Tariff Authority for Major Ports

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the representation received from M/s. Beekeyen Freight Services (P) Limited (BFSPL) about classification of Linen Fabrics for the purpose of levy of wharfage by the Chennai Port Trust as in the Order appended hereto.

(S. Sathyam)
Chairman

M/s. Beekeyen Freight Services (P) Limited - - - Applicant

Vs

The Chennai Port Trust (CHPT) - - - Respondent

ORDER
(Passed on this 12th day of August 2002)

This case relates to a representation received from M/s. Beekeyen Freight Services (P) Limited (BFSPL) for refund of excess wharfage collected by the CHPT on import of Linen Fabric.

2. The BFSPL has made the following main points in favour of its representation:

(i). It is a Custom House Agent based in Chennai and its customer M/s. Ambattur Clothing Limited (ACL) are a 100% Export Oriented Unit (EOU) engaged in manufacture and export of readymade garments.

(ii). The cargo item Linen Fabric has been classified by the Customs under tariff heading 53.09 as woven fabrics of flax since linen fabric is made out of the stems of the plant called flax.

(iii). Linen fabric falls under the category of ‘Textiles’. The appropriate tariff heading available in the existing Scale of Rates of the CHPT is under item number 84 which prescribes a wharfage rate for ‘Textiles and Yarn Silk, Synthetic, Woolen, Cotton and all manufactures thereof.’

(iv). Since a separate wharfage rate for Linen Fabric did not exist in the Scale of Rates of the CHPT, it was classified under the category of ‘Textiles’ in the Import Applications. The port had accepted this classification at the time of clearance. Accordingly, wharfage at the rate of 0.13% advalorem was paid as per the rates applicable for ‘Textiles’; and, delivery of the consignment was taken in December 2000 under the two Import Applications (IAs).
(v). Subsequently, in the month of July 2001 based on an audit query regarding classification of this item, the port had informed about short recovery of Rs. 48,843 taking into consideration an advalorem wharfage rate of 0.52% by classifying this cargo under item number 95B - ‘Goods not specified otherwise’.

(vi). The BFSPL had offered the following clarification in support of its claim to the CHPT:

(a). All textile fabric are made out of any one or more of raw materials. The raw materials undergo various processes before being manufactured as final product such as textile fabrics. Linen fabric is made out of fibrous material taken out from the plant called flax.
(b). Simply because the Linen fabric does not have a specific mention in the wharfage schedule, it does not mean that it is not a fabric at all. The words ‘all manufactures thereof’ used in item number 84 of the wharfage schedule clearly indicates that linen fabric falls under the ‘Textiles’ category.

(vii). The port refused to classify Linen Fabric under the head ‘Textiles’ despite the clarification given by it. The Office of Textile Committee was then approached for clarification. The Textile Committee has clearly explained that Linen fabric falls under the category of ‘Textiles’.

(viii). The CHPT did not accept the explanation given by the Textile Committee and insisted with its demand for difference of wharfage rate. Left with no other alternatives, the BFSPL had paid under protest the difference in wharfage as demanded by the CHPT.

(ix). The CHPT is basically at fault as it has taken decision arbitrarily without analysing the technical difference between stems, fibers and manufactured articles made out of the fibre of the plant.

(x). In view of the above, it is clear that the linen fabric falls under the category of ‘Textiles’. The wharfage earlier paid by it under item No. 84 of the wharfage schedule is in order. That being so, the excess amount recovered by reclassifying the cargo under item number 95-B needs to be refunded.

3. A copy of the representation received from BSFPL was circulated to the CHPT and concerned representative bodies of port users for their comments. The comments received from them are summarised below:

**The Tamil Chamber of Commerce (TCC)**

(i). The Textiles Committee, Chennai have certified that the woven fabrics of flax (linen) falls under ‘Textile’ group. The representation made by the BFSPL for levy of wharfage as prescribed for item number 84 is, therefore, correct.

(ii). The port may be advised to refund the excess amount recovered by classifying it under item number 95-B.

**The Southern India Chamber of Commerce and Industry (SICCI)**

(i). As stated by the BFSPL the port had initially agreed that the consignment of linen fabric fell under the category of ‘Textiles’.

(ii). Further, the Textile Committee of the Ministry of Textile has also classified woven fabric of flax under the heading ‘Textiles’. That being
so, the classification of linen fabric under item number 84 of the Scale of Rates must be accepted.

**The Chennai Custom House Agents Association (CCHAA)**

(i). A noteworthy opinion is the one which is obtained from the Textiles Committee which is functioning under the Ministry of Textiles, and who can be considered an authority on the subject and whose opinion must be considered final on the subject.

(ii). It is therefore, felt that the classification of linen fabric as “Textiles” under item number 84 is correct.

