
PLG Impex Vs Commissioner Of Customs

Customs Appeal No. 50334 Of 2021

Court: Customs, Excise And Service Tax Appellate Principal Bench, New Delhi

Date of Decision: Nov. 29, 2021

Acts Referred:

Customs Act, 1962 " Section 12, 14, 17(5), 18, 108, 128A(3)#Customs Tariff Act, 1975 " Chapter 48

Hon'ble Judges: Delip Gupta, J; C.J. Mathew, Technical Member

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Ernest K Gann, author of Fate is the Hunter, would never have imagined that the title - "Rule books are paper - they will not cushion a

sudden meeting of stone and metal" of one of the chapters of this iconic work is an apt description of the parallel tracks on which the rival

contentions in this appeal concerning the entitlement for concessional rate of duty on the import of, coincidentally, paper has traversed. Indeed, this

product of plant fibre " whether from papyrus in the ancient times or from wood in our own " on which has been documented the celebrations

and controversies, as well as the ideas and incidents, of civilization is so indispensable to daily living as to offer little room for contentious

distinguishment. And so it was until treaty negotiators of the Indo-Japanese Comprehensive Economic Partnership Agreement (CEPA), 2011

excepted paper that had been manufactured from pulp obtained by chemical processing or, when mixed with other pulp, containing no more than a

tenth of the fibre content obtained by mechanical or chemi-mechanical process from concessional rate of duty extended to other varieties of "coated

paper" enumerated within heading 4810 of the First Schedule to Customs Tariff Act, 1975.

2. Though the circumstances in which this appeal has surfaced before us, impugning order-in-appeal no. 72 (SM) CUS/JPR/2020 dated 27th

November 2020 of Commissioner of Central Excise & CGST (Appeals), Jaipur, is no less significant than the factual matrix narrated therein, it is of

no harm to take note of the facts first. Of the consignments of "coated paper" imported by M/s PLG Impex, a proprietary concern of Shri

Giriraj Gupta, against bills of entry no. 6932911/18.02.2020, 7146553/07.03.2020 and 7158311/07.03.2020, the former two, presented in rolls/reels,

were detained pursuant to instruction dated 21st November 2019 requiring "no objection" from Directorate of Revenue Intelligence (DRI)

before being given "out of charge" while the third, being in the form of sheets, was released on self-assessment without demur. It is seen that

the paper manufactured by M/s Mitsubishi Paper Mill with brand of "TruGloss" and those branded as "Hi-Alpha", "Kinman Vivid",

and "Kinmari Matt" by M/s Hokuetsu Corporation were procured through M/s Spring Cosmo International, Japan against orders placed by the

appellant with M/s SAPP Trading, UK.

3. The declaration in the impugned bills of entry sought clearance on payment of duty at the effective rate prescribed for tariff item 4810 29 00 of the

First Schedule to Customs Tariff Act, 1975 corresponding to "paper and paperboard" (other than light-weight coated paper)

"of a kind used for writing, printing or other graphic purposes, of which more than 10% by weight of the total fibre content consists of

fibres obtained by a mechanical or chemi-mechanical process"

and residuary tariff item 4810 99 00 of the First Schedule to Customs Tariff Act, 1975 corresponding to "paper and paperboard" (other than

kraft and multi-ply) not used for writing, printing or other graphic purposes. All goods covered by the description

"paper and paper board, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder and

with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets of any

size"

corresponding to heading no. 4810 of the First Schedule to Customs Tariff Act, 1975 are entitled to the concessional rate of duty in notification no.

69/2011-Cus dated 29th July 2011 except for

"paper or paper board of a kind used for writing, printing or other graphic purposes, not containing fibres obtained by a mechanical or

chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres in rolls"

corresponding to sub-heading no. 4810 13 of the First Schedule to Customs Tariff Act, 1975; the proceedings before the lower authorities rested solely

on recourse to this exception.

4. The value declared, the country of origin and coverage within the description corresponding to heading 4810 of the First Schedule to Customs Tariff

Act, 1975 is uncontroverted. The reclassification has been built upon the alleged absence of pulp produced by mechanical or chemi-mechanical

process in the impugned consignments of paper with consequent denial of preferential duty of 1.8% from April 2019 onwards and of 2.7% during

2018-19 for levy at the standard rate of 10% instead.

