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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. 371/88/DBK/13-RA/5229 DATE OF ISSUE: 30.09.2020

ORDER NO. 196 /2020-CUS(WZ)/ASRA/MUMBAI DATED 14.09.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SETION 129DD OF THE CUSTOMS ACT, 1962.

Subject : Revision applications filed under section 129DD of the Customs Act, 1962 against the Order in Appeal No. 169/2003 (JNCH) dated 18.11.2003 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II.

Applicant : M/s Juliet Industries Ltd. (Previously known as M/s Juliet Products Ltd.), Mumbai.

Respondent : Commissioner of Customs (G), New Customs House, Ballard Estate, Mumbai.

ORDER

This revision application has been filed by M/s Juliet Industries Ltd. (Previously known as M/s Juliet Products Ltd.), Mumbai (hereinafter referred to as "the applicant") against the Order in Appeal No. 169/2003 (JNCH) dated 18.11.2003 passed by the Commissioner of Customs (Appeals), JNCH,Nhava Sheva, Mumbai-II.

2. The applicant is in the business of exports and has been exporting textiles made-ups and Brassieres, etc. The applicant was erstwhile doing business in the name and style of "Juliet Products Ltd." however; the name of the applicant company has been changed from "Juliet Products Ltd." to "Juliet Industries Ltd." in terms of Fresh Certificate of incorporation consequent upon change of name, issued on 2nd February 2011 by Deputy Registrar of Companies, Maharashtra, Mumbai.

3. The Brief facts of the case are that the applicant filed 7 shipping bills No.2000001475 dated 10.01.2003, 2000003083 dated 21.01.2003, 2000045502 dated 16.08.2002, 2000000180 dated 02.01.2003 2000015241 dated 28.03.2003 and 2000050429 dated 29.10.2002 for export of Brassieres and other garments to U.A.E. with claim of duty drawback under Serial No. 62.11 of Drawback Schedule, 2002- 2003. At the time of examination, the export goods appeared to be in the form of knitted fabrics, through the applicant mentioned that brassieres are in the form of woven fabrics. However, a representative sample of brassieres drawn from consignment of shipping bill no. 2000003083 dated 21.01.2003 was sent for test at C.R.C.L., New Custom House, Mumbai for ascertaining whether woven or knitted brassieres. From the test report it was clear that knitted components of the goods in question work out to 93.3%. Apparently the goods appeared to be knitted brassieres; therefore the brassieres were not eligible for drawback under subheading 62.11. The adjudicating authority rejected the drawback claim vide Order-in-Original No.S/6-0B-07/2003 CFS(M)(X)//S/10-04/2003 CFS(M) dated 04.07. 2003 since the goods were knitted brassieres which were not classifiable under sub-heading 62.11 which covered only woven, other than knitted and crocheted brassieres.

4. Being aggrieved by the said Order-in-Original the applicant filed appeal before Commissioner of Customs (Appeals), Mumbai-II who after consideration of

all the submissions, rejected their appeals and upheld impugned Orders-in-Original by observing as under:-

> *'I have gone carefully through the records of the case and heard the appellant. It is observed that drawback claimed has been rejected since the appellant claimed the brassieres to be woven fabrics under subheading 62.11 but it is observed from the CRCL test report that the brassieres are knitted components predominate and exceed 93% of the total composition. Therefore the impugned goods did not appear eligible for drawback under subheading 62.11. It is further observed that appellant exported the brassieres of different brands and articles declaring this is to be woven fabrics for the purpose of drawback claim. The appellant has not made any difference between knitted and woven brassieres and convinced themselves that both were same and there was no need for them to declare the brassieres to be woven.*
>
> *In view of the above, I find no merits in the appeal to interfere with the impugned order of lower authority which is legal and proper. I, therefore, reject the appeal filed by the appellant.*

5. Being aggrieved with these Orders-in-Appeal, applicant has filed the present revision application mainly on the on the following grounds :

