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

Customs Appeal No. 40098 and 42096 of 2017

(Arising out of Order in Original No. 51626/2016 dated 24.11.2016 passed by the Principal Commissioner of Customs – III, Chennai)

M/s. Shri Grotex Trade Links Pvt. Ltd. **Appellant**
13/77-78, Chandra Market, Pashupatheshwar
Varanasi – 221 001, Uttar Pradesh.

And

Shri Lalit Kumar Jagadish Grover **Appellant**
Director, M/s. Shri Grotex Trade Links Pvt. Ltd.
13/77-78, Chandra Market, Pashupatheshwar
Varanasi – 221 001, Uttar Pradesh.

Vs.

Commissioner of Customs **Respondent**
Chennai – III Commissionerate
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri V.M. Doiphode, Advocate for the Appellants
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

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

FINAL ORDER NOS. 40983 & 40984/2026

Date of Hearing: 04.03.2026
Date of Decision: 03.09.2026

Per M. Ajit Kumar,

Both these appeals arise out of Order in Original No. 51626/2016 dated 24.11.2016 passed by the Principal Commissioner of Customs – III, Chennai.

Factual Matrix

2. Brief facts are that the appellant imports silk yarn and fabrics and exports sarees and luxury fabrics. Acting on specific information that the appellant had mis-declared woven cut-pile fabrics as mulberry

silk fabrics and wrongly classified them under CTH 5007/5408 instead of CTH 5801, the DRI initiated investigation. Seven consignments declared as "mulberry silk fabrics – Art. No. 65111", imported through seven Bills of Entry dated 30.08.2011, were examined and representative samples were tested by the Textile Committee, Chennai. The test reports revealed that the fabrics predominantly comprised viscose (rayon) exceeding 75%, with polyamide (11–12%) and mulberry silk (8–10%). Analysis of the appellant's imports from May 2010 to August 2011 revealed 73 consignments of fabrics bearing Art. No. 65111, imported through Chennai Seaport (64) and Mumbai Air Cargo (9), under various tariff items, including CTH 5408, 5407, 5007 etc. Of the 66 consignments imported through Chennai, 27 were provisionally assessed. The goods were imported from M/s. Huzhou Jishuo Silk Trading Co. Ltd. and M/s. Zhejiang Cathaya International, China. The DRI accordingly issued Show Cause Notice dated 06.05.2015, proposing rejection of the declared classification and reclassification of the goods under CTH 5801 3500, along with differential duty of Rs.1,50,79,977/- on the Chennai consignments and Rs.8,61,295/- on the Mumbai consignments, with applicable interest and penalties. After due process, the learned Principal Commissioner rejected the description as declared in the bills of entry, both at Chennai and Mumbai and held them to be "Rayon mixed with polyamide and silk warp cut pile fabric", classifiable under CTI 5801 3500 up to 31.12.2011 and under CTI 5801 3720 from 01.01.2012. He further confirmed the differential duty with interest and enforced the available Bank Guarantees, confiscated the impugned goods but refrained from imposing any fine on the goods that were not available. Penalties were also imposed on the noticee's.

3. The Ld. Advocate Shri V.M. Doiphode appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

Submissions made by the Appellant

3.1 Shri V.M. Doiphode the Ld. Counsel for the appellant submitted as follows:

A. Limitation and prior departmental knowledge:

The Appellants had imported identical goods from China since 2008. Customs had obtained Textile Committee reports in March, July and August 2008, which identified the goods as viscose (rayon)-silk woven velvet, yet accepted the declared classification under CTH 5408. This practice continued until 2011, including 32 finally assessed Bills of Entry at Chennai and 10 at ACC Sahar. Since the SCN was issued only on 06.05.2015, demands relating to these finally assessed consignments are time-barred, except for the seven provisionally assessed consignments.

B. No suppression or misdeclaration:

The Principal Commissioner erred in questioning the Appellants' declaration despite the fact that the earlier Textile Committee test reports had been obtained by Customs itself and were disclosed to the Appellants only with the SCN. A subsequent change in the Department's view on classification cannot, in these circumstances, establish misdeclaration with intent to evade duty. At the highest, the demand could survive only for the seven provisionally assessed Bills of Entry.

C. Departmental knowledge:

The rejection of the Appellants' plea of prior departmental knowledge, on the ground that the earlier consignments were not part of the

present investigation, is untenable. The relevant fact is that Customs possessed identical Textile Committee test reports concerning the same Art. No. 65111 goods from the same supplier and nevertheless accepted the declared classification.