5. It would appear that the availing of exemption afforded by notification no. 69/2011-Cus dated 29th July 2011, for implementation of the

Comprehensive Economic Partnership Agreement (CEPA) with Japan, alarmed the investigating agency sufficiently for assessing authorities to

resort to provisional assessment under section 18 of Customs Act, 1962 on furnishing of appropriate security for the differential duty in several

instances of similar imports. The appellant herein, instead of being amenable to such tentative determination of levy, preferred to discharge the duty

liability at the standard rate of duty in the tariff. The import of 18.86 tons of $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$, valued at Rs.12,25,792.43 in bill of entry no.

6932911/18.02.2020, was cleared on payment of duty of Rs. 2,98,113 (including basic duty of Rs. 1,22,579) at the standard rate applicable to tariff

item 4810 13 90 of the First Schedule to Customs Tariff Act, 1975 even though the goods, covered by invoice no. 4134-4891/16.01.2020 of M/s SAPP

Trading, UK, was traced to CEPA no. 19041142317120161/28.01.2020 issued by Japanese Chamber of Commerce. The import of 14.52 tons of

$\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$ valued at Rs.7,01,634.50, 4.75 tons of $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$ valued at Rs.2,50,574.28 and 0.66 tons of $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$

paper gloss $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$ valued at Rs.34,740.39 in bill of entry no. 7146553/07.03.2020 was cleared on payment of duty of Rs.170637.40 (including basic duty

of Rs. 70,163.40) and Rs. 2,40,026 (including basic duty of Rs. 25,057.40 and Rs. 3474) respectively at the standard rate applicable for tariff item 4810

13 90 of the First Schedule to Customs Tariff Act, 1975 even though the goods, covered by invoice no. 4136-4889/16.01.2020 of M/s SAPP Trading,

UK, was traced to CEPA no. 19042242117801410/ 28.01.2020 issued by Japanese Chamber of Commerce.

6. Typically, in such standoff over classification with the $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$, an importer desiring to secure possession of the goods has only two

options: either to agree with re-assessment or to discharge the higher duty liability before taking recourse to appellate remedy. With either, the

$\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$ cannot be on less than firm ground for the $\tilde{\text{A}}\text{C}\hat{\text{a}},\text{--}\tilde{\text{E}}\text{c}\text{o}\hat{\text{a}},\text{--}\hat{\text{a}},\text{C}$ to pass muster in statutory appeal if the importer fails to be

convinced that the proposed revision in classification is appropriate. The only other course of action is, and only in the specifically enumerated

circumstances, to resort to provisional assessment under section 18 of Customs Act, 1962 which may also be subject to appellate challenge should an

early finalization not be on the horizon. Doubtlessly, the assessing authority was cognizant of ongoing investigations but, owing to uncertainty of

closure, was unable to insist upon deferment of the final assessment. It is, therefore, not surprising that order dated 22nd May 2020, narrates that

The goods imported vide BE No. 7158311 dated 07.03.2020 have been found to be coated paper in sheets of KINMARI Brand of

Hokueisa corporation, Japan classified under the tariff heading 48101990, whereas the matter is being investigated by the DRI (DZU). New

Delhi is in respect of import of paper in roils/ reels coated on one side or both sides, imported from Japan, accordingly, the goods imported

under this BE are not in dispute and correctly classified, thus, the same has been cleared by allowing exemption under CEPA under

Notification NO. 69/2011 - Customs dated 29.07.2011.

The goods imported vide BE No. 6932311 dated 18.02.2020 and 7146553 dated 07.03.2020 importing from M/s. Mitsubishi Japan, and

M/s, Hokeutsu Corp., Japan Through M/s. SAPP trading , UK have been declared as coated paper gloss and coated paper matt in Reels/

rolls and classified under tariff heading 4S109900 & 48102300 and claimed exemption under CEPA under notification No. 69/2011 -

Customs dated 29.07.2011, whereas an investigation in respect of import of said goods by the importer M/s. PLG Impex is pending before

Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit (DZU), New Delhi regarding mis-declaration and mis-classification of the said

goods under Tariff heading 48102900 or 48101390 instead of correct classification 481013S0 under which the importer was earlier

classifying, with an intent to evade customs duty by wrongly availing CEPA benefit under Notification No. 69/2011 - Customs dated

29.07.2011, whereas during investigation it has been admitted by the proprietor of M/s. PL.G Impex, that Japanese origin coated paper

imported by them was mainly manufactured by two Japan based paper mills namely M/s. Hokuetsu corporation & M/s. Mitsubishi paper

mills Ltd., and said has been manufactured from chemical pulp only, whereas the two tariff headings under which goods classified by the

importer are applicable only if fibre obtained by mechanical or chemi-mechanical process is more than 10% of the total fibre.

