IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76577 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/291/2023 dated 21.04.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Elvance Overseas LLP **: Appellant**
No. 105, H-3, Vardhman Plaza Tower,
Netaji Subhash Place, Pitampura,
New Delhi – 110 034

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri R.N. Bandyopadhyay, Advocate,
Ms. Sukanya Roy, Consultant,
Ms. Rupsha Chatterjee, Advocate,
For the Appellant

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76130 / 2026

DATE OF HEARING: 20.07.2026

DATE OF DECISION: 25.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by M/s. Elvance Overseas LLP, Delhi [hereinafter referred to as the "appellant"], against the Order-in-Appeal No. KOL/CUS(PORT)/KS/291/2023 dated 21.04.2023 passed by the Commissioner of Customs (Appeals), Kolkata, whereby the ld. lower appellate authority upheld Order-in-Original No. KOL/CUS/JC/PORT/PCA/30/2021 dated 31.05.2021 passed by the Joint Commissioner of Customs (Port), Kolkata confirming the proceedings initiated against the appellant.

2. The facts of the case are that the appellant is engaged in the import of textile fabrics and, during the relevant period, imported consignments declared as "Mixed Lot of Polyester Warp Knitted Fabrics" of Chinese origin from overseas suppliers, namely, M/s. Dauer International Ltd., U.K. and M/s. LCL Group Co. Ltd., H.K. The appellant filed five (05) Bills of Entry for clearance of the aforesaid imported goods, having a cumulative assessable value of Rs.3,38,71,839/-, by classifying the goods under Customs Tariff Item No. 6005 9000 of the First Schedule to the Customs Tariff Act, 1975 and simultaneously claiming the benefit of concessional Basic Customs Duty at the rate of 10% under Serial No. 166 of Notification No. 82/2017-Customs dated 27.10.2017. On the basis of such self-assessment, Customs duty amounting to Rs.56,05,789/- was discharged and the goods covered under the said Bills of Entry were cleared for home consumption. The details of the impugned Bills of Entry are provided in the table given below: -

Sl. No.	**Bill of Entry No.**	**Bill of Entry Date**	**COO**	**Supplier**	**Declared Item Description**	**Assessable Value (in Rs.)**
1	6374269	14.05.2018	CN	Dauer International Ltd., U.K.	Mixed lot of Polyester Warp Knitted Fabric	76,96,458
2	6379031	15.05.2018	CN	LCL Group Co. Ltd., H.K..	Mixed lot of Polyester Warp Knitted Fabric	50,37,134
3	6893293	21.06.2018	CN	Dauer International Ltd., U.K.	Mixed lot of Polyester Warp Knitted Fabric	77,79,313
4	7189011	12.07.2018	CN	Dauer International Ltd., U.K.	Mixed lot of Polyester Warp Knitted Fabric	80,31,090

5	7189955	12.07.2018	CN	LCL Group Co. Ltd., H.K.	Mixed lot of Polyester Warp Knitted Fabric	53,27,844
Total						3,38,71,839

3. Subsequently, the Revenue entertained the view that the classification adopted by the appellant in respect of the imported goods, viz. "Polyester Warp Knitted Fabrics", could not fall under the residual Tariff Entry Item No. 6005 9000, but were liable to be re-classified under the Tariff Entry Nos. 6005 3500 to 6006 3900 applicable to warp knitted fabrics of 'synthetic fibres'. Thus, it was alleged that the consequential benefit of concessional Basic Customs Duty under Notification No. 82/2017-Customs had been wrongly availed.

4. Chapter 60 of the First Schedule to the Customs Tariff Act, 1975 classifies knitted or crocheted fabrics under six principal headings, namely:

Heading	**Description**
6001	Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted
6002	Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of Heading 6001
6003	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of Heading 6001 or 6002
6004	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of

	elastomeric yarn or rubber thread, other than those of Heading 6001
6005	Warp knitted fabrics (including those made on galloon knitting machines), other than those of Headings 6001 to 6004
6006	Other knitted or crocheted fabrics

5. According to the Department, the tariff structure under Heading 6005, classifies goods on the basis of their constituent material, namely cotton, synthetic fibres, artificial fibres and "other", as reproduced below: -