5.1 The Commissioner of Customs [Appeals] erred in not passing a detailed and reasoned order taking into consideration all the submissions and contentions of the applicant. The impugned Order is clearly misconceived without authority of law and is liable to be quashed and set aside. The Commissioner (Appeals) erred in holding that they had not made out any difference between knitted and woven brassieres or that they had convinced themselves that both woven and knitted brassieres were the same and that there was no need for them to declare the brassieres as woven brassieres. He failed to appreciate that the main component of brassieres is the narrow woven fabric i.e. elastic tapes which are the principal material for the body support and that the other accessories viz. cup fabric hooks, laces etc. material to be used for making the brassieres and fabric are minor components in the making of brassieres. The brassieres are not only classifiable under Chapter 62 of the Drawback Schedule but are also classifiable under Chapter 62 Customs Tariff Act. 1975 and Chapter 62 of the Central Excise Tariff Act, 1985. The Customs Tariff Act. 1975 and the Central Excise Tariff Act. 1985 under Chapter 62 subheading 6212 classifies "brassieres", whether or not knitted or crocheted. This is despite the fact that the Chapter heading of Chapter 62 the said acts reads as "Articles of Apparel and Clothing Accessories "not knitted or crocheted". It is therefore clear that for claiming drawback, brassieres are to be classified under Chapter 62

irrespective of whether brassieres contained knitted or crocheted fabric.

5.2 In the case of Collector of Customs Versus Aysha Export Corporation reported in [1993] 60 E.L.T. 265 [G.O.I], it was held that drawback being rebate of Customs/Central Excise duty can only be granted if the goods appropriately are covered under the relevant sub-serial number of Drawback Schedule and if necessary after drawing support from the definition as given in the Customs and Central Excise Tariff. It is submitted that brassieres are classified under the same Chapter viz. Chapter 62 of the Central Excise Tariff Act, Customs Tariff Act and the Drawback Schedule and therefore they ought to have been allowed to claim duty drawback in view of the specific entries in the Customs Tariff Act, Central Excise Tariff Act and the Drawback Schedule. In the case of R.B. KNIT EXPORTS Vs. Commissioner Customs, Amritsar reported in (2002) 145 ELT 207 [Tri. Del], the exporter had claimed drawback rate at 14% by classifying the goods under heading 61.01 of Drawback Schedule. The Export authorities pointed out that as the goods are classifiable under Chapter no. 6304.01 of the Central Excise Tariff Act. 1985 and the applicable rate of drawback was 7% of the FOB value, the proper classification would be on the basis of the Central Excise Tariff Act. 1985. The Hon'ble Tribunal held that as the goods were classifiable wider subheading 6304.01 of the Central Excise Tariff Act. 1985, wherein the applicable rate of drawback was 7% of the FOB value, the exporter was only entitled to 7% of drawback rate. It is therefore clear that for claiming drawback, the drawback schedule has to be read along with the Central Excise Tariff Act,1985 or the Customs Tariff Act, 1975 as the case may be. Further, Chapter Note 2 [a] of Chapter 61 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, records that "This chapter does not cover the goods of heading 62.12". Subheading 62.12 covers "brassieres, girdles, corsets. braces, suspenders and similar articles and parts thereof, whether or not knitted or crocheted. It is significant that the Chapter heading of Chapter 61 reads as "Articles of apparel and clothing accessories, knitted or crocheted". It is clear therefore that brassieres whether knitted, crocheted or woven are specifically excluded from Chapter 61 and therefore can only be classified under Chapter 62. Also, Chapter Note 1 of Chapter 62 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985 records that 'this chapter applies only to made up articles of any textile fabric other than wadding excluding knitted or crocheted (other than those of heading 62.12). It is significant that even under Chapter 62, brassieres whether knitted or crocheted would have to be classified under subheading 6212.

5.3 The Dy. Commissioner of Customs erred in holding that their contention that brassieres are specifically covered in Chapter 62

under serial no. 62.11 of the drawback schedule because the word "woven" is not used against the description of brassieres as quoted for other subheadings in the same chapter, is devoid of any legal force. The Dy. Commissioner of Customs erred in holding that because subheading numbers from 62.11 to 62.25 does not mention of the word "woven" that it does not mean that the goods falling under subheading nos. 62.11 to 62.25 could either be woven or knitted. It is clear from Chapter 62 of the drawback schedule that only items under subheading No. 62.1 to 62.10 would cover articles of apparel and clothing accessories which are not knitted or crocheted. The fact that the items falling under Subheading Nos. 62.1 to 62.10 contain the word -woven" whilst under subheading nos. 62.11 to 62.25 the word -woven" is specifically omitted clearly postulates that items falling under Subheading Nos. 62.11 to 62.25 are not restricted to apparel and clothing accessories which are -woven" and would even include items which are knitted or crocheted.