and, noting that

the proprietor admitted that the Japanese origin coated paper imported by them was manufactured mainly by two Japan based

paper mills, namely, M/s Hokuetsu Corporation and M/s. Mitsubishi Paper Mills limited and said goods have been manufactured from

chemical pulp only.

before summarizing that

Accordingly, DRI, (DZU) new Delhi vide letter dated 12.03.2020 has been requested to impart guidance regarding clearance of the

above goods and DRI (DZU), New Delhi vide letter dated 12.03.2020 has informed that live- consignment and future consignment of the

importer (M/s PLG Impex) in respect of import of coated paper in reels / rolls form of Japan Origin, may be dealt by taking suitable measures, in the interest of revenue.

Further, it has been, noticed that various consignments of the importer has been seized by the DRI at Mundra port and Chennai port and

were provisionally released after submission of requisite bond and bank guarantee. Accordingly, importer vide this office letter dated

16.03.2020 has been requested that Since the investigation is pending before DRI in similar matter, therefore, either submit bond & Bank

guarantee for the differential duty of Tariff rate & rate under CEPA Exemption under Notification No. 69/2011 - Customs dated 29.07.2011 for provisional assessment till final outcome of investigation or deposit full rate of duty.

The importer vide letter dated 17.03.2020 & 19.03.2020 has requested to release the goods provisionally but has not submitted requisite

bond undertaking as per Circular No. 17/2020 dated 03.04.2020 and bank guarantee in compliance of this office letter 16.03.2020.Ã¢â¬â¢

implies that the classification adopted by the importer was not found acceptable solely owing to the alert from the investigating agency, prompted by

the recent departure from the classification bearing higher burden of levy, and an inculpatory admission to the investigating agency by the proprietor of

the importing entity. While there is no estoppel on seeking the privilege of concessional rate of duty, the importer had not been placed on notice that

the purported admission was to be used to its detriment and the explanations offered by, and documents tendered on behalf of, the manufacturers

appear to have been kept out of consideration in the Ã¢â¬â¢speaking orderÃ¢â¬â¢, mandated by section 17(5) of Customs Act, 1962 upon clearance of

goods without the benefit of concessional duty, that was challenged in the first appeal. The lack of success before the Commissioner of Central Excise

& CGST (Appeals), Jaipur has brought the impugned order-in-appeal no. 72(SM)CUS/JPR/2020 dated 27th November 2020 before us.

7. In the face of disregard of the specific averments and several documents for controverting the assertion that the impugned goods had been

manufactured entirely from chemically extracted wood pulp, of the lack of scrutiny of the rival descriptions in the tariff or of any ascertainment of the

composition of the imported Ã¢â¬â¢paperÃ¢â¬â¢, it fell to the first appellate authority to render the first finding of the Ã¢â¬â¢paperÃ¢â¬â¢ having been

manufactured entirely of pulp obtained by chemical process to justify the classification adopted for derailing the entitlement to concessional rate of

duty. It is the deployment of Ã¢â¬â¢chemically processedÃ¢â¬â¢ pulp that is the sole distinction between the respective sub-headings within which the

original claim and the revised assessment are situated. And in the choice between the two, in accordance with General Rules for Interpretation of the

Harmonized System, lies the resolution of this dispute.

8. As is usual in disposition of classification disputes, three sets of representative samples had been drawn for ascertainment of physical/chemical

properties of the impugned goods and it was on the foundation of the test report dated 15th October 2020 furnished by the Central Revenue Control

Laboratory (CRCL), coupled with the alleged failure to provide any acceptable certification to the contrary, that the impugned order justifies the denial

of concessional rate of duty.

9. The first attempt in soliciting the opinion of the Central Revenue Control Laboratory (CRCL) on 3rd June 2020, on the direction of the first appellate

authority, proved futile as the seals on the samples were found to be broken; the second attempt on 10th July 2020 did not elicit any response and it

was only upon reminder for early disposal that the non-receipt of sample was reported. The last sample did yield a test report dated 15th

October 2020 that was, thereafter, made available to the importer on 23rd October 2020 on directions of Commissioner of Central Excise & GST

(Appeals) even as that authority had, between 11th September 2020 and 17th September 2020, completed the mandated personal hearings.

10. The first appellate authority took note of the statements of Shri Giriraj Gupta, recorded under section 108 of Customs Act, 1962 by officers of

Directorate of Revenue Intelligence, in which he is said to have admitted that the paper imported by them is composed entirely of

chemically extracted pulp. The impugned order also took note of the lack of elaborate description in the bill of entry that would have enabled

discriminating determination of the tariff item among the several enumerations of coated paper and the reluctance to produce fibre analysis

certificate which had prompted the manufacturer, as well as the importer, and the competent authority issuing the certification of origin to claim

coverage under subheading other than 4810 13 of the First Schedule to Customs Tariff Act, 1975 to infer deliberate concealment with intent to avail

concession for which they were not eligible. It also noted that, while the importer did not appear to be coy about admitting that coated paper in

sheet form, in which the pulp composition was immaterial to classification, was entirely composed of chemical pulp, similar alacrity was

distinguishably absent when it pertained to coated paper in rolls obtained from the same manufacturer in which the proportion of chemical pulp

made all the difference between entitlement and non-entitlement to concessional rate of duty.

11. In the course of proceedings before the first appellate authority, it was informed by the importer that the article information sheet report

dated 23rd July 2019 detailing the composition of coated paper as inclusive of wood pulp, calcium carbonate, aluminum silicate, starch and

latex, the letter of declaration dated 29th November 2019 reporting the classification as 4810 99 in view of use for pouches and flexible

packing which would not be paper for writing, printing or other graphical purposes, production flowchart dated 30th November 2019 showing

the complete manufacturing process and the supplementary copy of letter of declaration dated 6th February 2020 re-iterating the HSN

classification - all emanating from M/s Mitsubishi Paper Mills - and notice of judgement on product origin issued to the manufacturer by Japan

Chamber of Commerce in support of the claimed classification were not credible enough to counter the test report. It was also pointed out that the

application of M/s Hokuetsu Corporation with Japanese Chamber of Commerce dated 22nd November 2019 elaborating on the production of the

paper as conforming to sub-heading 4810.19 and 4810.29 supplied to the importer and the copies of the notice of judgement on produce origin that

issued by Japanese Chamber of Commerce furnished to the investigation authorities appear to have been similarly discarded. For doing so, the alleged

failure to provide the certification that was the basis of these documents was held by the first appellate authority to suffice.

12. With this elaborate, and near exhaustive, backdrop, we proceed to resolve the dispute with the assistance of the arguments put forth on behalf of

both sides.

13. Learned Counsel for the appellant contended that the denial of concessional duty, without any tenable evidence of ineligibility and entirely on

conjectures, fails the test of judicious determination mandated in section 12 of Customs Act, 1962. According to him, the appellant had been compelled

to disclaim the entitlement under protest and seek judicial determination as the investigation agency did not appear to have neither the evidence nor

even the inclination for closure of the controversy in the immediate future. The obvious disinclination on the part of the assessing officer to have the

samples tested and obdurate subordination of statutory responsibility to the influence of the investigating agency was, in his opinion, consequence of

that lack. In support of this contention, he drew attention to the justification insinuated by the first appellate authority into the record of proceedings for

substitution of the tariff item without the pre-requisite of submitting the reasons for discarding evidence furnished by the appellant in support of the

declared classification and to the frailty of the evidence of the chemical processing that was interpolated without validation through opportunity to

controvert. He claimed that the conclusion in the test report "incomplete for not having responded to the specific query that was within their remit

and unsubstantiated by suppression of the method for determination of pulp content - had been contrived by the first appellate authority to press the

denial of the entitlement to concessional duties at the instance of the investigative agency evident in irresponsible procrastination to conceal lack of

concrete evidence and informed inquiry for ensuring their unconcealed objective.

14. He further contended that the several documents, submitted to and emanating from the authority nominated under the Agreement for certifying the

origin, had categorically placed the goods within the six digit level subheading of the Harmonized Code of Commodity Description System

declared in the bill of entry and that the customs authorities, by selective validation of contents to suit their convenience, had eroded their own

credibility as administrators of the law. This, he further pointed out, was evident in appropriation, and discarding, of the descriptions at the

and for enabling denial of a benefit afforded by a constitutionally sanctified international agreement binding

on the Republic. He argued that the imports comprised of coated paper which was to be used for purposes other than writing, printing or any

other graphical representation and of coated paper for such use manufactured out of pulp that was produced by mechanical/chemi-

mechanical process as evidenced by the flowcharts furnished by the manufacturer. He concluded with the contention that, except by

controverting the composition, and extent, of fibre from which the paper was produced, the certification of content by the manufacturer,

supplemented by certification on the part of the Japanese Chamber of Commerce, entitles the appellant to the privilege accorded by the Agreement

for which reliance was placed on the decision of the Hon'ble Supreme Court in HPL Chemicals Ltd v. Commissioner of Central Excise,

Chandigarh, 2006 (197) ELT 324 (SC) holding that

29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the

Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the

Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged

at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical

Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No.