6006: Warp Knit Fabrics (Including Those made on Galloon Knitting Machines), Other Than Those of Headings 6001 to 6004				
HS Code	**Level**	**Item description**	**Unit**	**Effective BCD** **(N82/2017)**
	-	*Of cotton:*		
6005 21 00	--	Unbleached or bleached	kg.	25%
6005 22 00	--	Dyed	kg.	25%
6005 23 00	--	Of yarns of different colours	kg.	25%
6005 24 00	--	Printed	kg.	25%
	-	*Of synthetic fibres:*		
6005 35 00	--	Fabrics specified in Sub-heading Note 1 to this Chapter	kg.	20%
6005 36 00	--	Other, unbleached or bleached	kg.	20%
6005 37 00	--	Other, dyed	kg.	20%

6005 38 00	--	Other, of yarns of different colours	kg.	20%
6005 39 00	--	Other, printed	kg.	20%
	-	*Of artificial fibres:*		
6005 41 00	--	Unbleached or bleached	kg.	20%
6005 42 00	--	Dyed	kg.	20%
6005 43 00	--	Of yarns of different colours	kg.	20%
6005 44 00	--	Printed	kg.	20%
6005 90 00	-	Other	kg.	10%

5.1. Chapter Heading 6005 itself is divided into four principal groups represented by the single-dash entries in the Harmonised System, namely:

Level	**Article / Group**	**Relevant Tariff Items**
–	Of cotton	60052100, 60052200, 60052300, 60052400
–	Of synthetic fibres	60053500, 60053600, 60053700, 60053800, 60053900
–	Of artificial fibres	60054100, 60054200, 60054300, 60054400
–	Other	60059000

5.2. Proceeding on the aforesaid tariff structure, the Revenue was of the view that the expression "Polyester Warp Knitted Fabric" itself indicated that the goods were manufactured from polyester, which, in terms of Chapter Note 1 to Chapter 54 of the

Customs Tariff Act, constitutes a 'synthetic fibre'. It was, therefore, prima facie considered that the goods could not appropriately fall under the residual Tariff Entry No. 6005 9000, which was intended to cover articles other than those specifically classifiable under the preceding entries. The Revenue also took note of contemporaneous import data in respect of various other importers of "Polyester Warp Knitted Fabric" of Chinese origin during the year 2019, wherein the goods had been declared under Customs Tariff Item Nos. 6005 3600 and 6005 3700.

6. On the aforesaid basis, it is the case of the Revenue that the imported goods are appropriately classifiable under Customs Tariff Item Nos. 6005 3500 to 6006 3900, being warp knitted fabrics of synthetic fibres, and consequently attracted Basic Customs Duty at the rate of 20%, Surcharge at the rate of 10% and I.G.S.T. at the rate of 5% in terms of Notification No. 82/2017-Customs. Accordingly, it is alleged that the appellant has deliberately mis-classified the subject goods under Customs Tariff Item No. 6005 9000, so as to avail the benefit of Basic Customs Duty at the rate of 10% provided under Serial No. 166 of Notification No. 82/2017-Customs with the intention to evade payment of applicable customs duty.

7. Accordingly, a Show Cause Notice dated 06.12.2019 came to be issued proposing rejection of the classification claimed by the appellant under Customs Tariff Item No. 6005 9000 and denial of the corresponding exemption benefit under Notification No. 82/2017-Customs dated 27.10.2017. The Notice further proposed reclassification of the imported goods under Customs Tariff Item Nos. 6005 3500 to 6006 3900, recovery of differential Customs duty

amounting to Rs.39,12,198/- together with applicable interest and imposition of penalties under Sections 114A and 114AA of the Customs Act, 1962.

7.1. The above Notice was adjudicated vide the Order-in-Original No. KOL/CUS/JC/PORT/ PCA/30/2021 dated 31.05.2021, whereby the adjudicating authority confirmed the differential duty demand of Rs.39,12,198/- along with applicable interest, by rejecting the classification claimed by the appellant under Customs Tariff Item No. 6005 9000 and reclassifying the imported goods under Customs Tariff Item Nos. 6005 3500 to 6006 3900 and denying the benefit of Notification No. 82/2017-Customs dated 27.10.2017 (Sl. No. 166) as claimed by the appellant. The ld. adjudicating authority also imposed a penalty equal to the differential duty demanded above, under Section 114A of the Customs Act, 1962 along with a penalty of Rs.5,00,000/- under Section 114AA ibid.