**Madras Chamber of Commerce and Industry (MCCI)**

It has no comment to offer.

4. The comments received from the various port users/representative bodies of port users were forwarded to the BFSPL and the CHPT as feedback information.

5. The CHPT has furnished the following comments on the representation of BFSPL:

   (i). Wharfage charges were collected initially for the subject cargo @ 0.13% ad valorem as prescribed for item number 84 – Textiles and Yarn Silk, Synthetic, Woolen, Cotton and all manufactures thereof at the time of the two import applications (IA) filed by the BFSPL.

   (ii). Subsequently, in the light of the objection raised by the Government Audit, the port reclassified the subject cargo under item number 95B – ‘Goods not specified otherwise’ and levied wharfage @ 0.52%; and, collected a further dues of Rs.48,843/-. 

   (iii). The cargo linen fabric (filed in the two IAs) were woven from a flax textile fibre; and, it does not cover any of the specified items viz., silk, synthetic, woolen and cotton covered under item number 84 for cargoes of textiles and yarn as contended in the Government Audit letter.

   (iv). This cargo can be classified with the other vegetable fibres like jute, hemp, sisal, paper yarn, etc., as classified by the Customs under Customs Tariff Chapter Code No.53.

   (v). The cargo items included under item number 84 in its Scale of Rated are covered under Customs Tariff Chapter Code Nos.50, 51, 52, 54 and 55 viz., Textile Fabrics of Cotton, Wool, Silk and Yarn Spun and synthetic like nylon, polyesters, polyamides, viscose, rayon, acrylic or modacrylic of man made artificial fibres.

   (vi). In the light of the fact that the Customs have classified the cargo linen fabric under its tariff Chapter Code No.53 in the Bill of Entry and as the cargo does not cover among any of the four items specified in the item number 84 of the Scale of Rates, the cargo Linen Fabric has been reclassified under item number 95B, ‘Goods not otherwise specified’.

6. Note 2 under Scale A in Chapter II A of the CHPT Scale of Rates is reproduced below:

   “Before classifying any cargo under ‘goods not otherwise specified’, the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in the schedule given above”.

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*Note: The document appears to be a report or a letter discussing the classification of a specific cargo (linen fabric) under item number 84 of the Scale of Rates, with opinions from different associations and comments from the Chennai Custom House (CCHAA) and Madras Chamber of Commerce and Industry (MCCI). It also includes details about wharfage charges and reclassification based on Government Audit objections.*
A joint hearing in this case was held on 7 May 2002 at the CHPT premises in Chennai. At the joint hearing, the following submissions were made:

**M/s. Beekeyen Freight Services Private Limited (BFSPL)**

(i). For years, we have been doing this. Why this sudden objection?

(ii). There is a specific entry. Why go to the residual clause?

(iii). The Textile Committee has also certified it to be a fabric.

(iv). Item 84 cannot list exhaustively all the fabrics. Some entries are there. You have to logically interpret it.

**Chennai Custom House Agents’ Association (CCHAA)**

(i). (a). There is clear categorisation by Customs under code 53.09.

   (b). The Textile Committee also has clearly certified.

(ii). The SOR requires verification with Customs classification in doubtful cases.

(iii). It is a wrong application of the SOR by the CHPT. They had originally done correctly. Later, they modified the tariff to commit this mistake.

**The Tamil Chamber of Commerce (TCC)**

(i). The CCTL has only one wharfage rate. Hence, there is no scope for such disputes. Here also, we must take a similar initiative.

(ii). There is a certification by the Textile Committee. Their opinion shall be final.

(iii). Please concede the demand and give a clear verdict.

**The Chennai Port Trust (CHPT)**

(i). Residual entry is only for such doubtful cases.

(ii). Tariff heading 84 clearly enumerates. There is no “etcetera” there. The BFSPL cannot, therefore, liberally interpret.

(iii). The Customs have several entries for woollen, silk, etc. But, for flax they have a separate entry. The BFSPL cannot, therefore, try to bracket ‘flax’ with other fibres.

(iv). The Textile Committee can not give directions. We have been required to consult only with Customs classification.
(v). Flax cannot be taken under ‘synthetic’. Otherwise, why did the Customs give a separate entry for ‘flax’? (In this context the CCHAA says that in Customs classification, it is in the chapter on Textiles. The Customs need to have an exhaustive listing because they have to provide for duty drawbacks, etc.)

8. With reference to the totality of the information collected during the processing of this case, the following position emerges:

(i) The issue posed for adjudication by this Authority is whether any wrong application of the notified Scale of Rates (SOR) has been made by the CHPT insofar as levying wharfage charges on the Linen Fabric import relating to the Applicant.