25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as

Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured

salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.

and on the decision in Hindustan Ferodo Ltd v. Collector of Central Excise, Bombay, 1997 (89) ELT 16 (SC) which held that

3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the

Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the

evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.

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7. Learned Counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappraised. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the

matter.

15. According to Learned Authorized Representative, the order of assessment could not be faulted for not foreclosing an investigation that was

prompted, and justifiably so, by the abrupt departure from the past practice of clearance under a sub-heading that turned out to be the solitary

exception among "coated paper", otherwise entitled to preferential rate of duty in furtherance of the bilateral trade agreement with Japan and for

having relied upon the purported admission by the proprietor during investigation that the "coated paper" imported by them had been

manufactured out of pulp extracted entirely from "chemical processing" of wood. In support of the confirmation of the revision in classification

by the first appellate authority, he pointed out that the report of the customs laboratory did indicate that the samples were found to be entirely

"chemical" and that the declaration in the entry under section 46 of Customs Act, 1962 appeared to have been deliberately cursory to mislead

the assessing authority into acceptance thereof. To sustain this line of argument, he drew attention to the reluctance on the part of the importer to

furnish any document, other than clarifications obtained from the manufacturer after the commencement of investigation into the impugned goods, that

would have controverted the proposed re-classification. He placed reliance on several authoritative texts to take us through the process of production

of pulp, the principal component of "paper", as also the Explanatory Notes to chapter 47 of the Harmonized Commodity Description and Coding

System, more familiarly referred to as Harmonized System (HS) of Nomenclature, to distinguish the different methods "mechanical, chemical,

mechanical and chemical" employed in the industry for extraction of cellulose from wood. It was contended by him that the flow charts also

evinced that the manufacturers did, indeed, undertake "chemical processing" in their production process. According to him, the Explanatory

Notes pertaining to chapter 48 of the Harmonized System (HS) Nomenclature, clarifying that "paper and paperboard", covered by 4810.13,

4810.14, 4810.19, 4810.22 and 4810.29, are in the "uncoated" state, no different from those covered by heading 48.02 "to posit that the "ash

content", elicited in the laboratory test, eliminates the possibility of the pulp having been obtained by a "mechanical or chemical-mechanical"

process. He relied upon the judgement of the Hon'ble Supreme Court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar &

Company, 2018 (361) ELT 577 (SC) and in LR Brothers Indo Flora Ltd v. Commissioner of Central Excise, 2020 (373) ELT 721 (SC) to support his

contention that the imperative of strict conformity to the conditions of eligibility was sine qua non for seeking benefit of exemption notification.

16. The proposition of Learned Authorized Representative that the "ash content" of the representative sample, as reported by the Central

Revenue Control Laboratory (CRCL), is the benchmark for ascertainment of the predominance of "chemical" processed wood pulp in the

imported paper proceeds from the juxtaposing of coated paper of headings 4810.13, 4810.14, 4810.19, 4810.22 and 4810.29 with the

Uncoated paper of heading 48.02 in the Explanatory Notes to Harmonised System of (HS) Nomenclature as the authority to rely upon the

parameters in note 5 of chapter 48 of the First Schedule to Customs Tariff Act, 1975 is, for several reasons, not acceptable. To begin with, that line of

argument, not even hinted at in the findings of the lower authorities, had not been offered to the appellant at any stage hitherto. To permit that to

influence the proceedings at during the second appeal stage is tantamount to acknowledging the propriety of the trend that has marked the progress of

this dispute: interpolation of alternative submissions to shore up the denial initiated at the instance of the investigating agency. We are also not

convinced that the said Explanatory Note is intended for application of the technical parameters of $\tilde{A} \hat{A}, \neg \tilde{A} \hat{A}$ uncoated paper $\tilde{A} \hat{A}, \neg \tilde{A} \hat{A}$, when it could as well be

intended to offer a distinction for grafting a national policy into the tariff by enumeration of items or in assigning of tax rates. Intuitively too, the *Äŕçä-Ëœœash*

content of the uncoated paper, containing, as it does, the coating material, should be higher than that from

Åĉâ,-ËœuncoatedÅĉâ,-â,,ĉ paper and no logical progression to segregation of Åĉâ,-ËœechemicallyÅĉâ,-â,,ĉ processed pulp from other pulp is apparent.

