

REGISTERED
SPEED POST



F.No. 375/29/DBK/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 5/11/18

Order No. 08/18-Cus dated 04-01-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section-129DD of the Custom-Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)/279/2014 dated 31.03.2014, passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : M/s Tulip Elastic Pvt. Ltd., Noida

Respondent : Commissioner of Customs, ICD, Tughlakabad New Delhi

ORDER

A revision applications No.375/29/DBK/15-RA dated 30.7.2014 is filed by M/s Tulip Elastic Pvt. Ltd., Noida (hereinafter referred to as the applicant) against Commissioner (Appeals)'s OIA No.CC(A)/279/2014 dated 31.03.2014, whereby the applicant's appeal filed before him against the order of Deputy Commissioner of Customs, ICD, Patparganj, New Delhi, has been rejected.

2. The brief facts leading to the revision application are that the applicant exported women narrow fabric elastics and claimed drawback of duty by classifying the goods under S.No.580601 of Duty Drawback Schedule 2011-12. However, on inspection of the sample of the goods the Custom Officers opined that the applicant's goods were different from the S.No.5806 and party mis-declared the product to avail the higher duty drawback. As per facts narrated in the show cause notice in this case, the applicant, vide their letter dated 11.10.12, explained the nature of the products, submitted technical test report dated 9.10.12 declaring the fibre contents of nylon, polyster and rubber threads which were used for making of the product. The applicant had also informed that the product was of 32 mm width and it is known as narrow woven fabrics. Subsequently, vide their letter dated 16.10.12, applicant also informed that they were registered with Central Excise and their product had been classified under Heading No.5806 and the same was given in the shipping bill dated 27.9.12. But despite of all explanation from the applicant, a show cause notice dated 14.11.12 was issued to disallow duty drawback of Rs.25260/- and to impose penalty on the applicant under Section 113 and 114 of the Customs Act. During personal hearing held on 15.3.13, the applicant again explained that as per HSN Explanatory Notes and Coding system published by WCO the expression narrow woven fabrics means warp and weft fabrics in strips of width not exceeding 30cm, whether woven as such or cut from wider pieces provided with selvages on both edges. However, the Deputy Commissioner did not accept the applicant's case before him and after just citing the test report submitted by the applicant, letter dated 12.10.12 of the applicant and the description of tariff item S.No.5806 in Drawback Schedule, he concluded that applicant's goods contains both warp and weft and thus it is not classifiable under S.No.5806 since its main condition

is that the fabrics should consist of warp without weft assembled by means of an adhesive. He held that the applicant's goods were rightly classifiable under S.No.5604 of the Drawback Schedule which reads as "rubber thread and cord, textile covered, textile yarn and strip and the like of Heading 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics". He also imposed penalty of Rs.25260/- on the applicants. The applicant's appeal before the Commissioner of Customs (Appeals) against the above stated Deputy Commissioner's Order is also rejected vide OIA No. CC(A)/279/2014 dated 31.03.2014. The Commissioner (Appeals) in his order has just observed that since the product is having both warp and weft as mentioned in the original order, its classification under 5806 is not possible and the product merits classification under 5604 of CTH as per reasoning given in para 10,11,12,13 and 14 of the original order.

3. Being aggrieved the applicant has filed the present revision application before the Central Government mainly with a request to set aside the order of the Commissioner (Appeals) and restore the drawback originally claimed by the applicant.

4. A personal hearing was held in this case on 12.12.17 and it was attended by Ms Vandana Singh and Shri B.K.Singh, the Advocates. Ms Vandana Singh argued at length touching upon the background of the case as discussed above and advanced several legal arguments to emphasize that their product is narrow woven fabrics classified under S.No.5806 of Drawback Schedule and both Deputy Commissioner as well as Commissioner (Appeals) have failed to appreciate their submissions in this matter before passing their erroneous orders. However, no one appeared for the hearing from the respondent side.

5. On examination of the OIO and the OIA, it is evident that the classification of the applicant's product under S.No.5806 has been rejected by the Deputy Commissioner solely for the reason that their product contains both warp and weft and no reason has been provided in the order for its classification under 5604 despite the applicant had explained the nature of the product and its contents before the Deputy Commissioner on several occasions. The Commissioner (Appeals) has also not considered various contentions put forth by the applicant before him and

has upheld the order of the Deputy Commissioner without examining the matter in detail. Thus the first contention of the applicant that the orders have been passed by the lower authorities without appreciating the facts of the case and submission given by the applicant is found to be correct and true. As a result, the orders of the Deputy Commissioner and the Commissioner (Appeals) are vitiated for this reason alone.

6. Apart from above, the applicant has pleaded that CTH 5806 has two parts and these are separated by a semi-colon. In support of their contention that semi-colon has an effect of separating two categories, the applicant has placed reliance on several decisions such as


- CC, Madras Vs. Mcdowell Co. Ltd. [1997(94) ELT 215(Tb.)
- Project & Development India Ltd. Vs. Collector of Customs-1989(42)ELT 98
- Collector of Customs Vs Escorts Ltd. – 1991 (54) ELT 144
- Crates of India Ltd. Vs. Collector of Customs – 1990(46) ELT 424
- Reckitt & Colman of India Ltd. Vs. Asstt. Collector of Central Excise, Hyderabad [1994 (72) ELT 263 (A.P.)]

The applicant has claimed that their product narrow woven fabrics is covered under first part of the description of CTH 5806 which is narrow woven fabrics other than goods of heading 5807 'and not under second part of the description which is narrow fabrics consisting of warp without weft assembled by means of an adhesive (Bolducs)'. This claim is sought to be supported by HSN explanatory notes to Chapter 58 as per which narrow woven is defined as warp and weft fabrics in strips of a width not exceeding 30 cm, provided with selvages on both edges. They have also placed reliance on notes of Section XI and chapter notes 5 of chapter 58, their central excise registration granted for their products classifying under 5806 and their earlier export of the same goods under EPEG Scheme classified goods under CTH 5806. After having considered all these applicant's arguments in the light of above mentioned technical literature, the Government agrees with the applicant's submission that CTH 5806 has two parts i.e. narrow woven fabrics other than goods

of heading 5807 and narrow fabrics consisting of warp without weft assembled by means of an adhesive and these two categories are separate and independent from each other by virtue of use of semi-colon between these two parts. Whereas, the Deputy Commissioner of Customs and the Commissioner (Appeals) have given full thrust on second part of 5806, they have completely ignored the first part of the said sub-section. When the first part of sub heading 5806 is considered dispassionately and fairly, it is evident that it covers all narrow woven fabrics other than covered under heading 5807 and from a word "woven" used in the first part of description it is evident that this sub heading is not allergic to the fabrics made of both warp and weft. Weaving of fabric is always by using both warp and weft and, therefore, the order of the Deputy Commissioner and the Commissioner (Appeals) has suffered from their basic mis-understanding that the applicant's product made of both warp and weft is not covered under CTH 5806. The sub headings of heading 5806 covering woven pile fabrics, typewriter ribbon cloth, Newar cotton and others also substantiate the above view that 5806 covers both narrow woven fabrics as well narrow fabrics consisting of warp without weft. Thus the most crucial factor for classification of any goods under sub heading 5806 is that the goods should be either narrow woven fabric or narrow fabric which is satisfied in this case. As per chapter note 5 of chapter 58 and HSN Explanatory Notes of chapter 58, for the purpose of heading 5806 the expression narrow woven fabrics means woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvages on both edges or tubular woven fabrics of a flattened width not exceeding 30 cm etc. The applicant has claimed that their product narrow woven elastics are used mainly in the men's underwear, these are of the width of 32mm only and these facts are not disputed by any of the Custom authorities in their orders or even otherwise. As per test report referred to in the order of the Deputy Commissioner and declaration of the applicant, the raw material used for the manufacturing of narrow woven elastics are polyester, nylon and the rubber. Further, the revenue authorities have accepted that the product of the applicant is made by using these raw materials and with the technique of warp and weft. Considering all these facts, it is apparent that the woven fabric elastics exported by the applicant were narrow woven fabrics falling under S.No.5806 01 and not under 5604 as held

by the Deputy Commissioner and the Commissioner (Appeals). As stated above, the Deputy Commissioner and the Commissioner (Appeals) have not offered any reason in their orders and have not discussed any detail on the basis of which the applicant's products can be classified under 5604. But considering the above discussed nature of the product, its size, its contents and its manufacturing techniques, the Government feels that the applicant's product exported under shipping bill No.1945690 dated 27.9.12 are not classifiable under 5604 which only covers rubber thread and cord, textile covered, textile yarn and strip and the goods of heading 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics and not the goods like narrow woven fabrics exported by the applicant. Accordingly, the applicant is eligible to avail drawback of duty at the rate applicable to the goods of S.No.5806 of Drawback Schedule which was originally claimed by the applicant.

7. In view of the above discussions, the Commissioner (Appeals)'s above referred order is set aside and the revision application is allowed.


4.1.2018
(R.P.Sharma)

Additional Secretary to the Government of India

M/s Tulip Elastic Pvt. Ltd.
C-15, Phase-II Extn. Hosiery Complex
Noida-201305

Order No. 28/18-Cus dated 4-1-2018

Copy to:

1. Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi-110020
2. Commissioner of Customs (Appeals), New Custom House, Near, Indira Gandhi International Airport, New Delhi-110037
3. Deputy Commissioner of Customs, ECD Patparganj, New Delhi
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED


(Ravi Prakash)