

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 23872 of 2014

(Arising out of Order-in-Appeal No.COC-CUSTM-000-APP-150-14-15
dated 02.07.2014 passed by the Commissioner of Customs
(APPEALS), Cochin.)

**M/s. Malayala Manorama
Company Limited,**
P.B.No.26, K.K.Road,
Kottayam-686 001.

Appellant(s)

VERSUS

Commissioner of Customs
Customs House,
Kochi-682 009.

Respondent(s)

APPEARANCE:

Present for the Appellant : Shri Ravi Raghavan, Sri Rohan Karia
and Shri Nischal K.M., Advocates

Present for the Respondent: Mr. K.A.Jathin, Deputy Comm. (AR)

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 21063 /2025

DATE OF HEARING: 13.02.2025

DATE OF DECISION: 22.07.2025

DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No. COC-CUSTM-000-APP-150-14-15 dated 02.07.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant had imported a consignment of 243.83 MTS of paper in reels in their Bill of Entry No.100946 dated 18.05.1999 declaring the same as standard "Newsprint" falling under Customs Tariff

Heading 480180. Samples were drawn and sent for test to ascertain whether the item satisfies the definition of 'newsprint'. The said goods were allowed to be cleared on provisional basis on payment of duty as declared. The test result revealed that in the imported goods, Mechanical Wood Pulp (MWP) content was less than 65%, hence, not newsprint. The appellant disputed the said test report and requested for retest of the remnant sample. Accordingly, it was forwarded to Central Revenue Control Laboratory (CRCL), New Delhi for retest on 08.12.2000. The Director of Central Revenue Control Laboratory (CRCL), New Delhi by letter dated 22.06.2001 confirmed that the Mechanical Wood Pulp is less than 65% by weight, in the sample. Accordingly, the appellant was directed to remit the duty on the goods reclassifying the imported goods as paper for printing other than newsprint falling under CTH 480260 and CETH 480290. The differential duty was worked out to Rs.30,44,186/- on finalisation of provisional assessment which was directed to be paid. On adjudication the said demand was confirmed vide order dated 28.08.2002.

3. Aggrieved by the said order, the appellant filed writ petition before the Hon'ble High Court of Kerala and the Hon'ble High Court quashed the Order-in-Original and remanded the matter to the adjudicating authority for fresh adjudication allowing an opportunity to the appellant to cross examine the officers who had conducted the chemical analysis and discharge duty along with interest if payable on completion of *de-novo* adjudication. The appellant filed special leave petition before the Hon'ble Supreme Court, it was remanded to the adjudicating authority after certain modification to order of the Hon'ble High Court of Kerala. The adjudicating authority after extending the opportunity of cross examination of the officers who conducted the chemical analysis of the samples adjudicated the case holding the classification of imported goods under Customs Tariff Heading 480260 and 480290 and confirmed the short levy of

Rs.30,44,186/-. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who in turn upheld the order of the adjudicating authority. Hence, the present appeal.

4.1. At the outset, the learned advocate for the appellant has submitted that the appellant are *inter-alia* engaged in the activity of printing and publishing of newspaper Malayala Manorama Daily, Manorama weekly, The Week and other publications. The present issue relates to assessment of imported consignment of 243.83 MTS of newsprint vide B/E No.100946 dated 18.05.1999. The only dispute in the present case is in respect of analysis conducted on the imported goods by the laboratories to ascertain the weight of mechanical wood fibre whether constitutes more than 65% of the weight of the goods. On the basis of the information collected by the appellant by filing applications under RTI and also during the course of cross examination of the officers who conducted the chemical analysis of the samples, it revealed that tests have not been conducted as per the law and consequently, the results being erroneous should not have been relied upon for reclassification of the imported goods, which are newsprint.