17. We concur with Learned Authorized Representative that benefit of concessional rate of duty can be accorded only upon strict conformity with the

conditions of the relevant notification. The threshold eligibility of origin is not in dispute and there is no quarrel that, but for the revision of tariff entry,

no ground exists for denial of the privileges flowing from the Agreement. The eligibility or ineligibility, therefore, flows from classification which turns

solely on the process by which pulp used in production of the impugned goods had been obtained. Classification, mandated by section 12 of Customs

Act, 1962, is the essence of assessment to duties of customs and attended by valuation, within the aegis of section 14 of Customs Act, 1962 should the

levy be ad valorem. The rigour of the obligation cast upon Revenue by the statute for discarding classification is not to be diluted by counterposing the

responsibility cast on the importer, by the judicial determination referred to by Learned Authorized Representative, for validating their right to an

exemption or concession. These two aspects of determination of duty liability exist in mutually exclusive spheres and the connection between them is

the broader canvas of levy of customs duties. The principle espoused in the judgements cited by Learned Authorized Representative is not relevant to

this dispute.

18. For concluding the present proceedings, we are required to determine the legality and propriety of the approach adopted by the first appellate

authority in the impugned order for upholding the classification redetermined by the assessing authority to deny eligibility to concessional rate of duty.

The decisions in HPL Chemicals Ltd and in Hindustan Ferodo Ltd mandate that it is for Revenue to discharge the burden of justifying the

appropriateness of the proposed alternative classification in conformity with the General Rules for Interpretation of the Harmonized System and it

does not secure acceptance merely by discrediting the classification claimed by the assessee. In the present dispute, that onus can be discharged only

by establishing that at least 90% of the fibre content of the pulp used for manufacture of the impugned goods has been derived from chemical

processing of wood.

19. The emphasis placed by the original authority on the inculpatory statement of the proprietor of the importing entity has been dwelt upon in the

impugned order to validate the test result thus

The test report corroborates the statement given the proprietor of M/s. PLG Impex before the Directorate of Revenue

intelligence (DZ) wherein he had admitted that said goods have been manufactured from chemical pulp only. Thus it is quite evidence that

the consignments being imported by the appellant under the above referred Bill of Entry are appropriately classifiable under Customs Tariff

Heading 481013 and not under 481029 or 481099.

even without placing the importer on notice that it was intended to be used to their detriment in the proceedings. The context of the purported

admission is, thus, not apparent on record and, with denial opportunity of defence, the extent of corroboration remains undeterminable. Consequently,

the test report and the said admission, posited by the first appellate authority as mutually validating the conclusion that pulp was derived from

chemical processing, stands on unstable ground to weaken the reliability of either.

20. The documents that were made available by the importer to the investigation agency as counter to the purported admission had been discarded

thus

14. Further, in the documents submitted by Appellant through their representation dated 10.02.2020 filed before the DRI, in one of the

documents viz. supplementary copy of declaration letter dated 06.02.2020, purported to be issued by the manufacturer M/s Mitsubishi

Paper Mills, Japan, it has been clearly mentioned that the paper manufactured by them is produced through Chemical pulp. This clearly

proves that the impugned goods did not contain fibres obtained by a mechanical or chemi-mechanical process or of which not more than

10% by weight of the total fibre content consists of such fibres and the goods were appropriately classifiable under sub-heading 481013 of

the Customs Tariff Act.

to retain the relevancy of the admission for corroborating the test report. Further discrediting of the validity of those documents thus

The appellant submitted various documents, but they never furnished any document relevant to decide the classification i.e. fibre

analysis certificate issued by the manufacturer. Further, it is evident that the Appellant is not an end user of the impugned goods and merely

a trader. Accordingly, the claim of the manufacturer M/s Mitsubishi Paper Mills, Japan, as shown in the supplementary copy of declaration

letter dated 06.02.2020, that the paper is going to India for end usage of flexible packaging and small pouch manufacturing, appears to be

influenced by the Appellant.

appeared to be intended for supplementing the gap in the investigation. The assumption of the mantle of investigator by the first appellate authority by

in designating a particular document as the sole acceptable evidence and drawing adverse inference from its absence appears to go beyond the limited

authority statutorily conferred by section 128A (3) of Customs Act, 1962. The further observation that

the documents viz. pulp component ratio or fibre analysis certificate or mill analysis report pertaining to the earlier import has not

been submitted by the appellant before DRI or before the undersigned as was asked to furnish the same during the course of personal

hearing. This shows that the appellant is not inclined to submit the required fibre analysis reports deliberately since the onus to prove that

the declaration submitted by the importer is correct is on the importer so the appellant has to prove that the coated paper imported by the

appellant has fibres more than 10% obtained from mechanical or chemi-mechanical process which the appellant has failed to

prove.

blurring the line separating investigation and appellate jurisdiction, is also contrary to the mandate in HPL Chemicals Ltd and in Hindustan Ferodo

Ltd.