5.4 Both the Commissioner of Customs (Appeals] and the Dy. Commissioner of Customs failed to appreciate that the Hon'ble Bombay High Court in the case of Ralliwolf India Limited Vs. UOI (1992) 59 ELT 220 [Bom. H.C.] held that the laws made by Parliament are to be read plainly and no word is to be added thereto or removed therefrom. It is clear that the Entries from 62.01 to 62.10 of the Drawback Schedule clearly include the word "woven" whilst Entries Nos. 62.11 and 62.12 exclude the word "woven" and therefore the customs authorities are precluded from presuming that the word "woven" ought to be read as forming part of entries nos. 62.11 and 62.12 in view of the Chapter Heading of Chapter 62 of the Drawback Schedule. The Dy. Commissioner of Customs erred in relying on the Chapter Heading "Articles of apparel and clothing accessories, not knitted or crocheted" for rejection of their claim for classification of brassieres under subheading 62.11 and thus rejecting their claim for duty drawback. He erroneously held that the chapter heading was imperative for classification and the fact that the word "woven" was not used in sub-heading 62.11 would in view of the chapter heading prevent them from classifying brassieres under Sub-Heading 62.11. It is submitted that the learned Dy. Commissioner of Customs failed to appreciate the judgment in the case of Collector of Central Excise versus Roha Dye Chem. Pvt. Ltd reported in 1989 [41] E.L.T. 667 [Tribunal] wherein it was held that:

> *"Though it is true Chapter titles by virtue of the Rules for the Interpretation of the Central Excise Tariff Schedule are provided for an ease of reference only and, for legal purpose. classification shall be determined according to the terms of heading and relative section or chapter notes, they do provide a broad*

indication of the goods sought to be covered within the respective".

5.5 The Dy. Commissioner of Customs failed to appreciate that it is clear from Note Nos. 2 and 3 of Chapter 62 of the Drawback Schedule that only the items under Sub-Serial No. 62.01 to 62.10 would cover garments which contain "woven" fabric. He also erred in rejecting their contention that clarification No. 4 on Chapter 62 of the Drawback Schedule would indicate that the board made no distinction between knitted or woven brassieres and also in placing reliance on the fact that the boards clarification No. 4 that duty drawback rate applicable to ready-made garments cannot be extended to brassieres. It is submitted that the same is of no relevance as to whether they claim for duty drawback under subheading 62.11 was valid or not.

6. The respondent Department vide Letter S/49-84/2003 Dbk(JNCH) dated 09.01.2020 filed counter objection to the instant Revision Application filed by the applicant. While countering the grounds of Revision Application the department mainly contended as under:-

6.1 Mere alleging applicant has nothing on record to submit to substantiate his claim in his ground of Revision Application which is absolutely baseless and unfounded. Hence, the Order is just legal proper and maintainable. The Commissioner of Customs (Appeals) correctly held that the applicant has exported the brassieres of different brands and article numbers declaring them to be Woven brassieres The applicant had not made any difference between knitted and woven brassieres and convinced themselves that both were same and there was no need for them to declare the brassieres to be woven and to be classified under chapter 62 under HS Code no 62121000. Further, before the Adjudicating Authority and before the Commissioner (Appeals) nothing was brought on record to convince both the Authority, hence the classification of exported goods observed by both the Authority in their Order is proper and well reasoned;

6.2 The contention of the applicant is well negated by the Adjudicating Authority in its Order dated 04.07.2003 in its Para no 8, 9 and 10 elaborately. Further, it has taken the support of Chemical Examination report wherein percentages of the contents are clearly shown and the party has never disputed the same. Hence now the allegation in their application is totally misleading and liable for rejection;