7.2. The appellant thereafter preferred an appeal before the Commissioner of Customs (Appeals), Kolkata, who, vide the impugned Order-in-Appeal No. KOL/CUS(PORT)/KS/291/2023 dated 21.04.2023, upheld the findings recorded in the Order-in-Original dated 31.05.2021 and rejected the appeal.

7.3. Aggrieved thereby, the present appeal has been filed before this Tribunal.

8. During the course of arguments, the Ld. Counsel appearing on behalf of the appellant made various submissions in support of their contentions, which are summarized as follows: -

(I) Burden of Proof in Tariff Classification:

(i) The law is now well settled that— Revenue must establish that the classification adopted by the importer is incorrect. A mere suspicion is insufficient.

(ii) The Department must produce technical evidence/ scientific evidence/ expert opinion/ literature laboratory report before rejecting the declared classification. Following Citations are relied upon:

- *HPL Chemicals Ltd. v. CCE [2006 (197) E L T 324 (S.C.)]. - burden to prove classification lies upon Revenue.*
- *CCE v. Wockhardt Life Sciences Ltd. [2012 (277) 239 (S.C.)] - classification cannot be changed merely by assumptions.*

(II) Necessity of Laboratory Testing:

(i) The Classification under Chapter 60 depends upon fiber composition, weight, predominance, textile construction etc. These cannot be determined merely from invoice, packing list, visual examination.

(ii) No Textile Committee report, No CRCL report, No NABL laboratory report, no scientific analysis has been adduced so far. Therefore, Revenue completely failed to follow these norms. Without any laboratory report classification cannot be altered. Particularly textile matters involved with 1. Polyester, 2. knitted fabrics, 3. woven fabrics and 4. mixed textile goods.

(III) Interpretation of Chapter 60:

(i) This chapter is required to be properly analyzed regarding Section XI of the First Schedule of the Customs Tariff Act, 1975, the HSN Explanatory Notes of this chapter, difference between CTH 6005 and 6006, meaning of Warp Knitted Fabrics, meaning of Synthetic Fabrics, meaning of Artificial Fabrics, meaning of Mixed Textile Materials. The HSN commentary is required to be clarified extensively.

(ii) The mixed lots cannot automatically be treated as 100% synthetic fabrics unless fiber composition is scientifically determined. Nothing has been followed in the instant case.

(IV) Contemporaneous Assessment at Other Ports:

(i) The Nhava Sheva, Chennai, Mundra and other Customs Houses where identical goods having identical description were accepted under CTH 6005 9000 / CTH 6006 9000. The Tribunal has repeatedly held that contemporaneous assessment is an important piece of evidence. If Revenue departs from uniform practice, it must explain why. Otherwise, classification becomes arbitrary.

(V) Assessment Already Completed:

(i) The Proper Officer examined assessed, enhanced value and accepted classification. Later, without any fresh evidence classification has been changed. This itself shows change of opinion rather than discovery of new evidence.

(ii) The decisions of reopening where the assessment has got finality are beyond the capacity of Law where there is no new material.

(VI) No Evidence Produced by Revenue

(i) The Revenue has failed to produce Test report, Technical literature, Textile Committee opinion, Expert witness, Chemical Examiner's report, Market enquiry, Manufacturer's specification, Fibre composition, Yarn composition, GSM analysis etc. Therefore, there is absolutely no evidence.

(ii) Denial merely because Revenue believes that another heading should apply without any positive proof or evidence which is illegal.

8.1. In view of the above submissions, the Ld. Counsel for the appellant contends that the goods in question are rightly classifiable under Customs Tariff Item No. 6005 9000, and thus, the appellant is entitled to the benefit of Sl. No. 166 of Notification No. 82/2017-Customs dated 27.10.2017. Accordingly, they have prayed for setting aside the impugned order and allowing the appeal, with consequential reliefs.

9. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings of the authorities below. He submits that the appellant themselves declared the impugned goods imported as "Polyester Warp Knitted Fabric"; that this description indicates that the goods were manufactured from polyester, which, in terms of Chapter Note 1 to Chapter 54 of the Customs Tariff Act, constitutes a 'synthetic fibre'. It is therefore submitted that polyester fabric manufactured out of synthetic fibres are appropriately classifiable under the CTH 6006

3200. Thus, the Ld. Authorized Representative of the Revenue contends that the appellant has mis-classified the goods imported with a view to avail undue benefit of concessional rate of duty. In view of these submissions, he prays for rejection of the instant appeal.

10. Heard both the sides and perused the records available before us.

11. We find that in this case, the appellant has imported consignments declared as "Mixed Lot of Polyester Knitted Fabrics" by classifying the said goods under Customs Tariff Item No. 6005 9000 of the First Schedule to the Customs Tariff Act, 1975. The Appellant claimed the benefit of concessional Basic Customs Duty at the rate of 10% under Serial No. 169 of Notification No. 82/2017-Customs dated 27.10.2017. On the basis of such self-assessment, duty amounting to Rs.56,05,789/- was discharged and the goods covered under the said Bills of Entry were cleared for home consumption.

11.1. We take note of the fact that the Department had not raised any objection to the classification of the goods determined by the appellant on self-assessment. The eligibility towards benefit of concessional rate of duty benefit claimed by the Appellant was also not questioned before clearance of the goods.

11.2. It is a settled position of law that the Revenue must establish that the classification adopted by the importer is incorrect, before re-classification. A mere suspicion of mis-classification is not sufficient. The Department must produce technical evidence / scientific evidence / expert opinion / literature laboratory report before rejecting the declared classification. This view has been held by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise v. Wockhardt Life Sciences Ltd. [2012 (277) E.L.T. 299 (S.C.)]*, wherein it has been categorically held that the burden to prove classification lies upon Revenue. The relevant portion of the said decision is reproduced below:

> *"30. There is no fixed test for classification of a taxable commodity. This us probably the reason why the 'common parlance test' or the commercial usage test' are the most common [see A. Nagaraju Bors. v. State of A.P., 1994 Supp (3) SCC 122 = 1994 (72) E.L.T. 801 (S.C.)]. Whether a particular article will fall within a particular Tariff heading or not has to be decided on the bases of the tangible material or evidence to determine how such as article in understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intension, when the statute was enacted [see D.C.M. v. State of Rajasthan, 1980 (4) SCC 71 = 1980 (6) E.L.T. 383 (S.C.)]. One of the essential factors for determining whether a product falls Chapter 30 or not is whether the product in understood as a pharmaceutical product in common parlance [see C.C.E. v. Shree Baidyanath Ayurved, 2009 (12) SCC 413 = 2009 (237) E.L.T. 225 (S.C.)]; Commissioner of Central Excise, Delhi v. Ishaan Research Lab (P) Ltd. - 2008 (13) SCC 349 = 2008 (230) E.L.T. 7 (S.C.)]. Further, the quantity of medicament used in a particular product will also not be a relevant factor for, normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. [Puma Ayurvedic Herbal (P) Ltd. v. C.C.E., Nagpur - 2006 (3) SCC 266 = 2006 (196) E.L.T. 3 (S.C.)]; State of Goa v. Colfoax Laboratories - 2004 (9) SCC 83 = 2003 (158) E.L.T. 18 (S.C.)]; B.P.L. Pharmaceuticals v. C.C.E. - 1995 Supp (3) SCC 1 = 1995 (77) E.L.T. 485 (S.C.)].*
>
> *31. However, there cannot be a static parameter for the correct classification of a commodity. This*

Court in the case of Indian Aluminium Cables Ltd. v. Union of India, 1985 (3) SCC 284 = 1985 (21) E.L.T. 3 (S.C.), has culled out this principle in the following words :

"13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff...."

32. Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance [see O.K. Play (India) Ltd. v. C.C.E., - 2005 (2) SCC 460 = 2005 (180) E.L.T. 300 (S.C.); Alpine Industries v. C.C.E., New Delhi - 1995 Supp. (3) SCC 1; Sujanil Chemo Industries v. C.C.E. & Customs - 2005 (4) SCC 189 = 2005 (181) E.L.T. 206 (S.C.); ICPA Health Products (P) Ltd. v. C.C.E. - 2004 (4) SCC 481 = 2004 (167) E.L.T. 20 (S.C.); Puma Ayurvedic Herbal (supra); Ishaan Research Lab (P) Ltd. (supra); C.C.E. v. Uni Products India Ltd., 2009 (9) SCC 295 = 2009 (241) E.L.T. 491 (S.C.)].

33. A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense [see Akbar Badrudin v. Collector of Customs, 1990 (2) SCC 203 = 1990 (47) E.L.T. 161 (S.C.); Commissioner of Customs v. G.C. Jain, 2011 (12) SCC 713 = 2011 (269) E.L.T. 307 (S.C.)]. A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former [see C.C.E. v Jayant Oil Mills, 1989 (3) SCC 343 = 1989 (40) E.L.T. 287 (S.C.); H.P.L. Chemicals v. C.C.E, 2006 (5) SCC 208 = 2006 (197) E.L.T. 324 (S.C.); Western India Plywoods v. Collector of Customs, 2005 (12) SCC 731 = 2005 (188) E.L.T. 365 (S.C.); C.C.E. v. Carrier Aircon, 2006 (5) SCC 596 = 2006 (199) E.L.T. 577 (S.C.)]. In C.C.E. v. Carrier Aircon, 2006 (5) SCC 596 = 2006 (199) E.L.T. 577 (S.C.), this Court held :

"14.....There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of

classification, the relevant factors inter alia are statutory fiscal entry, the basis character, function and use of the goods. When a commodity fall within a tariff entry by virtue of the purpose for which it is put to (sic. produced), the end use to which the product is put to, cannot determine the classification of that product."

*34. In our view, as we have already stated, **the combined factor that requires to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the user to which the product is put**. However, the miniscule quantity of the prophylactic ingredient is not a relevant factor. In the instant case, it is not is dispute that this is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as a "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry."*

[Emphasis supplied]

11.2.1. A similar view has been held in the case of H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh [2006 (197) E.L.T. 324 (S.C.)] wherein it has been held that classification cannot be changed merely by assumptions. In the aforesaid judgement, the Hon'ble Apex Court has observed 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."*

11.3. In the present case, we find that no samples have been drawn to ascertain the constituent material of the fabric imported. It is pertinent to note that the classification of the goods under Chapter 60 depends upon fiber composition, weight, predominance, textile construction, etc. These cannot be determined merely from invoice, packing list or visual examination. This Chapter is required to be properly analyzed regarding Section XI of the First Schedule of the Customs Tariff Act, 1975, the HSN Explanatory Notes of this chapter, differences between the relevant tariff entries, meaning of Warp Knitted Fabrics, meaning of Synthetic Fabrics, meaning of Artificial Fabrics, meaning of Mixed Textile Materials, etc. The claim of the appellant in this case is that they have imported fabrics containing mixed lots of fibres. According to the appellant, these fabrics were not made up of purely 'synthetic' or 'pure artificial' fibres, but are made up of mixed lot of fibres. We agree with the submission made by the appellant that such a fabric made up of mixed lot of fibres cannot automatically be treated as 100% synthetic fabrics unless the fibre composition is scientifically determined. In the present case, we find that no samples have been drawn to ascertain the constituent material or fibre content.

11.4. We further find that no Textile Committee report, no CRCL report, no NABL laboratory report and no scientific analysis has been adduced to substantiate the allegation of mis-classification against the importer-appellant. Thus, we find that Revenue has completely failed to follow the norms required for re-classification of the goods imported. In this regard, we find merit in the submission advanced by the appellant that without any laboratory report negating the existing classification, the classification adopted cannot be altered. Particularly when textile matters involved with Polyester, knitted fabrics, woven fabrics and mixed textile goods, a laboratory test report is a must to ascertain the constituent material, nature of weaving, etc. However, we find that the Revenue has failed to produce Test report, Technical literature, Textile Committee opinion, Expert witness, Chemical Examiner's report, Market enquiry, Manufacturer's specification, Fibre composition, Yarn composition, GSM analysis etc in support of their allegation of mis-classification. Therefore, we hold that there is absolutely no evidence available on record warranting re-classification of the goods.