4.2. He has further submitted that the test reports do not adhere to the International Organization Standardization (ISO) as per the HSN explanatory notes to chapter 48. It is mentioned in the said notes that in order to avoid discrepancies which can result from the use of different methods, it is desirable to use the ISO test methods to determine the physical properties of paper and paper board of Chapter 48; the HSN further mandates that ISO 1984/1-3 should be used for determining the fibre composition of the paper. Further, referring to circular dated 20.03.2007, the learned advocate has submitted that the said circular provides clarification on the testing method of imported newsprints relying upon HSN explanatory notes. In the said

circular, it is mentioned that CRCL has been using Bureau of Indian Standards (BIS) which is different from ISO standards since BIS covers only 19 plant species whereas ISO cover 32 plant species. Further, he has submitted that in response to their RTI applications, it has been specifically replied that ISO standards have not been followed by Cochin Customs Laboratory (CCL) and also stated that qualitative analysis has not been carried out as per the procedure. Also, the respective test reports do not mention of the ISO standards.

4.3. Further, he has submitted that cross examination of Dr. Archana Sinha revealed that the analysis of the sample was carried out on the prescribed standard and authentic literature. The CBEC circular dated 20.03.2007 made it very clear that CRCL has been following BIS standards earlier and it did not have the facility to determine the mechanical wood pulp content in a newsprint, therefore, the test report generated by the Cochin Customs Laboratory and CRCL, New Delhi cannot be relied upon being issued without following ISO standards as mandated by HSN explanatory notes to Chapter 48, hence the order adopting such test report is liable to be set aside.

4.4. Further, the learned advocate has submitted that the burden lies on the department to re-classify the goods which has not been discharged, since the test reports relied upon by the Department for reclassification of the imported paper consists of infirmities and thus, lacks any evidential value. In support, they referred to the judgment of the Hon'ble Supreme Court in the case of M/s. Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar, 2015 (320) E.L.T. 45 (S.C.) wherein it was held that samples have been drawn contrary to the express provisions of IS 436, hence test reports based on the same cannot be relied upon and also they referred to the judgment of the Tribunal in the case of (i) Commissioner of Customs (P), Ahmedabad v. Rajkot Engineering Association, 2000 (123) E.L.T.

968 (Tribunal), (ii) Adani Exports Ltd. v. Commissioner of Customs, Jamnagar, 2010 (249) E.L.T. 93 (Tri.-Ahmd.), (iii) HPL Chemicals Ltd. v. CC Ex., 2006 (197) E.L.T. 324 (S.C.), (iv) Hindustan Ferodo Ltd. v. Collector of C.Ex., 1997 (89) E.L.T. 16(S.C.) and (iii) Union of India v. Garware Nylons Ltd., 1996 (87) E.L.T. 12 (S.C.)

4.5. He has submitted that the imported goods are correctly classified under CTH 480100 as 'Newsprint, in rolls or sheets', since it satisfied Note 3 to Chapter 48 which lays down that newsprint containing 65% of mechanical wood pulp would be classifiable under CTH 4801. The quality certificate issued by the overseas supplier categorically certifies that the imported goods contain a minimum of 65% of mechanical wood pulp and that the quality confirms to the definition of the newsprint. Further, referring to the affidavit of Mr. J.D Feranandez, an expert in the subject of fibre analysis, he has submitted that marginal variations in the mass factor adopted can affect the determination of mechanical wood pulp content. In the present case, the mass factor has been arbitrarily taken as 0.55, therefore, the testing method adopted is fallacious.

4.6 Further, he has submitted that levy of interest under Section 18(3) of the Customs Act, 1962 which was introduced with effect from 13.07.2006 cannot be applicable to the imports effected by the appellant as on 18.05.1999. In support they placed reliance on the following judgments :- (i) Commissioner of Customs (Preventive) vs. Goyal Traders, 2014 (302) ELT 529 (Guj.), (ii) Jayaswal Neco Ltd. v. Commissioner of Customs, Visakhpatnam, 2015 (322) E.L.T. 561 (SC), (iii) Commissioner of Customs v. Hindalco Industries Ltd., 2008 (231) E.L.T. 36 (Guj.) (iv) Reliance Industries Ltd. v. Union of India, 2015 (326) E.L.T. 664 (Guj.), (v) Commissioner of Customs, Tuticorin v. CESTAT, Chennai, 2021 (376) E.L.T. 65 (Mad.) and (iv) M/s. Cisco

Systems Pvt. Ltd. v. Commissioner of Customs, Bangalore, Final Order No.20005 to 20010/2022 dated 07.01.2022.