D. Contemporaneous Imports:

The Principal Commissioner rejected the Appellants' submission regarding similar imports by other importers for want of evidence. The Department, however, could have verified contemporary import data, which would have established the prevailing classification practice.

E. Co-noticees' statement:

Reliance on the co-noticee's statement regarding classification is misplaced. Classification is to be determined by the proper officer on examination/testing of the goods. The Appellants had consistently declared Art. No. 65111 in all Bills of Entry, a fact acknowledged in the impugned order.

F. Classification:

The goods, being composite fabrics predominantly comprising rayon (over 75–80%), are appropriately classifiable under CTH 5408 in terms of Rules 3(a) and 3(b) of the General Rules for Interpretation and Section XI Note 2(A), which requires mixed textile materials to be classified according to the material predominating by weight. Rayon being predominant, classification under Chapter 54 is warranted.

G. Alternative claim for duty benefits:

The Principal Commissioner failed to consider the Appellants' alternative claim regarding exemption from CVD and SAD. The benefits under Notification No. 30/2004-CE dated 09.09.2004 and Notification No. 20/2006-Cus. dated 01.03.2006, as applicable, were required to be considered. The Appellants' entitlement to a benefit otherwise

available in law cannot be denied merely because it was not initially claimed, as recognised by the Supreme Court in ***Share Medical Care v. Union of India***, 2007 (209) E.L.T. 321 (S.C.).

I. Penalties and Confiscation:

The dispute essentially concerns interpretation of the classification provisions. In view of Customs' prior knowledge of identical test reports and its consistent acceptance of the declared classification, no suppression or intent to evade duty is established. Consequently, confiscation, redemption fine and penalties under Sections 112(a), 114A and 114AA are unsustainable.

The ld. Counsel prayed that the appeals be allowed. Alternatively, if the classification is held against them, the demand may be confined to Rs.21,26,125.18 relating to the seven provisionally assessed Bills of Entry.

Submissions made by Respondent-Revenue

3.2 Shri Sanjay Kakkar, Ld. Authorized Representative, submitted the following on behalf of the Revenue.

A. Validity of the impugned order

The impugned order is a reasoned and comprehensive order, based on the test reports, statements, HSN notes, relevant literature and the Appellants' submissions. The adjudicating authority considered and distinguished the case law relied upon by the Appellants and gave reasons for rejecting their request for cross-examination. The allegation of non-application of mind is therefore untenable.

B. Misdeclaration and prior knowledge of the Appellants

The Textile Committee reports of 27.03.2008, 08.09.2010 and 09.09.2010, admittedly known to the Appellants, identified the goods as warp cut-pile fabrics. Despite this, the Appellants continued to

declare them merely as mulberry silk fabrics. The goods contained only about 10% silk, nearly 80% viscose and also polyamide, which was not declared. As an experienced importer and trader, the Appellants could not reasonably plead ignorance of the nature and composition of the goods.

C. Effect of Customs' earlier acceptance

The fact that Customs possessed earlier Textile Committee test reports does not absolve the Appellants of their statutory obligation under Section 46(4) of the Customs Act to make a truthful declaration. Each import is independently assessable, and past acceptance of an incorrect declaration cannot operate as an estoppel against the statute. The earlier reports, in fact, reinforce the Appellants' knowledge of the true nature of the goods.

D. Classification

The test reports establish that the goods are warp cut-pile fabrics and are accordingly classifiable under CTH 5801, having regard to the HSN Notes, GIR 3(a) and Section XI Note 2(A). The plea that the dispute is merely one of interpretation is untenable in view of the deliberate suppression of the essential characteristic of the goods. Past assessments or alleged contemporaneous imports cannot create an estoppel against the correct statutory classification.

E. Evidentiary value of the Director's statement

The Director, in his statement dated 29.09.2011, admitted the mistake in description and acknowledged the predominance of rayon and the incorrect classification. His un-retracted statement under Section 108 constitutes material evidence and corroborates the test reports and the finding of suppression.

F. Cross-examination

Cross-examination is not an absolute right where sufficient documentary and corroborative evidence is available. In the present case, the admitted test reports and the Director's un-retracted statement provided adequate evidence, and the Appellants neither demonstrated prejudice nor furnished sufficient grounds for cross-examination.

G. Exemption from CVD

The Appellants cannot claim the benefit of Notification No. 30/2004-CE retrospectively merely because the goods are now proposed to be classified under CTH 5801. The exemption is conditional, including the requirement regarding non-availment of CENVAT credit, and was not claimed at the time of import. Reliance on ***Share Medical Care*** is therefore misplaced.