21. The certification evincing the origin of the goods, and based on production process intimated by the manufacturer, is the threshold qualification for

preferential rate of duty. The rules of origin stipulate ascertainment of the source, and extent, of content in a manufactured. The partial acceptance of

origin in the certificate while casting aspersions on the classification therein is not consistent with treaty mandate of presumption of authenticity unless

expressly established otherwise.

22. The order of assessment revised the classification without the assistance of the samples and, in the light of our observations on the reliability of the

admission statement as well as the aspersions cast by the first appellate authority on the documentation emanating from the manufacturers, this

subsequently obtained test report is all that remains in the kitty of customs authorities as evidence of conformity of the impugned goods with the

description corresponding to the tariff item adopted for assessment. The anchor of that evidence is the finding by the laboratory that the paper is

is chemical. The first appellate authority did not consider it necessary to ascertain the methodology of that determination even though the report was

bereft of any explanation. Nor is there any submission that standard tests for determination of the chemical pulp as having been extracted by

chemical process was available in the laboratory. Such unqualified reliance on a single sentence in the test report which abdicates the

statutorily empowered determination in favour of the laboratory certification is not dissimilar to the abdication of empowerment to assess in favour of

the investigation agency as both remain in the lee of statutory accountability. Hence the finding that

17. The appellant was provided with the copies of Test reports to offer their comments on the reports, instead of offering any comments,

during the course of personal hearing it was only said that 'the report does not give Customs Tariff hearing and does not disclose end use

of the product'. The CRCL or the any Testing lab is not required to classify the product (sample) or give opinion about the end use of the

product, they are required to give the composition, contents of the product (sample) which has clearly been given in the Test Report. As such

the contention of the appellant that the report is inconclusive is not acceptable.

18. Ongoing through the above test reports issued by CRCL, New Delhi it is evident that the consignments imported by the appellant are of

Paper composed wholly of chemical pulp, coated on one or both sides with kaolin (china clay) and other inorganic substance (i.e. calcium

carbonate) in rolls and do not contain fibres obtained by mechanical or chemi-mechanical process or of which nor more than 10% by

weight of the total fibre content consist of such fibres.

based on

16. I further find that the Test Report in respect of Bill of Entry No.6932911 dated 18.02.2020 (Lab No.CL-577 I/24.9.2020) issued by

the Central Revenue Control Laboratory, New Delhi clearly specifies that "The sample in the form of cut piece of white paper having glossy

surface on one side. It is composed wholly of chemical pulp and is coated on one side with inorganic substances (Kaolin and calcium

carbonate)"; in respect of sample drawn from the consignment covered under Bill of Entry No.7146553 dated 07.03.2020 (Lab No.CL-578

1/24.9.2020) it clearly stated that "The sample in the form of cut piece of white paper. It is composed wholly of chemical pulp and is coated

on both sides with inorganic substances (Kaolin and calcium carbonate)"; in respect of sample drawn from the consignment covered under

Bill of Entry No.7146553 dated 07.03.2020 (Lab No.CL-579 I/24.9.2020) it clearly stated that "The sample in the form of cut piece of white

paper having glossy surface on both sides. It is composed wholly of chemical pulp and is coated on both sides with inorganic substances

(Kaolin- and calcium carbonate)"; and in respect of sample drawn from the consignment covered under Bill of Entry No.7146553 dated

07.03.2020 (Lab No.CL-580 I/24.9.2020) it clearly stated that "The sample in the form of cut piece of white paper having glossy surface on

both sides. It is composed wholly of chemical pulp and is coated on both sides with inorganic substances (Kaolin and calcium carbonate)"".

The complete test reports dated 15.10.2020 issued by CRCL New Delhi pertaining to the samples drawn from the above Bill of Entry are

shown hereunder for reference:Ã¢â¬â¢

indicates non-application of mind. These pitfalls inhere in proceedings that are not borne out of a show cause notice followed by an assessment order

founded on the description corresponding to the appropriate tariff item in the First Schedule to Customs Tariff Act, 1975. The superstructure erected

on such foundations cannot but bear the risk of unstable, and uneasy, existence.