5.1. *Per contra*, learned AR for the Revenue reiterating the findings of the authorities below submitted that the issue involved in the present appeal is regarding classification and assessment of imported newsprint. The initial analysis of the samples of the imported goods by the Cochin Customs Laboratory and retest by the Central Revenue Laboratory, New Delhi revealed that mechanical wood pulp content was 53.1% which is much below than 65% threshold necessary for its classification as newsprint. The adjudicating authority, relying on the said test reports, reclassified the imported goods under CTH 480260 and CETH 480290.

5.2 Further, he has submitted that the customs lab at Cochin and CRCL, New Delhi followed IS 5285 and also Chief Chemist instructions in this regard which are legally binding on Departmental officers. Further, CRCL is the Appellate testing authority under law and its reports are final and binding both on the Department and the importer; thus, the appellant's challenge to such test reports are devoid of merit. Further, he has submitted that the test reports of the chemical examiner and chief chemist of the Government unless demonstrated to be erroneous, cannot be brushed aside on the basis of the report of private persons. In support he has referred to the judgment of Hon'ble Supreme Court in the case of Reliance Cellulose Products Ltd. Versus Collector of C.Ex., Hyderabad, 1997 (93) E.L.T. 646 (S.C.)

6. Heard both sides and perused the records.

7. The short issue involved in the appeal for determination is: whether the imported consignment of 243.83 MTS of paper in

reels covered under Bill of Entry No.100946 dated 18.05.1995 be classifiable as 'Newsprint' falling under CTH 480180.

8. The Revenue, after import of the said goods, drew samples and tested it at Cochin Customs Laboratory and the test report revealed that Mechanical Wood pulp (MWP) content was less than 65%; on the written request it was retested at CRCL, New Delhi, and the report also revealed that the Mechanical Wood pulp content is less than 65% by weight.

9. The appellant disputed the said reports submitting that it was not in accordance with ISO standards as mentioned under the HSN Explanatory notes to Chapter 48, therefore, the test result of the samples by both the laboratories cannot be accepted. The Revenue on the other hand vehemently argued that the chemical analysis has been done at Cochin Customs Laboratory and CRCL, New Delhi adopting the ISI standards test and opined that the Mechanical Wood pulp content was less than 65%. The said test reports cannot be brushed aside, since, the appellant had never disputed in the past on the result of test reports carried out in the said two labs.

10. To examine the rival claims on the classification of the imported papers, it is necessary to reproduce the competing Tariff headings, which reads as follows:-

Heading No.	Sub-heading No.	Description of article	Rate of duty standard	Preferential areas
(1)	(2)	(3)	(4)	(5)
48.01	4801.00	Newsprint, in rolls or sheets	15%
48.02		Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and punch card stock and punch tape paper, in rolls or		

		sheets, other than paper of heading No.48.01 or 48.03; hand-made paper and paper board		
	4802.10	Hand-made paper and paperboard	35%
	4802.20	Paper and paperboard of a kind used as a base for photo-sensitive, heat-sensitive or electros-sensitive paper or paperboard	35%
	4802.30	Carbonising base paper	35%
	4802.40	Wallpaper base -Other paper and paperboard, not containing fibres obtained by a mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres:	35%
	4802.51	Weighing less than 40/m ²	35%
	4802.52	Weighing 40/m ² or more but not more than 150 g/m ²	35%
	4802.53	Weighing more than 150 g/m ²	35%
	4802.60	Other paper and paperboard, of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical process	35%

Chapter Note 3 of Chapter 48 reads as follows:-

“3. In this Chapter the expression “newsprint” means uncoated paper of a kind used for the printing of newspapers, of which not less than 65% by weight of the total fibre content consists of wood fibres obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness parker print surf (1 MPa) on each side exceeding 2.5 micrometres (microns), weighing not less than 40 g/m² and not more than 65 g/m².”

