 and customs duty of Rs. 15,59,363/- pertaining to the Bill of Entry No. 776711 dated 24.03.2009 under proviso to section 28 of the Customs Act, 1962. Since the duty has been already paid it is appropriated against the demand confirmed.
>
> (iv) I impose a penalty of Rs. 47,89,393/- (Rupees Forty Seven Lakhs Eighty Nine Thousand Three Hundred only) under section 114A of the Customs Act, 1962.
>
> (v) I refrain from imposing any penalty under section 112 of the Act for the reasons discussed above".

5. Revenue's appeal is on the limited ground that while the Commissioner confirmed the demand of duty under section 28

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6. the Act

(4) in respect of both Bills of Entry, he imposed mandatory penalty of only Rs. 47,89,393/- under section 114A of the Act which pertains to the Bill of Entry dated 21.02.2009 and did not impose penalty equivalent to the differential duty of Rs. 15,59,363/- pertaining to the Bill of Entry dated 24.03.2009.

6. The importer's appeal assails the entire order confirming the demand of duty and imposing penalties.

Submissions on behalf of the importer

7. Learned counsel for the importer made the following submissions :-

(i) The issue involved in the present appeal is regarding classification of the fabric in question and therefore the same was to be decided on the basis of the Test Report and since the appellant did not accept the Test Report, repeated requests were made to get the sample tested on certain parameters. The Adjudicating Authority neither allowed nor rejected the request and more importantly, the Adjudicating Authority did not refer to the said request in the adjudication order. This clearly shows that the Adjudicating Authority did not look into the documents and records which were very much available in the adjudication file while deciding the show cause notice. Hence, there was denial of principles of natural justice.

(ii) The issue as to whether an assessee has a right to request re-test of the samples and whether the authority is required to accede to such a request is no more res-integra as the High Court of Delhi has in

catena of judgments held that there is no statutory prohibition to retest the sample. Reliance is placed on the following judgments :-

(a) **Magma (India)** versus **Union of India**[7]
(b) **Plasto India Pvt. Ltd.** versus **Union of India**[8]
(c) **Delhi Press Patra Prakashan PTE. Ltd.** versus **DRI, New Delhi**[9]
(d) **Chhaju Ram Gobind Ram** versus **Dy. C.C. Inland Container Depot**[10]
(e) **Odyssey Impex** versus **Commissioner of Customs (Import), Chennai**[11]
(f) **Shri Vyom Dipesh Raichanna** versus **Union of India & Ors.** passed in Writ Petition No. 10708/2025 passed by High Court of Bombay on 10.09.2025

(iii) A similar issue also arose before the High Court of Madras in the case of **Odyssey Impex** (supra) in respect to the classification of the fabric and the High Court held that re-testing is permissible in terms of clause 19 of Customs Apprising Manual.

(iv) The impugned order records an incorrect finding that the appellant had not filed its reply to the show cause notice. The appellant had filed their reply vide letter dated 15.03.2010 which the Adjudicating Authority failed to take note of.

(v) The dispute in the present case is purely of a technical in nature i.e. the classification dispute which is to be decided on the basis of the test/re-test reports in reference to the technical literature for the fabric in question.

(vi) The appellant was fully justified to know as to under what reference/context the textile committee had carried out the tests and sent the reports. Its denial amounts to denial of natural justice.

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7. 2005 (189) E.L.T. 261 (Del.)
8. 2010 (258) E.L.T. 356 (Del.)
9. 2015 (329) E.L.T. 115 (Del.)
10. 2016 (342) E.L.T. 62 (Del.)
11. 2014 (312) E.L.T. 47 (Mad.)

(vii) The principles of natural justice warrants that no one should be condemned unheard in a matter.

(viii) Without prejudice to the above, the subject fabric is knitted fabric. This fact is accepted by the department also. This knitted fabric is manufactured on knitting machines by producing series of interlinking loops unlike woven fabrics manufactured by interlacing warp and weft threads. In the knit machine, by means of an additional yarn, protruding loops are formed. The fabric so obtained is taken off the machine and loops are sheared/cut to form pile.

(ix) The Commissioner erred in confirming the demand of duty under proviso to section 28 of the Customs Act holding that there was mis-declaration of value and description of goods without any evidence on record to show that the appellant has deliberately mis-classified the goods.

(x) In case of a classification dispute, penalty is not imposable as held by the Courts time and again. The appellant relies on :-

(a) **Padmini Products** versus **Collector of Central Excise**[12]

(b) **International Merchandising Company, LLC** versus **Commissioner of Service tax, New Delhi**[13]

(c) **Stemcyte India Therapeutics Pvt. Ltd.** versus **Commissioner of Central Excise and Service Tax, Ahmedabad – III**

(d) **Jay Kay Exports** versus **Commissioner of Customs (Port), Calcutta**[14]

(e) **Shree Ganesh International** versus **Commissioner of C. Ex., Jaipur**[15]

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12. 1989 (43) E.L.T. 195 (S.C.)
13. (2022) I Centax 31 (S.C.)
14. 2003 (161) E.L.T. 443 (Tri. – Cal.)
15. 2004 (174) E.L.T. 171 (Tri. – Del.)