H. Confiscation and redemption fine

The seized goods were released against bond and bank guarantee. Once the goods were liable to confiscation and were provisionally released, imposition of redemption fine was legally permissible. The redemption fine of Rs.30 lakh imposed in the impugned order is therefore sustainable.

I. Penalties

The allegations concerning the addendum to the SCN and imposition of penalties are supported by the findings recorded in the impugned order. The Respondent accordingly relies upon the findings of the adjudicating authority and submits that the remaining grounds of appeal merit rejection.

Submissions filed by the Appellant after the hearing held on 04.03.2026

3.3 Subsequent to the public hearing the Appellant was permitted to file its rejoinder to the Respondent's submissions, which is summarised, as follows:

A. It was submitted during hearing that, apart from the seven provisionally assessed Bills of Entry covered by the present demand, 13 other Bills of Entry referred to in paragraph 15 of the SCN were also provisionally assessed. On verification, however, no demand or proposal for finalisation in respect of these 13 Bills of Entry was made in the SCN or addendum, nor has any SCN or intimation for their finalisation been received. **The present appeal, therefore, concerns only the seven provisionally assessed Bills of Entry cleared against bond and bank guarantee.**

B. Customs possessed several Textile Committee test reports, including 13 reports dated between 29.02.2010 and 25.02.2011, as well as the report dated 27.03.2008, identifying Article No. 65111 as woven warp cut-pile fabric. Paragraph 21 of the SCN itself records that the impugned goods had been tested by Customs. Despite possessing these reports from 2008 onwards, Customs continued to assess the goods as declared by the Appellants until the DRI investigation commenced in September 2011.

C. It was submitted that the Revenue's own contention that textile-fabric classification is complex supports the Appellants' case that the dispute is one of bona fide interpretation of the tariff and not misdeclaration with intent to evade duty. The fact that Customs continued to accept the declared classification despite repeated test reports further negatives any allegation of suppression. Consequently,

demands relating to Bills of Entry other than the seven provisionally assessed consignments are barred by limitation.

D. The submission that the Appellants failed to avail the opportunities of hearing is incorrect. The Appellants attended the personal hearing on 30.12.2015 and filed additional submissions thereafter. A reminder was submitted on 29.03.2016. Following the corrigendum dated 05.04.2016, adding further Bills of Entry, the Appellants filed their reply and again requested disposal of the matter on merits. The impugned order was thereafter passed on 24.11.2016.

E. The Director, Shri Lalit Grover, did not admit deliberate misdeclaration. His statement records that the description was based on the suppliers' commercial invoices, which did not specify the composition, while paragraph 12.5 refers to the classification as having been wrongly declared. Thus, the statement at best admits an incorrect classification and not suppression of the description with intent to evade duty. It is settled that merely claiming a particular tariff classification or exemption, in the absence of suppression of material facts, does not by itself constitute misstatement or misdeclaration, as the proper officer is required to determine the correct classification and eligibility to exemption.

4. We have carefully perused the appeal memorandum along with connected documents and heard the rival parties. The following issue have been raised by the Appellant:

> A. There was no suppression or misdeclaration hence extended time limit cannot be invoked.

B. Classification of the goods has been adopted as per the assessment done by the Department, after obtaining Textile Committee test reports.

C. No penalties were imposable nor were the goods liable for confiscation

We take up the issues for consideration.

5. It is the Appellants averment that there was prior knowledge with the departmental about the actual constituents of the goods and hence the extended period of limitation cannot be invoked. The Appellants had imported identical goods from China since 2008. Customs had obtained Textile Committee reports in March, July and August 2008, which identified the goods as viscose (rayon)-silk woven velvet, yet accepted the declared classification under CTH 5408. This practice continued until 2011, including 32 finally assessed Bills of Entry at Chennai and 10 at ACC Sahar. Since the SCN was issued only on 06.05.2015, demands relating to these finally assessed consignments are time-barred, except for the seven provisionally assessed consignments.

5.1 We find that the goods covered by the seven 'live' Bills of Entry, all dated 30.08.2011, as also the 32 consignments imported through Chennai Port and 10 consignments imported through Mumbai Air Cargo during the period May 2010 to August 2011, were declared as "Mulberry silk fabrics without dyed and printed with metallic yarn, Article No. 65111", with minor variations in description over time, and were classified under CTH 5408 2120. Significantly, the Department had obtained Textile Committee test reports in March, July and August 2008, which had identified the goods as viscose (rayon)-silk woven velvet, etc. Despite being in possession of this material, the

Department accepted the declared classification under CTH 5408, including during the pre-self-assessment regime. The combined Show Cause Notice is dated 06.05.2011. In these circumstances, the allegation that the Appellant deliberately suppressed the material facts with intent to evade payment of duty cannot be sustained and the extended period of limitation is therefore not invocable.

5.2 Revenue has stated that the fact that Customs possessed earlier test reports does not absolve the Appellants of their statutory obligation under Section 46(4) of the Customs Act to make a truthful declaration. Each import is independently assessable, and past acceptance of an incorrect declaration cannot operate as an estoppel against the statute. While it is true that the Appellants is bound by the statutory obligation under Section 46(4), the majority of the assessments pertain to the period prior to the introduction of self-assessment by the Finance Act, 2011 under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. As per the 'Customs Manual on Self-Assessment – 2011', self-assessment has become the norm of assessment of Customs duty in respect of imported/ export goods with effect from 8-4-2011. The Appellant cannot be blamed for self-assessing the goods as earlier assessed by the Department, during the subsequent period.

5.3 The principle is well settled. The Supreme Court, in **Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay**, [1995 (78) E.L.T. 401 (S.C.)], while interpreting the analogous proviso to Section 11A of the Central Excise Act, 1944, held that "suppression" does not mean any omission and that the act must be deliberate. The Court observed that, in the context of taxation,

suppression can mean only a deliberate failure to disclose correct information with the intent to evade payment of duty. Significantly, the Court held that where the facts are known to both parties, an omission by one party to do what it might have done does not amount to suppression. The same principle applies to the proviso to Section 28 of the Customs Act. In the present case, the relevant material was not only available with the Department but had been generated through its own Textile Committee reports well before the imports in question. The subsequent invocation of the extended period on the allegation of suppression is, therefore, unsustainable.

6. The Appellant has submitted that the goods, being composite fabrics predominantly comprising rayon (over 75–80%), are appropriately classifiable under CTH 5408 in terms of Rules 3(a) and 3(b) of the General Rules for Interpretation and Section XI Note 2(A), which requires mixed textile materials to be classified according to the material predominating by weight. Rayon being predominant, classification under Chapter 54 is warranted. It had only followed the assessment practice as adopted by the Department in the pre-self-assessment era.

6.1 Per contra Revenue has submitted that the test reports establish that the goods are made of silk and polyamide/ rayon with essential characteristics of warp cut-pile fabrics and are accordingly classifiable under CTH 5801, having regard to the HSN Notes, GIR 3(a) and Section XI Note 2(A). The specific description for pile fabrics has to be preferred against any other heading. Each import is independently assessable, and past acceptance of an incorrect declaration, if any, cannot operate as an estoppel against the statute. The goods are hence classifiable

under CTI 5801 3500 up to 31.12.2011 and under CTI 5801 3720 from 01.01.2012.

6.2 Under GIR Rule 1, classification is determined according to the terms of the headings and relevant Section/Chapter Notes. The Textile Committee Test Reports dated 26.09.2011 identifies the goods as woven warp cut pile fabrics. CTH 5801 specifically covers "woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806". Accordingly, the goods merit classification under CTH 5801. Under Rule 3(a) of the General Rules for Interpretation (GIR), CTH 5801, which specifically covers pile fabrics, is to be preferred over the more general headings claimed by the importer. Further, being composite fabrics of silk, polyamide and rayon, their essential character is that of warp pile fabric; hence, Rule 3(b) also supports classification under CTH 5801.

6.3 The Appellants classification of the impugned goods under CTH 5007, 5407, 5408 etc is not sustainable, as pile fabrics constitute a specific category of woven fabrics covered by CTH 5801. Consequently, the declared classifications under have been rejected correctly and the question of predominance does not arise. The classification as finalised in the impugned order is hence held to be proper.

6.4 The Appellant has stated that the Ld. Principal Commissioner did not consider the alternative submission regarding the rate of duty charged as 30/04-CE dated 09.09.2004. CVD was exempted in respect of items falling under 58. Hon. Supreme Court in the case of **SRF Ltd Vs Commissioner of Customs, Chennai** [2015 (318) ELT 607 (SC)], has held that such exemption is applicable. Further, as per notification no 20/2006-CUS dated 01.03.2006 and serial no. 50, all goods specified in the first schedule to the Additional Duty of Exercise (Goods

of Special Importance) Act 1957 carry nil date of duty, schedule one lists such goods which are of special importance. Schedule one under section 3(1) lists chapter heading 5801 as one of the items specified in the first schedule to the said act, and therefore, SAD was not leviable. The Appellants had filed a calculation sheet without taking into account CVD, and SAD, however, the Ld. The Principal Commissioner did not consider even these benefits of the notification, which can be legitimately claimed at a later stage as held by Hon. Supreme Court in **Share Medical Care V/s. UOI** [2007 (209) ELT 321 (SC)].