11. A plain reading of the Tariff entry 48.01 along with chapter note 3 to Chapter 48, it is clear that to fall under Chapter 48.01, it should be uncoated paper of a kind used for printing of newspapers, of which not less than 65% by weight of the total fibre content consists of wood fibres obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness parker print surf (1 MPa) on each side exceeding 2.5 micrometres (microns), weighing not less than 40 g/m² and not more than 65 g/m² except the parameter of fibre content formed to be less than 65% by weight of the total fibre content, no other parameters has been disputed by the Revenue.

12. The next question needs to be answered is ascertaining the fibre content in the samples drawn by the Department from the imported lot whether less than 65% by weight or otherwise. The claim of the Revenue is that all along they have been following ISI standards for analysis of the sample, but not International Organization for Standardization i.e. ISO 9184/1-3, as mentioned in the HSN for Chapter 48.

13. Thus, it is necessary to read the corresponding HSN Explanatory Notes of Chapter 48 which is as follows:-

“To avoid discrepancies which can result from the use of different methods, it is highly desirable that all administrations use the International Organization for Standardization (ISO) test methods to determine the physical properties of paper and paperboard of Chapter 48. Whenever the following analytical and physical criteria are mentioned throughout this Chapter, the ISO Standards listed below should be used:

Ash Content:	
ISO 2144	Paper and board Determination of ash
Brightness:	
ISO 2470	Paper and board-Measurement of diffuse blue reflectance factor (ISO brightness)

Bursting strength and burst index:

ISO 2758 Paper Determination of bursting strength

ISO 2759 Board Determination of bursting strength

CMT 60 (crush resistance):

ISO 7263 Corrugating medium Determination of the
flat crush resistance after laboratory fluting

Fibre composition:

ISO 9184/1-3 Paper, board and pulps -- Fibre furnish analysis

Grammage (weight):

ISO 536 Paper and board – Determination of
Grammage"

14. It is the contention of the learned advocate for the appellant that information collected through RTI revealed that to ascertain the fibre content, both the laboratories at Cochin Customs Laboratory and CRCL, New Delhi have not adopted the ISO 9184/1-3 standard, but instead, adopted the Indian Standard IS 5285/1998; thereby, the result arrived at indicating the fibre content is less than 65% is incorrect. Also, the learned advocate drew our attention that in BIS 5285 standard, it covers only 19 plant species, whereas in ISO 9184, 31 plant species are considered for determination of the fibre content.

15. We find force in the contention of the learned advocate for the appellant. Both the laboratories at Cochin Customs Laboratory as well as CRCL, New Delhi followed BIS standards in analysing the sample, whereas the HSN notes specifically prescribes to adopt ISO 9184/1-3 standards for determination of the fibre composition for the sake of uniformity in results when subjected to testing by the exporting and the importing countries. Also, it is not in dispute that the overseas supplier in its quality certificate dated 19.04.1999 clearly indicated that the fibre content is not less than 65%. During the course of cross examination of the analyst also, it revealed that the

tests were not done in accordance with ISO standard, but as prescribed by the Chief Chemist on the basis of BIS standards. Thus, if different standards are adopted for testing of the samples, the results are distorted and bound to be different. The Hon'ble Supreme Court in the case of Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar (supra) observed that when samples have been drawn not in accordance with the express provisions of IS 436, the test reports based on the same cannot be looked into.

16. From the above, inevitably it follows that since the tests were not conducted in accordance with ISO 9184/1-3 prescribed for determination of fibre composition as per the HSN, the objective of which was to avoid discrepancies in result on use of different methods, the test result arrived at by both Cochin Customs Laboratory as well as CRCL, New Delhi cannot be accepted. Thus, the test report accompanied the imported goods has to be accepted. Consequently, the impugned consignment of 243.83 MTS of paper in reels against Bill of Entry No.100946 dated 18.05.1999 be classifiable as "Newsprint" under Customs Tariff Heading 480180 with 'nil' rate of CVD as declared. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced on 22.07.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Gm/Raja..