(f) **Kirti Sales Corpn.** Versus **Commr. of Cus., Faridabad**[16]

No other submissions were made by the appellant.

Submissions on behalf of the Revenue :-

8. Learned authorized representative for the Revenue submits that there is no infirmity in the impugned order except to the extent that it failed to impose mandatory penalty under section 114A of an amount equivalent to the differential customs duty in respect of Bill of Entry dated 24.03.2009. He further submits that both Bills of Entry were on identical facts of the case and were adjudicated together by the Commissioner who committed an error in not imposing penalty.

Findings

9. We have considered the submissions by both sides and perused the records.

10. There is no dispute that the importer filed two Bills of Entry and declared the goods as 100% polyester knitted fabrics. There is also no dispute that the test report from the Textile Committee showed that they were polyester cut pile fabric. Learned counsel for the importer emphasized on the fact that despite repeated requests, the Commissioner did not allow re-test of the samples on certain parameters indicated by the importer. In particular, he pointed out that it was not

16. 2008 (232) E.L.T. 151 (Tri. – Del.)

indicated in the test reports as to how the goods were manufactured.

11. Learned counsel for the importer placed on record the reports from the manufacturer which read as follows :-

"Sarvatra International,
B-6, Defence Colony,
New Delhi – 110 024.

Sir,

In response to your letter dated 21st December 2009, the manufacturing process of fabric i.e. polyester knitted printed fabric is as under :

First of all the fabric is knitted on the circular knitting machine and the loops are formed during the process of knitting on the knitting machine thereafter the looped fabric is put on another smooth/napped finish of the fabric. Thereafter the looped cut fabric is printed on printing machine".

INSPECTION REPORT

TO WHOM IT MAY CONCERN

Applicant	:	HONGWEI CLOTH (CHANG SHU) CO. LTD.
Consignee	:	Sarvatra International
Description of Goods	:	100% Polyester Fabric
Quantity of sample	:	One piece of 1 m x full width
Resource of sample	:	Sent by the applicant
Inspection items	:	Manufacture Process

INSPECTION RESULTS

The manufacturing process of fabric i.e. Polyester knitted printed fabric is as under :

First of all the fabric is knitted on the circular knitting machine and the loops are formed during the process of knitting on the knitting machine thereafter the looped fabric is put on another machine for cutting the loops to get the smooth/napped finish of the fabric thereafter the looped cut fabric is printed on printing machine".

12. At a first glance, the submission of the learned counsel that retest of the sample was not allowed appears attractive. However, what needs to be noted is that the test report of the Textile Committee showed that they were cut pile fabric. The

reports of the manufacturer submitted by the appellant indicate how they were manufactured and how the pile was formed. Therefore, so long as the goods were cut pile fabric according to the reports of the Textile Committee and also according to the report submitted before us by the importer, we find no reason to doubt the test report of the Textile Committee. The Commissioner cannot be faulted by relying on the test report. It would have been the different matter if the importer had different test report showing that they were not cut pile fabrics, in which case the sample could have been re-tested.

13. Learned counsel also emphasized that the test should have been conducted by the Textile Committee as per the parameters indicated by the importer. We do not find any such right of the importer to get the samples tested in the manner in which he wants to get it tested. It is for the expert to decide how the sample should be tested. What is relevant, based on the test report, is whether the imported goods were cut pile fabrics or otherwise. There can be no dispute that the goods were cut pile fabrics because even the reports submitted by the importer shows that they had a pile. Under these circumstances, we find that there is no need for the sample to be re-tested because there is no contrary report.

14. In view of the above, we do not find any infirmity in the order passed by the Commissioner re-classifying the goods as

polyester cut pile fabric and confirming demand of duty accordingly in respect of both the Bills of Entry.

15. As far as the appeal of the Revenue is concerned, while the demand of duty was confirmed in respect of both Bills of Entry the amount of duty has been mentioned individually with respect to each Bill of Entry but the mandatory penalty under section 114A of the Act which is equal to the amount of duty has been imposed only including the differential duty in one Bill of Entry. This is clearly an error and there is no reason why penalty should not have been imposed for the second Bill of Entry.

16. In view of the above, we find that the impugned order needs to be modified only to the extent that the penalty under section 114A of Rs. 47,89,393/- is increased by Rs. 15,59,363/- under section 114A of the Act.

17. In view of the above, appeal filed by the importer is dismissed and the appeal filed by the Revenue is allowed. The impugned order is modified to the extent indicated above.

(Order pronounced in open court on 21/04/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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