11.5. As regards the classification adopted by the appellant, it is observed that the goods in question have been declared by the appellant-importer as "Polyester Warp Knitted Fabrics" and the same have been classified under the Customs Tariff Item No. 6005 9000, as they contain material made of mixed lot of fibres. We find that Chapter Heading 6005 is divided into four principal groups represented by the single-dash entries in the Harmonised System, namely:

Level	**Article / Group**	**Relevant Tariff Items**
–	Of cotton	60052100, 60052200, 60052300, 60052400
–	Of synthetic fibres	60053500, 60053600, 60053700, 60053800, 60053900
–	Of artificial fibres	60054100, 60054200, 60054300, 60054400
–	Other	60059000

11.6. From the above, it can be seen that if the warp knit fabric is exclusively made up of cotton, synthetic fibres or artificial fibres, then the said goods are appropriately classifiable under the relevant Tariff Headings mentioned in the first three columns of the Table *supra*. However, if the fabric is not made exclusively of cotton, synthetic or artificial fibres, then the said goods has to be classified under the residual entry 6005 9000. In the present case, the appellant's claim is that they have imported fabrics made up of a mixed lot of fibres, which by composition are not purely synthetic in nature. It is a fact that no testing has been conducted by the Department to ascertain the percentage of various constituent materials in the fabric or to disprove the stand taken by the appellant. Although, we find that the Appellant has also not submitted any Test Report in support of their claim that the fabric is made up of fibres of mixed lot containing other fibres and their percentages thereof except claiming that the fabric is made up of mixed lot of materials, since the Department had not raised any objection as to the classification or the eligibility towards the benefit of the said Notification at the time of clearance of the goods, we are of the opinion that onus in this case lies on the Revenue to substantiate by means of corroborative evidence that the goods had in fact been mis-classified. The said view as to responsibility of proving classification of the goods being on the Revenue has been as expressed by the Hon'ble Supreme Court in the case of *HPL Chemicals Ltd.* cited supra. Thus, if the Revenue is of the view that the classification adopted by the appellant is incorrect, then the Revenue must establish it by means of Test Reports, Literature, etc. In the present case, we find that the Department has not drawn any samples to ascertain the constituent materials of the fabrics in question viz. mixed lot of fabrics, as contended by the appellant. In the absence of any test report suggesting contrary to the claim made by the appellant, their claim of classification cannot be simply rejected.

11.7. We find that the Revenue's proposal for re-classification of the goods emanate from the declaration of the description made by the appellant in the Bills of Entry. The appellant has declared the goods imported as "Mixed Lot of Polyester Warp Knitted Fabrics" whereas the Revenue has interpreted it to mean that the fabric is made up of 100% polyester and hence classifiable as fabrics made up of 'synthetic fibres' alone. In this regard, we find force in the appellant's submission that polyester warp knitted fabrics do not always mean that the fabric is made up of 100% polyester. It has been submitted that in such cases, although the fabrics is made up of polyester fibres in the 'Warp', however, the 'Weft' can be made up of any other material other than polyester. Thus we agree with the appellant's stand that the term 'Polyester Warp Knitted Fabrics' as used by the importer would indicate that the Warp is made up of polyester and not prove as to its essential composition.

11.8. Moreover, we find that the Proper Officer has examined the goods and accepted the classification declared by the appellant under the Customs Tariff Item No. 6005 9000 and assessed the Bills of Entry and cleared the goods. No objection was raised at the time of assessment. Later, the change in classification was proposed without bringing in any fresh evidence warranting re-classification. As the assessment has not been challenged, it has attained finality. It cannot be re-opened without bringing in any fresh evidence suggesting suppression of material fact on the part of the appellant. As already discussed hereinbefore, the Department has failed to bring in any fresh evidence to allege mis-declaration on the part of the appellant. In the absence of any fresh evidence warranting re-classification, we hold that the classification adopted by the appellant cannot be rejected.

