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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 371/46/DBK/15-RA/1018

Date of Issue: 09.03.2022

ORDER NO. 106/2022-CUS (WZ)/ASRA/MUMBAI DATED 07.03.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,
1962.

Applicant : M/s Rochlon Exports Pvt. Ltd.,
360/64, Kalbadevi Road,
Opp. Ramwadi Post Office (basement),
Mumbai-400002

Respondent: Commissioner of Customs (Appeals), Mumbai Zone-III

Subject : Revision Application filed, under Section 129DD of the Customs Act,
1962, against the Order-In-Appeal No MUM-CUSTOM-AXP-APP-73/
15-16 dated 29-05-2015 passed by Commissioner of Customs
(Appeal), Mumbai Zone -III

ORDER

1. This Revision Application has been filed by M/s Rochlon Exports Pvt. Ltd (hereinafter referred to as "the applicant"), situated at 360/64, Kalbadevi Road, Opp, Ramwadi Post Office (basement), Mumbai-400002 against the Order-in-Appeal No. MUM-CUSTOM-AXP-APP-73/15-16 dated 29-05-2016 passed by the Commissioner of Customs (Appeal), Mumbai Zone-III.

2. The brief facts of the case are that the officers of SIIB (X), Air Cargo Complex, Sahar, Andheri (East), Mumbai on suspicion, detained two consignments (goods description as Assorted garments), under shipping bill nos. 2704670 dated 04.03.2011 and 2684363 dated 03.03.2011, filed by CHA M/s Eastern Cargo Carriers (India) Pvt. Ltd. (CHA 11/680) on behalf of the applicant under drawback scheme, after their clearance through customs. The applicant filed two shipping bills for export of "long veils" valued at Rs. 1019407/- claiming Drawback benefit at the rate of 9.5% or Rs. 66 per kilogram (whichever is lower) under drawback heading 62140303A. The SIIB during examination found that the goods were "Sarees" and the drawback on the same is admissible at the rate of 6.6% to 8.6% or Rs. 20 -26/kilogram. During investigation and subsequent recording of statements by SIIB revealed that the exporter consciously mis-declared the description to claim higher drawback. On previous 187 occasions also, by adopting the same modus operandi, excess drawback of Rs. 3341528/- was availed by the exporter. Hence Show Cause Notice dated 05-09-2011 was issued to the Applicant directing them to show cause as to why the goods seized and released provisionally under the said two Shipping Bills should not be confiscated and drawback of Rs.43,336,91 and Rs. 48357.72 should not be held inadmissible. The Show Cause Notice also directed the Applicant to show cause as to why the drawback of Rs. 3341528/-in respect of previous exports under 187 Shipping Bills should not be held inadmissible and recovered from the Applicant alongwith interest. The Show Cause Notice also proposed penalty under Section 114 of the Customs Act, 1962 on the Applicant and Shri. Ravindra Rochlaney, the Director.

3. The Adjudicating Authority vide OIO No. ADC/MP/125/2012-13-Adj./ACC dated 29-10-2012 held the applicant, responsible for misdeclaring the export goods 'sarees' as 'long veils' in order to claim higher drawback under heading 62140303A knowing fully well that 'sarees' are not eligible for classification under drawback heading 62140303A. He ordered for confiscation of the goods of the current two consignments valued at Rs. 1019407/- and the previous 187 consignment valued at Rs. 33205311/- under section 113 (d), (h) (i) of customs act and ordered for recovery of excess drawback availed. A penalty of the Rs. 5 lacs and 1 lakh has also been imposed on the exporting firm and its proprietor. The Order also appropriated Rs. 200208/- towards drawback payable to the Applicant in respect of five Shipping Bills which was not paid to them. The Order also appropriated a sum of Rs. 8,70,000/- towards recovery of inadmissible drawback received by the Applicant and interest thereon. The Order also appropriated Rs. 3,06,000/- towards personal penalty and redemption fine.

4. Aggrieved by the said Order the applicant filed appeal with Commissioner Appeal who vide his Order-in-Appeal No. MUM-CUSTOM-AXP-APP-73/15-16 dated 29-05-2016 upheld the Additional Commissioner's Order and rejected the applicant's appeal.

5. Aggrieved by the Commissioner Appeals Order, the present revision application has been filed on the following grounds:

5.01 The Applicant submitted that the impugned Order passed by the is ex-facie bad in law as the same is passed without application of mind and without appreciating the correct facts of the case and therefore the same deserves to be set aside forthwith.

5.02 While passing the impugned Order the Adjudicating authority erred in holding that the Applicant categorically admitted that the description of the goods was mis-declared to claim higher drawback. The said findings is factually incorrect in as much as in his statement dated 08-03-2011 Shri Ravindra

Rochlani has stated as under:

"I have not found any specific heading or serial number for the item Sarees in the drawback schedule so we have described the goods as Long veils"

In his further statement dated 17-03-2011 Shri. Ravindra Rochlani has clearly stated as under:

"On being asked I have to say that I have not mis-declared the description of the goods. According to me the goods which are in form of sarees are long veils. I have described the goods as Long veils because this description is closest and similar to Veils and like".

From the above said answers it is clear that there is no admission regarding mis-declaration of the goods by the Director of the Applicant and therefore there is no question of retraction of the said statement as observed by the Respondent in her Order.

5.03. The Applicant submitted that Public Notice No. 23/2008 dated 20-11-2008 issued by Commissioner of Customs (Export), ACC, Mumbai clearly stated that Embroidered Sarees whether hemmed or not would be suitably classified as "Made ups: for the purpose of DEPB benefit. As such, the classification claimed by the Applicant under Drawback heading 62140303A is correct and it cannot be alleged that the goods were deliberately mis-declared for the purpose of claiming higher drawback.

5.04. The Applicant further submitted that Drawback heading 6214 clearly showed the description as under.

"6214 Shawls, Scarves, mufflers, mantillas, veils and the like"

From the said heading it may be noted that the word "the like" always included Sarees in as much as there was no specific entry for the product Sarees for claiming a Drawback. This was the reason for declaration of the same as Long veils in the place of Sarees by the Applicant. The Applicant submitted that when

there was a migration from DEPB to duty drawback w.e.f. July, 2011, Madeups were put under chapter 63 and Fabric were put under Chapter 54/55. In other words, all Madeups have to be classified under 63 and the classification of the same as Fabrics under Chapter 54/55 as held is erroneous and duty drawback cannot be said to be recoverable from the Applicant.

5.05. With regard to findings at para 4 of the impugned Order and reliance placed on CBEC Circular No. 557/53/2000- CX dated 03-11-2000, it is submitted that the product mentioned therein was a Saree and not an Embroidered Saree. As such, the same cannot be made applicable to the product exported by the Applicant under Drawback heading 62140303A. Therefore, the said findings are erroneous and the impugned Order is not legally sustainable.

5.06. The Applicant submits that the Respondent while placing reliance on the said Circular dated 03-11-2000 has conveniently ignored the wordings that "Rectangular: (including square) articles simply cut out from such long running length fabric without other working and not incorporating....."

It may be perused that in the instant case the product exported is Embroidered Sarees which cannot be compared with "without other working" and therefore its classification as a fabric under Chapter 52/54/55 as discussed in the said Circular is grossly erroneous and cannot be made applicable for the purpose of duty drawback

5.07. The applicant submitted that when the product Sarees is classified under Drawback Serial no. 5407 in terms of Circular dated 03-11-2011 (as stated in para 16(XI) of the Show Cause Notice) it may be appreciated that the said Circular is not applicable to Embroidered Sarees and therefore classification on the basis of the same has to be ruled out.