6.5 We find that the impugned order at para 20 has rejected the Appellants request for eligibility for an alternative exemption on the ground that the goods were cleared without claiming the benefit of the said notification and cannot be claimed at adjudication stage. Further both the notifications are conditional in nature and hence the benefit cannot be extended at the time of clearance.

6.6 It is well settled that, other than a case of fraud, an assessee is not debarred, prohibited or estopped from claiming, at a later stage, the benefit of an exemption notification to which it is otherwise entitled. In **Unichem Laboratories Ltd. Vs Collector of Central Excise, Bombay** [(2002) 7 SCC 145], the Hon'ble Supreme Court held that, where no time is prescribed for claiming the benefit of an exemption notification, such benefit can be claimed subsequently and, if the notification applies, the benefit thereunder must be extended. The principle was reiterated in **Share Medical Care Vs Union of India** [(2007) 4 SCC 573 / 2007 (209) E.L.T. 321 (S.C.)], wherein the Supreme Court held that even if an applicant does not claim the benefit under a particular notification at the initial stage, it is not thereby precluded from claiming such benefit at a later stage. The Court further

held that where the assessee is **otherwise entitled to the benefit** under another applicable category of the exemption notification, such benefit cannot be denied merely because exemption had earlier been claimed under a different category.

6.7 Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law. Consequently, where, on a proper application of the statutory provisions and the exemption notification, the appellant is found to satisfy the conditions thereof and is otherwise entitled to the benefit of the exemption, such benefit cannot be denied merely because it was not claimed at the initial stage. It is evident that the request made by the Appellant now are in the light of the change in classification which was not the same at the time of the initial clearance. Accordingly, the appellant's alternative claim for exemption is required to be examined on its own merits. If the appellant satisfies the substantive and procedural conditions prescribed under the alternative exemption notification, the benefit thereof cannot be denied merely because the notification was not claimed at the time of import/clearance or in the initial proceedings.

6.8 Since the issue involves a mixed question of fact and law, requiring examination of the relevant foundational facts. Such issues are, therefore, appropriately considered by the Original Authority. Recently, the Hon’ble Karnataka High Court in **Assistant Commissioner Vs Kapsons Online Pvt. Ltd.,** [2026:KHC:4310-DB, dated 21.01.2026], held that an appellate forum should ordinarily confine itself to examining the correctness of the order under appeal and, where foundational facts remain undetermined, remit the matter to the Original Authority for fresh adjudication. However, a pure question of law may be decided for the first time in appeal where all

facts necessary for its determination are already on record. This principle is consistent with the observations of the Hon'ble Supreme Court in **Ramakant Ambalal Choksi Vs Harish Ambalal Choksi & Ors. [2024 INSC 913]**, relying, inter alia, on **Shyam Sel & Power Ltd. Vs Shyam Steel Industries Ltd., [(2023) 1 SCC 634]** and **Monsanto Technology LLC Vs Nuziveedu Seeds Ltd., [(2019) 3 SCC 381**]. Accordingly, where the foundational facts necessary to determine the alternative exemption are not seen to be examined properly by the Original Authority, it would be appropriate to remand the matter for consideration of the Appellants' claim in accordance with law.

7. We find that the appellant had declared the goods under the classification, which was accepted by the Department, despite the Department having the benefit of Textile Committee test reports obtained from time to time. In these circumstances, no deliberate or blameworthy act can be attributed to the appellant in adopting the said classification. Consequently, the goods are not liable to confiscation, and the appellants cannot be held liable to penalty.

8. Accordingly, we set aside the demand for duty and interest for the extended period. However, the classification as finalised in the impugned order with respect to the seven 'live' Bills of Entry, merits to be upheld. The issue of the eligibility of the said goods for the benefit of the alternative exemption notifications claimed by the Appellant in their appeal therefore requires to be remanded to the Original Authority - limited to this issue - for determination on merits. The duty, if any, shall thereafter be determined accordingly, along with applicable interest, if any, for the normal period. The Appellants may be given an opportunity to present their case both orally and in writing,

before the matter is decided within 90 days of receipt of this Order. The Appellants should also cooperate in the matter. The Appellants are eligible for consequential relief as per law, if any. The appeals are disposed of accordingly.

(Order pronounced in open court on 03.09.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

Rex