11.9. Further, a perusal of the impugned order reveals that the Ld. adjudicating authority has re-classified the impugned goods under the Tariff Entry Nos. 6005 3500 to 6006 3900 applicable to warp knitted fabrics of 'synthetic fibres'. It can thus be seen that the goods have not been specifically classified under a particular Tariff Entry. There is no provision in law to classify the goods under multiple Tariff Entries between 6005 3500 to 6006 3900. In any case, as there is no evidence available on record to hold that the fabrics imported by the appellant are exclusively purely made up of 'synthetic fibres' so as to justify such an approach, we hold that the re-classification done by the Ld. adjudicating authority in the impugned order is legally not sustainable and hence we reject the same. In the absence of any cogent or corroborative evidence available on record to dispute the classification claimed by the appellant under the Customs Tariff Item No. 6005 9000, and since the same has been approved by the Proper officer and the said assessment has not been challenged, we uphold the classification of the impugned goods under the Customs Tariff Item No. 6005 9000 as claimed by the appellant. Accordingly, we hold that the appellant is eligible for the benefit of concessional rate of Basic Customs Duty, as provided under Sl. No. 166 of the Notification No. 82/2017-Customs.

11.10. In this regard, we also take note of the evidence submitted by the appellant which shows that in Nhava Sheva, Chennai, Mundra and other Customs Houses, identical goods having similar description were accepted under the CTH 6005 9000. Copy of one of such Bills of Entry where similar goods were classified under the Tariff Entry 6005 9000, as placed on record by the appellant, is extracted below for ready reference: -

ITEM DETAILS

BE NO.:8474242 BE DATE :16/10/2018 CC :N TYPE :H Invoice No/Item No:1 / 1

Item Desc:WARP KNITTED FABRICS CORG:CN Qty /Unit:20351.2 KGS

Brand:NA Model:NA

Gen Desc:WARP KNITTED FABRICS End Use:FSH100

Item Acc: Mnf Nm:HONG KONG DAWEIDE CLOTHING CO LTD

	Sch Code	Ritc Code	Customs Tariff Head	Central Excise Tariff Head	Unit Price	Invoice Currency	SVB Load
Declared		60059000	60059000	NOEXCISE	2.25	USD	
Assessed		60059000	60059000	NOEXCISE	2.25	USD	

Custom Duty	Declared								Assessed							
	Rate	Flg	Amounts	UQC	Notn-Sr. No.	Duty	Duty FG	Assess Val	Rate	Flg	Amounts	UQC	Notn-Sr. No.	Duty	Duty FG	Assess Val
BCD	10				082/2017-166	341594.9	591813.0	3415948.92	10				082/2017-166	341594.9	591813.0	3415948.92
CAIDC						0.0	0.0							0.0	0.0	
Ed Cess	0				-	0.0	0.0		0				-	0.0	0.0	
SH Ed-Cess	0				-	0.0	0.0		0				-	0.0	0.0	
CVD	0				-	0.0	0.0		0				-	0.0	0.0	3757543.82
EAIDC						0.0	0.0							0.0	0.0	
SCD	10				-	34159.5	0.0		10				-	34159.5	0.0	
IGST AMT						189585.2	0.0						001/2017-I22	189585.2	0.0	
Total Duty						565339.60								565339.60		

11.11. In view of the above discussions, we uphold the classification of the impugned goods under the Customs Tariff Item No. 6005 9000 as claimed by the appellant and reject the re-classification of the goods by the Revenue between the Customs Tariff Item Nos. 6005 3500 to 6006 3900. We therefore hold that the appellant is eligible for the benefit of concessional Basic Customs Duty at the rate of 10% under Serial No. 166 of Notification No. 82/2017-Customs dated 27.10.2017. Consequently, we hold that the differential duty demand of Rs.39,12,198/- together with applicable interest confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the allegations of mis-declaration and mis-classification are not sustained, we hold that the penalties imposed on the appellant under the Sections 114A and 114AA of the Customs Act, 1962 are not warranted and hence the same are set aside.

12. Thus, the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on **25.08.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd