F. No.371/59/DBK/16-RA
F. No.371/60/DBK/16-RA
F. No.371/61/DBK/16-RA

SPEED POST
REGISTERED POST

सत्यमेव जयते

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. 371/59/DBK/16-RA
F. NO. 371/60/DBK/16-RA 1044
F. NO. 371/61/DBK/16-RA Date of Issue: 10 .03.2022

ORDER NO.109-111/2022-CUS (WZ) /ASRA/Mumbai DATED 09.03.2022 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 : 1) M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara, Rajasthan

2) Shri R.P.Jhanwar,
Director, M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara,Rajasthan

3)Shri Sunil Rathi
Past Director, M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara, Rajasthan

Respondent : Commissioner of Customs, Mumbai-II,
Nhava Sheva

Subject : Revision Applications filed under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No.107 to 109 (General)/2016(JNCH)-Appeal-I dated 29.07.2016 passed by the Commissioner of Customs (Appeals-I), Mumbai – II, JNCH, Sheva.

ORDER

These Revision Applications are filed separately by M/s Primera Sulz Pvt Ltd, G-125-128, RIICO Industrial Area, 4th Phase, Opp Ronak Processors, Bhilwara Rajasthan (hereinafter referred to as 'the applicant') and its Directors Shri R.P Jhanwar and Shri Sunil Rathi (hereinafter referred to as 'the co-applicants') against the Orders-in-Appeal Nos.107 to 109 (General)/2016(JNCH)-Appeal-I dated 29.07.2016 passed by the Commissioner of Customs (Appeals-I), Mumbai – II, JNCH, Nhava Sheva. The said Orders-in-Appeal dated 29.07.2016 decided an appeal against the Orders-in-Original dated 09.04.2015 passed by the Additional Commissioner (Export), JNCH, Nhava Sheva.

2. The facts briefly stated are that intelligence gathered by DRI that the main applicant was one of the Rajasthan based exporters who were claiming higher rate of drawback under Serial No. 551202A of the drawback schedule on woven fabrics dyed P/V [Polyester/Viscose] exported by them, by way of mis-declaring the description of the goods in the invoices and consequently wrong mentioning of entry number of the drawback schedule.

3. The applicant had been exporting the Polyester Viscose woven fabrics under the tariff heading 5512 and claiming drawback under tariff item No. 551202A of the Drawback schedule which read as under:

"Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres".

3.1 The applicant was exporting woven fabrics containing Polyester and Viscose in different composition. The analysis of HSN, Customs Tariff and technical literature of Textile Committee corroborated the intelligence of DRI and it appeared that the Viscose staple fibers did not fall under the definition of synthetic staple fibre, instead it was covered by the definition of artificial staple fibre and therefore, to be eligible for drawback under tariff item No. 551202A exported goods i.e. blended woven fabrics of Polyester and

Viscose fibre should have Polyester staple fibre 85% or more by weight as Polyester staple fibre is the only synthetic staple fiber and remaining i.e. Viscose Fibre is an artificial fibre.

3.2. On scrutiny of the documents it was also revealed that in respect of three exports made vide invoices No. W003 dated 06.06.2007, W004 dated 25.06.2007 and W007 dated 02.07.2007, the applicant mentioned the RITC Code as 55151130 and wrongly claimed the higher amount of drawback under tariff item No. 551202A instead of claiming under the appropriate tariff item No. 551502A. Hence, it appeared that the applicant knew that the appropriate tariff heading for the goods was 5515 and the appropriate drawback schedule heading was under tariff item No 551502A, but the exporter fraudulently mentioned the wrong heading and wrong description and claimed higher rate of drawback under drawback schedule No 551202A, with intent to fetch the higher amount of drawback not due to them.

3.3 The authorized representative of the Directors of the company admitted that they had wrongly claimed the drawback under tariff item No. 551202A, where the fabric was manufactured mainly of blend PV/65/35, PV/70/30 and PV/80/20; the synthetic part always remained less than 85% and that they had purchased Polyester Viscose Yarn in which polyester and viscose contents were in ratio of 65%/35% and 70%/30%; that blended yarn was further used in the manufacture of grey fabrics and after processing the same, resultant finished woven fabrics were exported under claim of drawback under tariff item no. 551202A of the Drawback Schedule. Therefore, the blended fabrics manufactured and exported by the applicants under claim of drawback under tariff item no. 551202A did not satisfy the description for goods eligible for drawback under tariff item no. 551202A of the Drawback Schedule which pertains to 'Woven Fabrics of Synthetic Staple Fibres containing 85% or more by weight of Synthetic Staple Fibres'. Further investigations revealed the co-applicants i.e Shri R.P Jhanwar and Shri Sunil Rathi were the active Directors of the company and the whole work related to export was being looked after by them and they were the ultimate beneficiaries of the company and the modus operandi was under

the notice of them and that both the co-applicants were aware and deliberately claimed the higher rate drawback under tariff item No 551202A instead of under tariff item No 551502A to fetch higher amount of drawback which was not due to them.

4. Pursuant to issue of show cause notice and following the principles of natural justice, the Adjudicating Authority vide Order-in-Original No. 5/2015-16 dated 09.04.2015 held that the applicant had mis-declared the said drawback serial number with a view to avail excess drawback and denied the claim of the applicant on the blended woven fabrics exported by them under claim of drawback under tariff item No 551202A of the Drawback Schedule and allowed the drawback claim at the rate prescribed under tariff item No 551502A of the Drawback Schedule. The original adjudicating authority also ordered the recovery of differential drawback amount of Rs. 5,03,394/- claimed in excess, appropriation of Rs. 1,84,640/- and Rs.8460/- deposited towards differential drawback during investigation and interest amount of Rs. 3623/- deposited by the applicant. Recovery of interest was also ordered. Penalty amounting to Rs. 3,00,000/- was imposed on the applicant, M/s. Primera Sulz Pvt Ltd., Bhilwara and penalty of Rs. 1,00,000/- each was imposed on the co-applicants, Shri R.P. Jhanwar and Shri Sunil Rathi under Section 114 of the Customs Act, 1962

5. Aggrieved by the Order-in-Original 5/2015-16 dated 09.04.2015, the applicant and the co-applicants preferred an appeal before the Commissioner of Customs (Appeals-1), Mumbai-II, JNCH, Nhava Sheva resulting in Orders-in-Appeal No. 107-109(General)/2016(JNCH)-Appeal-I dated 29.07.2016. The Appellate Authority upheld the orders-in-original and rejected the appeal filed by the applicants.

5. Aggrieved, the applicant has filed the present Revision Application against the Order-in-Appeal dated 29.07.2016 on the following grounds: -

5.1 That the amount demanded has been deposited in the following manner

i) The applicant sought the release of the balance amount of duty drawback, after such adjustment / set off. This request of the applicant was accepted by the authorities and the balance amount was disbursed to the applicant after setting off/adjustment.

ii) The applicant has already deposited a sum of Rs. 1,48,608/-, on 17.03.2010, of Rs. 36,032/- on 15.04.2010 and Rs. 8,460/- on 20.12.2011, totalling to Rs. 1,93,100/- towards the differential drawback amount it had erroneously received from the Department.

iii) There was a calculation mistake of Rs. 6,373/-, whilst disbursing the drawback claims. A part of the duty drawback, as per the entitlement under 551502A was short disbursed to the applicant.

Thus it is evident that the duty drawback has been returned to /retained by the Custom Authorities in-toto, and no duty drawback remains unpaid or short paid.

5.2 That the Appellate Authority has erred in classifying the impugned fabrics exported by the applicant under sub-heading 551502A of the Drawback Schedule and that the impugned fabrics are rightly classifiable under sub-heading 551202A of the Drawback Schedule, as it contains more than 85% of synthetic fabrics i.e polyester and viscose.

That as per Chapter Note 1 of Chapter 54 of the schedule to the Customs Tariff Act, 1975, polyester is a synthetic fabric and viscose is an artificial fabric. However, this chapter note further provides that, "the terms "man-made," "synthetic" and "artificial" shall have the same meaning when used in relation to textile materials," but the chapter note implies that the three words are to be used interchangeably and shall have the same meaning, when the same are used in relation to textile materials, meaning that both polyester and viscose are to be considered synthetic fabrics for the purposes of heading 551202A of the drawback schedule.

That the Synthetic and Rayon Textile Export Promotion Council ("SRTEPC") have clarified that the product "Polyester/Viscose Suiting - 65/35" falls under DBK Sr. No. 551202A.

The applicant has relied on the following case laws
Commissioner of Customs, Chennai vs. ITI Ltd. [2002 (145) ELT 697 (Tri-Mad)]

5.3 That the customs authorities were allowing drawback under tariff item 551202A of the drawback schedule and the applicant was submitting all the necessary documents and all the necessary documents. The Department was also drawing the samples of the export goods. The advice, as regards the classification, has been provided by the SRTEPC, which has been set up by the Government of India, Ministry of Textile. Therefore, the burden was squarely cast upon the Customs authorities to classify the goods correctly. Since, the Customs itself was, after proper examination, clearing the goods under heading no. 551202A, there was no reason for the applicant to believe that the classification was wrong in any manner.

The applicant has cited the following case laws in support of their contention

i) M/s Hindustan Ferodo Limited vs. Collector of Central Excise, Bombay --[1997 (89) E.L.T. 16 (S.C.)]
ii) Union of India vs.M/s Garware Nylons Ltd - [1996 ELT 12 (S.C.)]
iii) M/s Bombay Paints and Allied Products Ltd. vs. Union of India, [1985 (21) E.L.T. 663 (Bom.)]
iv) M/s Garware Nylons Ltd. vs. UOI [1980 E.L.T. 249 (Bom.)]
v) M/s Hindustan Lever Limited, Bombay vs. Collector of Central Excise, Bombay [1985 (19) E.L.T. 562 (Tri.)]
vi) M/s Jay Kay Exports & Industries vs. C.C. (Port), Kolkata, [2004 (163) E.L.T. 359]
vii) M/s Shree Ganesh International vs. Commissioner of Central Excise, [2004(174) ELT 171 (Tri. - Delhi)]
viii) CC, Bangalore vs. A. Mahesh Raj [2006 (195) ELT 261 HC]

5.4 That the impugned SCN is issued under Rule 16 of the Drawback Rules, and the same is clearly time barred inasmuch as the same has been issued after period of more than 18 months from the last date of export. Also that even though Rule 16 of the Drawback Rules does not provide for any limitation period, it is trite law that a reasonable period of limitation has be read into the same. Thus, the time limit of six months or five years as provided under Section 28 of the Customs Act, 1962 is to be made applicable to such cases. The law has been laid down Hon'ble Supreme Court of India in Government of India vs. Citedal Fine Pharmaceuticals, Madras reported in 1989 (42) E.L.T. 515 (S.C.), that in the absence of any

period of limitation, it is well settled that every authority is to exercise the power within a reasonable time.

Reliance is also placed on the following cases, wherein it has been held that where a statutory provision does not prescribe any period of limitation for exercise of power there under, a reasonable period has to be read therein:

i) M/s Pratibha Syntex Ltd. vs. UOI [2013 (287)E.L.T. 290 (Guj.)]
ii) M/s Gemini Dyeing & Printing Mills Ltd. vs. Commissioner [2014 (304) E.L.T. 51 (Kar.)], and affirmed in [2015 (316) ELT 11 (Karnataka High Court)]
iii) Collector of Central Excise, Jaipur vs. M/s. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.)]
iv) M/s Torrent Laboratories Pvt. Ltd. vs UOI [1991 (55) E.L.T. 25 (Guj.)]
v) CCE, Coimbatore vs. Chemicals & Plastics Ltd. [1997 (92) E.L.T. 187 (Tri.)]

5.5 That there was no suppression or mis-representation of facts and the extended period is not invokable as the applicant was in constant touch with the relevant authorities and no mala fide intent can be attributed to the applicant for the invocation of the larger period of limitation. The applicant submits that the act of the applicant was not deliberate default and therefore extended period of limitation is not invokable.

The applicant has cited the following case laws in support of their contention

i) Uniworth Textile Ltd. vs. Commissioner of Central Excise, Raipur [2013-TIOL-13-SC Cus,]

Alleged excess claim of duty drawback already within the knowledge of the department

5.6 That the extended period of limitation is invokable only in cases where the element of either fraud, mis-statement or collusion is present and can be established. In the instant case all the information regarding alleged drawback claim at a higher rate was already within the knowledge of the department, and the same was sanctioned by the Departmental officers. Also, the applicant intimated the Department about the export of the said impugned fabrics and also followed all the necessary regulations and procedures prescribed under the said rules and the description and the classification of the impugned fabrics has been authorized by the Customs

authorities and no objection was ever raised in relation to the incorrect classification or wrong availment of the drawback benefit.

The applicant has cited the following case laws in support of their contention

i) M/s Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462]
ii) M/s Sarabhai M. Chemicals vs. Commissioner of Central Excise, Vadodara [2004-TIOL-104-SC-CX]
iii) M/s Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut [2005-TIOL-118-SC-CX]

5.7 That mere failure to pay duty cannot be held against the applicant, so as to apply extended period of limitation and there has to be some conscious, deliberate act with a view to evade tax.

The applicant has cited the following case laws in support of their contention

i) M.s Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut [2005 (188) E.L.T. 149 (S.C.)]
ii) M/s Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Ltd. [2010 (260) E.L.T. 17 (S.C.)]
iii) M/s Infinity Infotech Parks Ltd. vs. Union of India [2014 (36) STR 371]

5.8 The department has been unable to prove that the applicant acted under a mala fide intent to evade duty. Therefore, as there was a bona fide scope for the applicant to believe that no duty was payable, the extended period of limitation cannot be invoked. Thus the imposition of penalty on the company and the Directors not sustainable as neither the impugned SCN nor the impugned order-in-original mentioned the provision of law under which the penalty has been imposed under Rule 16 read with Section 114(iii) of the Act.

5.9 That Rule 16 relates to recovery of erroneously granted drawback, and that penalty cannot be imposed by invoking Rule 16 of the Drawback Rules, and that penalty can be imposed under Section 114(iii) of the Act only if Section 28 is invoked. Further there is no proposal in the impugned SCN or finding in the impugned orders-in-appeal as to the offence committed by the applicant which can be justifiably described as 'abetment' of an offence rendering certain export goods liable for confiscation and the appellants

liable for penalty under Section 114 (iii) of the Act. It is well a settled position of law that in the absence of specific allegation/provision in the SCN, the SCN is liable to be dropped as absence of a specific allegation disables a noticee from defending the SCN, which leads to denial of natural justice.

The applicant has cited the following case laws in support of their contention

i) CCE, Raipur vs. M/s Shyam Enterprises [2011 (23) S.T.R. 29 (Tri. - Del.)]
ii) CCE, Bangalore vs. M/s Brindavan Beverages (P) Ltd. [2007 (213) E.L.T. 487 (S.C.)]

5.10 That the present case involves interpretation of the tariff entries and their respective scope and no penalty can be imposed in disputes relating to classification. Further, it has been held by the Hon'ble CESTAT in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions.

The applicant has cited the following case laws in support of their contention

i) M/s Bahar Agrochem & Feeds Pvt. Ltd vs. Commissioner of C.Ex., Pune, [2012 (277) E.L.T. 382 (Tri-Mum)]
ii) M/s Auro Textile vs. Commissioner of Central Excise, Chandigarh [2010 (253) ELT 35 (Tri. -Del.)]
iii) M/s Hindustan Lever Ltd. vs. Commissioner of Central Excise, Lucknow [2010 (250) ELT 251 (Tri-Del.)]
iv) M/s Prem Fabricators vs. Commissioner of Central Excise, Ahmedabad-II [2010 (250) ELT 260 (Tri.-Ahmd.)]
v) M/s Whiteline Chemicals vs. Commissioner of Central Excise, Surat [2009 (229) ELT 95 (Tri-Ahmd.)]
vi) M/s Delphi Automotive Systems vs. Commissioner of Central Excise, Noida (2004 (163) ELT 47 (Tri.-Del.)]
vii) M/s Digital Systems vs. Commissioner of Customs, [2003 (154) ELT 71] Collector of Central Excise vs. West Glass Works, [1984 (17) E.L.T. 368 (Tri.)]
viii) M/s Indocom Projects Equipments Ltd. vs C. C. E., [2005 (185) E.L.T. 291 (Tri.)]
ix) M/s Goodyear (India) vs. CCE., [2003 (157) ELT 560]
x) M/s Anand Metal Industries vs. C. C. E., [2005 (187) E.L.T. 119 (Tri.)]

5.11 That it is a well settled proposition that imposition of penalty is the result of quasi-criminal adjudication. Consequently, the element of *mens rea*

or malafide intent must be necessarily present, in order to justify imposition of penalty. The element of *mens rea* is conspicuously absent in the instant case. It is not disputed that the applicant was furnishing all the relevant documents. Therefore, assuming, without conceding that drawback was claimed at a higher rate than was available to the applicant, no malafide can be attributed to the applicant.

The applicant has cited the following case laws in support of their contention

i) M/s Hem Chand Gupta & Sons vs. Commissioner [2015 (330) E.L.T. 161 (Tri-Del.)]
ii) Commissioner vs. M/s Hem Chand Gupta & Sons [2016 (332) E.L.T. A185 (S.C.)]
iii) M/s Hindustan Steel Ltd. vs. State of Orissa [(1978(2) ELT J-159)]
iv) M/s Akbar Badruddin Jiwani vs. Collector of Customs [(1990 (47) ELT-161]
v) Commissioner of Sales Tax vs M/s Sanjiv Fabries [(2010-TIOL-71-SC-CST)]

5.12. If the drawback duty itself is not recoverable, then the question of charging the interest thereon does not arise. Therefore, the impugned order is liable to be set aside on this ground too.

6. The revision applications filed by the co-applicants Directors of the company i.e Shri Sunil Rathi and Shri R.P Jhanwar have been filed on the following grounds same grounds as taken by the applicant as stated above. In addition the co-applicants have also stated as under

6.1 Imposition of penalty without specifying the provision is violative of principles of the natural justice

6.2 The Appellate Authority merely remanded the matter for the limited purpose of specifying the provision of Section 114 of the Act under which penalty is to be imposed, instead of set aside

6.3 The law is well settled that penalty is not imposable when director/employee/agent of a Company is not benefited from the acts of the Company. In the case at hand, the applicant cannot simply divert the funds from corporate accounts to their personal accounts in the name of remuneration. Therefore, the observation of the Ld. Additional Commissioner in the impugned order-in-original that the Directors,

including the applicant, were the ultimate beneficiaries of the main applicant is erroneous.

7. Personal hearing in the matter was granted to the applicants on 10.10.2018, 11.10.2018, 14.10.2021 and 21.10.2021. Shri Abhishek Jain, Advocate appeared online on 22.10.2021 for the personal hearing on behalf of the applicants and reiterated his submissions. He submitted that differential drawback has partly been paid back and balance could be recovered from the amount due to the company. He further submitted that it's a classification issue and there being no mis-declaration, no penalty was imposable. He requested to drop the penalty.

8. Government has carefully gone through the relevant case records available in the case file, the written submissions and also perused the impugned Orders-in-Original dated 09.04.2015 and the Orders-in-Appeal dated 29.07.2016.

9. Government finds that the moot point involved in the instant case revolves around the correct classification of the goods exported by the applicant and whether the applicant has resorted to mis-declaration of the product to claim excess drawback. The correctness of the resultant penalties imposed on the applicant and the co-applicants is another issue in question in the instant case.

9.1 Government notes that the product Polyester Viscose woven fabrics, exported by the applicant, was classified under tariff heading 5512 and drawback was claimed under tariff item No. 551202A of the Drawback Schedule. The department on the other hand has concluded that the product in question would merit classification under tariff heading 5515 and would be eligible for drawback under tariff item No. 551502A of the drawback schedule. The result of such mis-declaration resulted in an excess drawback claim of Rs.5,03,394/-.

9.2 For the purpose of clarity on the issue, the description of tariff item number 551202A and tariff item No. 551502A of the Drawback Schedule is the key and needs to be elucidated.

9.3 The description of goods falling under tariff item No 551202A is 'Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres" and that of goods falling under tariff item No. 551502A is 'Woven fabrics of synthetic staple fibres, containing 85% or more by weight of artificial staple fibres".
Thus it is clear that for the product to be classified tariff item No. 551202A of the Drawback schedule it is essential that the fabric should contain 85% or more by weight of synthetic staple fibre.

9.4 From the records of the instant case, Government notes that the description of the goods in the shipping bills are "woven fabrics of synthetic staple fibre containing 85% or more by weight of synthetic staple fibre (dyed)". Government also notes that pursuant to investigations, it was ascertained that the polyester and viscose contents were in ratio of 65%/35%, 70%/30% and 80%/20%. The details the on the invoice Nos. W003 dated 06.06.2007, W004 dated 25.06.2007 and W007 dated 02.07.2007, issued by the applicant mentioned the quality as AST0016, AST0018, AST0011 and AST0017 and the RITC code as 55151130 and drawback was claimed under tariff item No 551202A instead of tariff item No. 551502A and the same qualities of goods were exported by the applicant under other shipping bills showing the code as 551202A. Government opines that the applicant, despite being fully aware of the contents of fabrics, classified the goods showing the tariff item to be 551202A though the percentage of the contents Polyester and Viscose do not fall under the description of tariff item No. 551202A. Government notes that this suggests awareness of the applicant about the same so as to enable to avail of the higher amount of drawback by mis-declaring the description and the serial number of the Drawback Schedule.

9.5 Government avers with the findings in the impugned order-in-original and holds the goods in question to be correctly classified by the original adjudicating authority under 55151130 of Custom Tariff Act, 1975 and thereby covered under tariff item No 551502A of Drawback schedule.

9.6 As regards the applicants claim that there was no misdeclaration on their part and the instant case was merely about classification and there was no suppression or misrepresentation of facts and the extended period is not invokable, Government notes that the General manager of the applicant company who was authorized by the co –applicants has admitted that the applicant had wrongly claimed the higher drawback under tariff item No 551202A, when the composition of the fabric exported did not answer the description and the specifications under the declared heading, and the misdeclaration was for availing the higher drawback. It is also a fact that had the said misdeclaration and availment of higher drawback would not have been unearthed but for the indepth investigations being carried out by the DRI which has exposed the modus operandi of the applicant.

9.7 Further by virtue of the Notification No. 103/2008-Cus (NT) dated 29.08.2008 which determines the rate of Drawback for the respective period, the description of goods in the said Drawback Schedule are aligned to the first schedule to the Customs Tariff Act, 1975 at the four digit level and the general rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 shall mutatis mutandis apply for classifying the export of goods listed in the Drawback Schedule.

10. Government notes that as regards the contention of the applicant that the correct classification is the duty of the department, the Drawback Scheme is export incentive scheme and applicant and being the beneficiary of the scheme, the onus is cast upon them to establish that the goods under dispute were correctly classifiable under tariff item No. 551502A of the Drawback Schedule. On the contrary the applicant has chosen to misdeclare the RITC and the tariff item No of the Drawback Schedule when it is crystal clear that the chapter heading 5512 covers 'Woven Fabrics to Synthetic

staple fibres containing 85% or more by weight of Synthetic Staple Fibres" whereas the Chapter 5515 covers "other woven fabrics to synthetic staple fibres. Thus to be eligible for drawback under tariff item No. 551202A, it is imperative that the goods should contain 85% or more by weight of synthetic staple fibre for the goods to be classified under but in the instant case investigations have zeroed in on to the fact that the exported goods were of the composition PV 65/35, PV 70/30 and PV 80/20.

11. The applicant and co applicants have made several averments about the imposition of penalty not being sustainable as the dispute related to classification and interpretation of tariff entries and no *mens rea* being attributed. Government opines that in the context of the facts of the case, the averments of the applicant are misplaced. It is very much on record that the applicant has exported 74 consignments by willfully mis-declaring the description of the goods and the tariff item number of the Drawback Schedule with an intent to avail higher drawback. Government also notes that it is also on record that the representative of the applicant who was authorized by the co-applicant i.e Directors, has admitted that they had purchased Polyester Viscose yarn having polyester-viscose contents in the ratio 65%/35% and 70%/30% and 80%/30% and the same does not confirm to the description of the goods eligible for drawback under tariff item No 551202A of the Drawback Schedule. This coupled with the fact that the composition of the goods were suppressed and not mentioned on the export documents makes it abundantly clear that there was a systematic attempt at misdeclaring the correct description and the tariff item number of the Drawback Schedule on the part of the applicants by the co-applicants to avail of the benefit of ineligible higher drawback.

11.1 Besides, it is also on record that the two co-applicants were active Directors and handled the export related work of the company and thus it is evident that they were fully aware of the activities of the applicant and were aware of the correct classification of the goods and not only turned a blind eye but also endorsed the acts of misdeclaring the description and the serial number of the Drawback Schedule and suppressing composition of the

goods exported to avail of the benefits of drawback at higher rates which were not due to them. It flows from the above that being the Directors who handled the export work, they were complicit in the mis-declaration and the benefits accruing from the continued exercise of the mis-declaration flowed to them.

12. The Government opines that since applicant have claimed the inadmissible drawback and the same was disbursed to them, the demand of interest in respect of the inadmissible amount of drawback from the date of disbursement to the date of payment is justified.

13. Government also observes that the reliance placed by the applicant on various case laws mentioned in the above paras are misplaced in as much as the applicants/appellants in those cases had substantially complied with the provisions under the relevant Notifications/Circulars whereas in the instant case the applicant has failed to follow the provisions under the Drawback Rules, 1995 and the Customs Act, 1962 as rightly held by Commissioner (Appeals) in his Orders-In-Appeal. The applicant has misdeclared the description and the serial number of the Drawback Schedule and suppressed the composition of the goods exported to avail of the benefits of higher amount of drawback. This act, as proven in the investigations and rightly held by the Appellate Authority was intentionally executed in the full know of the co-applicants who were the ultimate beneficiaries of the modus operandi. These rules are consistent with the provisions of the Customs Act, 1962 and the rules thereunder and therefore they carry statutory force. The applicant has failed to comply with the provisions of the Drawback Rules, 1995 and the notifications pertaining to grant of drawback. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018(362) ELT 404(Mad)] would be relevant here. The relevant text is reproduced.

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. .....".

Since the applicant and the co-applicants have failed to comply with the requirements of the Drawback Rules, 1995 and the Customs Act, 1962 and the rules/notifications issued thereunder, the reliance placed on these case laws by the applicant and the co-applicants are also misplaced.

14.1 In view of the above, Government finds no infirmity in the Orders-in-Appeal Nos.107 to 109 (General)/2016(JNCH)-Appeal-I dated 29.07.2016 passed by the Commissioner of Customs (Appeals-I), Mumbai – II, JNCH, Nhava Sheva and therefore ~~and therefore~~, upholds the impugned orders-in-appeal as far as it relates to confirmation of differential drawback amount.

14.2. Penalty imposed on the applicant and it two Directors (co-applicants) is excessive. Therefore, the penalty on the applicant is reduced from Rs. 3,00,000/- to Rs. 1,00,000/- and the same on co-applicants is reduced from Rs. 1,00,000/- to Rs. 25,000/- each.

15. The three Revision Applications are disposed off on the above terms.

Shrawan 9/3/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 109-111 /2022-CUS (WZ) /ASRA/Mumbai dated 09.03.2022

To,

1) M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara, Rajasthan

2) Shri R.P.Jhanwar,
Director, M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara,
Rajasthan

3) Shri Sunil Rathi
Past Director, M/s Primera Sulz Pvt Ltd,
G-125-128, RIICO Industrial Area, 4th Phase
Opp Ronak Process, Bhilwara,
Rajasthan

Copy to:

1. The Commissioner of Customs (Export), JNCH, Nhava Sheva, Uran, Maharashtra - 400 707.
2. The Commissioner (Appeals I), Mumbai – II, JNCH, Nhava Sheva, Uran, Maharashtra – 400 707.
3. Sr.P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare Copy