5.08. The Applicant submitted that in respect of their past 187 Shipping Bills wherein they exported Long Veils, the Department has not brought on record any such evidence showing that the goods were Sarees and were mis-declared

by them so as to claim the higher rate of duty drawback. Merely because two consignments exported in the month of March 2011 were found to be Sarees and declared as Long Veils, the past Shipping Bills cannot be treated as filed with malafide intention of claiming higher drawback. All the said Shipping Bills were passed by the Proper Officer and Let Export Order was issued after satisfying the all the requirements under the law. As such, the Drawback claim is rejected only on the basis of presumption and assumption which is not legally sustainable. It is not the case of the Department that in respect of 187 Shipping Bills the goods were found as Sarees with blouse pieces and therefore the same were not Long Veils. In absence of any evidence to this effect the impugned Order including the Order passed by the lower authority holding the duty drawback of Rs. 33,41,528/- as inadmissible is grossly erroneous and required to be set aside.

5.09. It is true that the exporter, in claiming a particular classification can always furnish the department with any additional evidence that he might have to support his case. But if the classification claimed is not acceptable to the department, then it is for the department to give the reasons therefor and to establish the alternative classification. The Revenue Department has large investigating machinery to look into matters which need further enquiries. There are various technical authorities who can aid and assist the department with expert opinion after physical examination or chemical tests of the impugned products. Often a market enquiry as regards the pricing of the product is helpful in determining the nature of the product or to provide evidence as regards any attempt to hoodwink revenue. There can be no short-cut to the need to investigate the matter thoroughly where the department is refusing to accept classification claimed by an Exporter. It cannot help the department to take the stand, as has been done in this case, that the Exporter's claim as regards classification is being rejected on a mere visual inspection by the officers.

5.10. In all, this is one of those cases in which the department has denied the classification claimed by the Exporter, on the basis of a charge which remains entirely unsubstantiated, uncorroborated and unsupported by evidence. With

regard to imposition of redemption fine it is submitted that when then goods are not liable for confiscation the imposition of redemption fine of Rs. 1,50,000/- is bad in law and the Order passed by the lower authority is required to be set aside. With regard to the imposition of penalty under Section 114 of the Customs Act, 1962 it is the submission of the Applicant that when the issue relates to interpretation / classification of Drawback Entry the said penalty is not legally sustainable.

6. A Personal hearing was held in this case on 07.10.2021 and Shri Vinay Ansurkar, Advocate appeared online on behalf of the applicant for hearing and reiterated his earlier submissions. He drew attention to para 3 of Public Notice No. 23/2008 dated 18-11-2008. He requested one week's time to submit additional written submissions.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

8 Government observes that the officers of the SIIB had detained two consignments under two shipping bills filed by the applicant under drawback scheme, after their clearance through Customs. The officers observed that the goods declared as 'Long veil' under Chapter heading 62140303 were in fact 'Sarees' to be classified under 5407 or 5408 as fabrics. The issue to be decided in the instant case is whether the exported goods Sarees declared as 'Long veil' was misclassified by the applicant with the intention to claim higher drawback.

9 On going through the records of the case Government observes that the exported goods have been mis-declared by the applicant as 'long veils' for the following reasons:

9.1 In order to verify the identity of the exported goods the samples of the same were forwarded by the department to Dy. Chief Chemist and also to the Textile Committee to ascertain whether the exported goods were 'Long veils' or 'Sarees'.

The Chemical analysis reported that the goods were sarees and were made up of Polyester. The Textile committee opined the following:

*"a. sample is of made out of Polyester woven printed fabrics with golden dots pasted all over. The Dimension of the sample is 1.10 x 6.08 mts. One end of the fabric is having pallu border and then different print and demarcation indicating that it will be cut for blouse purpose. **Both the ends are raw, unhemmed without any fringes.***

In our opinion the sample can not be classified as 'long veils' but may be classified as fabrics.

b. sample is combination of knitted and woven fabrics attached together by means of stitching. The dimension of the sample is 1.16 x 606 mts. Knitted portion is pallu, having applique and boarder stitched on remaining three sides. It also has embroidery all over knitted portion. The woven portion is made out of Jacquard fabrics, having biding on one side and on the other side is a boarder of same fabric as that of pallu boarder. The woven fabric end is unhemmed raw".

It is seen from the above that the reports of the Dy Chief Chemist and the Textile Committee are in line with each other and they have opined that the sample has to be classified as fabrics.

9.2 Further the description of the goods given Chapter 62 are **Articles of Apparel and Clothing Accessories, Not knitted or Crocheted**. The textile Committee has opined above at (b) that the sample is a combination of knitted and woven fabrics which again indicates that the goods have been misclassified under Chapter 62.

9.3. Chapter Note 1 of Chapter 62 specifies that it applies **only to made up articles** of any textile fabric other than wadding, excluding knitted or crocheted (other than those of heading 6212). 'Made-up' are defined under Note 7 of Section XI "Textile and Textile Articles" which is as follows:

"7. For the purposes of this Section, the expression "made up" means:

(a) cut otherwise than into squares or rectangles;

(b) produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);

(c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other sub-clause of this Note, but excluding fabrics the cut edges of which have been prevented from unravelling by hot cutting or by other simple means;

(d) hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;

(e) cut to size and having undergone a process of drawn thread work;

(f) assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

(g) knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length”

As per the Section Note 7, if a fabric has undergone processes of cutting other than into squares and rectangle, hemmed with rolled edges etc as above, then only the product is classifiable as made-up. In the instant case the fabric cut ends were raw unhemmed without any fringes and hence the same cannot be said to be made-up articles falling under Chapter 62.

9.4. The catalogues attached with the impugned goods demonstrated the usage of the material as sarees and in some cases, 'saree sticker' was affixed; Blouse pieces were also attached to the materials;

9.5. The Purchase Bill of the goods exported from different seller's show that the Bills are for Sarees and not 'long veils';

9.6. CBEC vide Circular 557/53/2000-CX dated 03.11.2000 clearly specified that sarees would be classified as fabrics. Para 8 of the Board's Circular is reproduced below.

"8 Board has accepted the decision taken in the Conference. In the circumstances, it is hereby clarified that unhemmed/unstitched Dhotis/Sarees which are basically woven as fabrics in running length with same pattern of weaving and which do not contain extra threads contributing greater thickness to the cloth with the outermost line running at or near the edge at regular intervals, so as to provide a substitute for hem (i.e. to protect unravelling of yarn or to prevent fraying of the edges), will continue to be classifiable as fabrics under Chapter 52/54/55. Rectangular (including square) articles simply cut out from such long running length fabrics without other working and not incorporating fringes formed by cutting dividing threads, even if sold folded or put in packing will not be regarded as "product in the finished state" and would merit classification as fabrics as per this practice followed hitherto."

9.7. Subsequently CBEC vide Circular No. 1054/03/2017-CX [F. No. 116/31/2016-CX.3] dated the 15th March, 2017 has clarified that "saree" which has undergone further processing such as embroidery, stitching of lace and tikki etc. and stitched with two or more kinds of fabrics will be classifiable as "saree" under Chapter 50, 52 and 54 of the Central Excise Tariff Act, 1985 depending upon the material of the fabrics, and not as made-ups under Chapter 63 of the said Act. Therefore Public Notice No. 23/2008 dated 18-11-2008 issued by Commissioner (Export), ACC Mumbai can not alter the above factual position.

9.8. The Government finds that the applicant has not provided any technical clarification/write up in support of their plea. They have merely repeated the same plea which was made with the Commissioner Appeal.

In view of the above Government finds that the goods exported by the applicant are not "Long veil" and does not qualify to be classified under the drawback schedule against serial No. 62140303.