(ii) Item 84 of the wharfage schedule of the CHPT prescribes an ad valorem rate of 0.13% for ‘Textiles and yarn-Silk, synthetic, woolen, cotton and all manufactures thereof’. Item number 95-B of the same schedule prescribes a rate of 0.52% ad valorem for ‘Goods not otherwise specified’. There is a conditionality in the CHPT Scale of Rates governing wharfage rates which stipulates that before classifying any cargo under the category of ‘goods not otherwise specified’ the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories in the wharfage schedule.

(iii) Admittedly, there is no specific reference to the commodity ‘Linen Fabric’ in the wharfage schedule. It has to be recognised that it may not be feasible to itemise all possible commodities passing through a Port and prescribe separate wharfage rates therefor. Ideally, wharfage rates must be a function of the handling efforts required from the Port concerned and the infrastructural / superstructural requirements to accomplish such tasks. Nevertheless, many of the major ports maintain historically a lengthy wharfage schedule; and, any step towards rationalisation of the wharfage schedule must be gradual recognising the financial implication not only on the Port but also on the users. Be that as it may, the wharfage schedule of the CHPT is generally for commodity groups and before treating a commodity as ‘unspecified’ it is reasonable to check whether it does not fit into any of the specified commodity groups. It is noteworthy that the CHPT had initially classified the cargo in reference under item 84 but revised its decision subsequently and demanded wharfage under item 95-B in view of an Audit objection.

(iv). The Applicant has produced a certificate from the Textile Committee which indicates that Linen is a textile and it falls under vegetable fibre group. The CHPT has chosen to brush aside this advice rendered by the Textile Committee by arguing that the Port is required to consult only the Customs classification. While Customs classification can be an aid to determine the classification, there is no reason why a Port cannot accept an advice given by an authentic research organisation run by the Government which is primarily engaged in certification / classification of textiles. It is strange that the Port shows willingness to readily accept the classification suggested by an organisation which may not have any technical competence to classify goods and
decides to reject an advice given by the technically competent organisation.

(v). The entry 84 in the Scale of Rates of the CHPT covers textile items i.e., fibre, yarn, and all manufactures thereof. It is well known that textile fibres fall under the categories natural, and man-made (which includes synthetic and cellulosic). Linen is made from flax which is a natural fibre like cotton, silk, wool, jute, hemp, etc. An expert body like the Textiles Committee has also confirmed so in writing. There is no reason why the CHPT can not accept this obvious position. Merely because its Scale of Rates identifies only silk, woollen, and cotton, it can not be held that there are no other natural fibres at all. Going by the spirit of the entry-84 and by longstanding practice, and bearing in mind the expert certification, (flax) linen has to be held to be ‘textiles’. The mere fact of an audit objection can not alter this basic position. Merely because ‘rice’ is not listed as a ‘food grain’ it can not be denied such status. The present case is as obvious as that. Reference to the Customs classification has been advised only as a last resort. There is no such ambiguity in this case requiring a reference to the Customs classification. The CHPT had recognised the correct position in its original classification. And, an audit objection involving a rigid interpretation can not be a basis for altering the correct position.

(vi). The CHPT has argued that Customs Tariff chapter codes are different for Textile fabrics of synthetic yarn and vegetable fibre. The relevance of Customs classification is limited only in cases of classifying cargo under ‘goods not otherwise specified’ category. In this case, the Customs classification may not be relevant at all since the cargo in reference, by its very nature, falls into a specified wharfage rate category. In this context, it may be relevant to mention that the CHPT wharfage schedule contains a specific entry for jute, hemp, etc., which are also vegetable fibres. Irrespective of the decision taken in this case that vegetable fibres are natural textiles, the separate rate prescribed for these specific vegetable fibres can continue to be levied till an exercise for a complete rationalisation of the wharfage schedule is taken up by the CHPT.

(vii). The TCC has rightly suggested that the wharfage schedule of the CHPT must be simplified. As has already been mentioned, such rationalisation cannot be done at one go. In fact, this Authority has already advised the CHPT at the time of the last general revision of tariffs in April 2000 to propose a rationalised and simplified Scale of Rates. As a part of the current proposal for general revision of its Scale of Rates, the CHPT has attempted to simplify the tariff book. In this exercise, it has proposed reduction of entries in the wharfage schedule from 96 to 36.

(viii). The Applicant has argued that he has had to pay under protest the difference in wharfage charges arising due to the wrong classification of cargo by the CHPT. In the light of the analysis given above, this Authority requires the CHPT to adjust its billing with reference to the
correct classification of Linen Fabric under item 84 of the wharfage schedule and refund the excess amount already realised.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority directs the CHPT to adjust its billing by correctly classifying the cargo in reference under item 84 of its wharfage schedule and refund the excess amount already collected.

( S. Sathyam )
Chairman

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