23. Evolving technology in the paper industry, and particularly in qualitative improvement for catering to existing uses as well as new applications, has

had to focus attention on the Ã¢â¬â¢yellowingÃ¢â¬â¢ and Ã¢â¬â¢brittlenessÃ¢â¬â¢ associated with passage of time that affect paper made from pulp obtained by

Ã¢â¬â¢mechanical processingÃ¢â¬â¢ of wood. It is seen from the interesting, and educative, material placed before us by Learned Authorized

Representative that wood pulp is mixed with fillers and binders to form slurry that, upon evaporation at high speed on meshes, becomes the paper that

we are all familiar with. We also gather from the technical literature that Ã¢â¬â¢ligninÃ¢â¬â¢, which naturally binds the fibre in plants and tends to adhere in

wood pulp, is responsible for this hazard of ageing. The Ã¢â¬â¢mechanical processingÃ¢â¬â¢ of wood does little to the Ã¢â¬â¢ligninÃ¢â¬â¢ content in pulp and,

while Ã¢â¬â¢chemi-mechanical processingÃ¢â¬â¢ has some impact, only Ã¢â¬â¢chemical processingÃ¢â¬â¢ can render Ã¢â¬â¢lignin freeÃ¢â¬â¢ fibre. It is, therefore,

the presence of Ã¢â¬â¢ligninÃ¢â¬â¢ in paper that is the distinction for differentiating between that manufactured from pulp obtained by Ã¢â¬â¢mechanical

processÃ¢â¬â¢ or Ã¢â¬â¢chemi-mechanical processÃ¢â¬â¢ and from Ã¢â¬â¢chemical processingÃ¢â¬â¢ of wood.

24. Ã¢â¬â¢Ash contentÃ¢â¬â¢ of paper is the residue of combustion at very high temperatures; it does not indicate the presence of Ã¢â¬â¢ligninÃ¢â¬â¢ alone but

of all minerals and substances in paper. The literature made available to us does not also correlate Ã¢â¬â¢ligninÃ¢â¬â¢ to Ã¢â¬â¢ash contentÃ¢â¬â¢ and there is

nothing on record to suggest that ascertainment of Ã¢â¬â¢ligninÃ¢â¬â¢ content in paper is possible by standard testing or that the content of the

representative samples reported by the customs laboratory was the outcome of such testing. No such submission has been made on behalf of

Revenue or has been elaborated upon in proceedings before the lower authorities. The absence of any submission, and reference in the submitted

material, on this technical aspect suggests that, after transformation into paper, Ã¢â¬â¢ligninÃ¢â¬â¢ content of pulp is not ascertainable. Had it been

otherwise, that would have been the priority in any investigation and the passing of time since November 2019 does not appear to have sufficed for

this fundamental ascertainment. The unqualified, and unexplained, inclusion of Ã¢â¬â¢chemicalÃ¢â¬â¢ in the test report does not find acceptance as

indicative of Ã¢â¬â¢ligninÃ¢â¬â¢, or its absence, in the paper imported by the appellant.

25. Yet, the universal customs classification code did segregate paper produced from pulp of chemical or, substantially of chemical

processing, and paper produced from pulp of mechanical or chemi-mechanical processing and the possibility of distinguishing the two is

implicit thereby. It was, probably, owing to the uniformity of rates of duty for the articles covered within heading 4810 of the First Schedule to

Customs Tariff Act, 1975 that such dispute did not arise to bring the mechanism for distinguishing to the fore. The distinction between the two is

now manifest in the rates of duty applicable to imports from Japan and, to the extent that the preferential rate is linked to the origin which itself is to be

accepted on the basis of prescribed certification, the classification too would have to rest on that same certification.

26. The descriptions in the relevant tariff items are emphatically unambiguous, the rules of classification clearly delineate the distinction and the onus

for disturbing classification is unequivocally enunciated as the law of the land. The classification can be revised only by determination of the process

by which the pulp was extracted. The cursory finding in the test report is not reliable in the absence of standard test for determination of the source of

pulp deployed for manufacture of the impugned goods. The coated paper, as certified by the competent authority designated under the

Comprehensive Economic Partnership Agreement (CEPA), does not conform to the description corresponding to sub-heading 8410.13 of First

Schedule to Customs Tariff Act, 1975. The denial of the benefit of the concessional rate of duty being improper, the impugned order is set aside and

appeal allowed with consequential relief.

(Order pronounced in the open court on 29th November 2021)