10. Government observes that during the material period of export, the relevant Notification fixing drawback rates was Notification No. 84/2010 - Customs (N.T.) dated 17.09.2010 effective from 20.09.2010 till 30.09.2011. The relevant extract of said Notification is reproduced hereunder:-

Tariff Item	Description of goods	Unit	A		B	
			Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback Rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
6214	Shawls, scarves, mufflers, mantillas, veils and the like					
621403	Others					
62140303	Of Man Made Fibres	KG	9.5%	66	2.4%	16.5
5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404	KG	6.6% to 8.6%	21 to 26	1.3% to 1.5%	3.6 to 5.0

The Applicant had claimed drawback under Sl. No. 62140303 of Schedule to said Notification and classified the items as 'Long veil' instead of classifying the same as Woven fabric-'Saree' under Tariff Item 5207. The applicant has merely stated that they classified their goods under the said Chapter since they did not find any specific heading or serial number for the item 'Saree' in the drawback schedule. They did not take any legal/technical advice in this regard.

Though the purchase bills showed the goods as 'Sarees', the applicant declared the same as 'Long veils' even though they were aware that the goods are 'sarees'

In view of the above Government observes that the applicant had just exported 'sarees' as 'long veils' to claim higher rate of drawback

11. In respect of the applicant's submission in respect of the past 187 shipping bills wherein they have exported 'long veils', Commissioner Appeal in the impugned Order has observed

"I observe that in the entire submissions of the appellant no legal arguments have been put forth. I find that it a matter of common sense that all cases as matter of practice the exporters are provided copies of shipping bills. Therefore the plea of the appellant that they were not supplied copies of 187 shipping is absurd. The other pleas that the nomenclature prevalent in common trade should be given preference is also not valid since no where the term 'sarees' is known as long veil in common parlance. I further find that this is not a case where diverse views are possible and there is any scope of interpreting the technical aspects of the case. The case is as simple as that 'sarees were being exported 'long veil' just to claim higher rate of drawback under sr. no. 6214 which was not appropriate by any standards.

6. *I find that the adjudicating authority has given sufficient reasons in its order backed by opinion of scientific experts guidelines issued by CBEC to substantiate that the goods were actually sarees and the drawback on sarees is covered under sr. 5407. Moreover once the entry or description made under section 50 Customs Act (i.e. shipping bill) read with Rule 11 of Foreign Trade (Regulation) Rules 1993 & section 11(i) of Foreign Trade (Development and Regulation) Act, 1992 has been held to be mis-declared, the goods become liable confiscation under section 113(d)&(h)(i) ibid and the offender is liable for penalty under section 114 of Customs Act, 1962. Under the circumstances, when the motive of such mis-declaration is with an intent to avail undue higher drawback amount, the case falls in the category of willful suppression/mis-declaration and collusion and the*

provisions under Drawback Rules, 1995 read with provisions of demand recovery under Customs Act, 1962 empower Department of Revenue recover such drawback amount. Therefore uphold recovery of excess amount of Drawback amounting to 3341528/- from the appellant.”

12. Government finds that Commissioner Appeal has addressed to the issues and summarized in the aforesaid para and does not find any reason to interfere with the Commissioner Appeal's Order.

13. In view of the above, Government finds no infirmity in Order-in-Appeal No. MUM-CUSTOMS-APP-73/15-16 dated 29-05-2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and rejects the appeal filed by the applicant.

14. The Revision Application is disposed off on above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 106/2022-CUS(WZ)/ASRA/Mumbai dated 07-03-2022

To,

1. M/s. Rochlon Exports, 360/364, Kalbadevi Road, Opp. Ramwadi Post Office (Basement), Mumbai-400002
2. M/s Nagarkar Associates, 35, Bombay Mutual Building, Sir P.M.Road (Above Citibank), 2nd Floor, Mumbai-400001

Copy to:

1. Commissioner of Customs, Air Cargo Complex, Sahar Andheri (East), Mumbai-99.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.