6.3 The Commissioner (Appeals) discussed in its Order the facts mentioned by the Lower Authority and disposed of the appeal filed by

the applicant with no relief appears to be proper and appropriate. Further it is observed that the said Order is accepted by the Review Authority on 08.12.2003. The case laws cited by the applicant are not relevant to this case. Hence, the applicant's reliance on case law has proved misplaced, futile and in no way supports their cause;

6.4 The submission made by the exporter appears to be based on the premises that Drawback Schedule is aligned with the customs Tariff Act, 1975 read with the interpretative notes/explanatory notes to the relevant chapters of Customs Tariff Act, 1975 has no legal force since the DBK Schedule is not aligned with the Customs Tariff Act. 1975 as it has been clearly held that in the case of M/s. India Steel Industries reported in 1993 (67) ELT. 760 (G.O.I) and et the case of M/s. Vibgyar Zippers Ltd. that Rules of Interpretation in the Customs Tacit Act, 1975 and Central Excise Tariff Act. 1985 are not applicable and only General rules of Interpretation may apply to drawback Rules and accordingly the citation made by the party is not relevant needs no comment;

6.5 The said goods are knitted brassieres based on its composition because the knitted component predominates and exceeds 93% of the total composition. Therefore the brassieres are not classified under chapter 62. On the basis of composition of the components rightly held by the Adjudicating Authority in its Order that the exporter is not eligible for any duty drawback under sub-heading no. 62.11 of the duty drawback schedule covers only woven or other than knitted or crocheted brassieres is proper and legal;

6.6 The applicant's submission that brassieres are specifically covered in Chapter 62 under serial no. 62 11 of the drawback schedule because the word "woven" is not against the description of brassieres as quoted for other subheadings in the same chapter, is devoid of any legal force in view of as discussed by the department & mentioned at pars 9 of 0-I-0;

6.7 The case laws cited by the applicant are not relevant to this case Hence, the applicant s reliance on case law has en relevance to substantiate their ground of Revision Application. The subject goods being knitted brassieres only for the reasons discussed in details by the department & mentioned at Para 9 of 0-I-0 cannot be classified under DBK sub serial no 62.11;

6.8 The applicant's reliance on clarification on Chapter 62 based on Board's letter has also proved futile and in no way supports their cause. Details are mentioned at para 10 of 0-I-0;

In view of the above, the said Order-In-Appeal passed by the Commissioner of Customs (Appeals) appears to be proper.

7. A Personal Hearing was held in this case on 14.01.2020. The applicant had authorized M/s. Crawford Bayley & Co.Advocates and Solicitors, Mumbai to appear, make submissions on their belhalf and represent them before this authority. Accordingly, Mr. Kazan Shroff, Counsel , Mr. Gaurav Gangal, Advocate, Ms. Pranhita Singh, Mr. Jignesh Popat, & Mr. R. B. Popat appeared for hearing. The applicant pleaded for condonation of delay as initially the appeal was filed before CESTAT, Mumbai, against impugned Order, however, CESTAT , Mumbai vide its Order dated 06.08.2013 dismissed their appeal as not maintainable and directed them to file the same before the appropriate authority and thereafter the same was filed before Government of India on 06.09.2013. They also reiterated the submission filed through Revision applications and made written submissions on the date of hearing. They also contended that main component of the brassieres are elastic straps which are made from narrow woven strips and are the principal material for body support. They further mentioned that Chapter Note 1 of Chapter 62 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985 records that 'this chapter applies only to made up articles of any textile fabric other than wadding excluding knitted or crocheted (other than those of" heading 6212)' and that even under Chapter 62, brassieres whether knitted or crocheted would have to be classified under subheading 6212. Lastly, they argued that if it is held that they are not entitled to claim drawback under Chapter sub heading 62.11, then in such circumstances, they would be entitled to duty drawback under Chapter Sub heading 61.05 (for the year 2000-01) and under Chapter Sub- heading 61.09 (for the year 2002-2004).

8. In their written submissions filed on the date of personal hearing the applicant reiterated the ground of the Revision Application and mainly contended that:

a) **Brasseries, were correctly classified under Chapter Sub-heading 62.11 of the drawback Schedule.**: The Commissioner(Appeals) has erroneously held that the brasseries are knitted brasseries and therefore do not fall under Chapter 62 as the same is titled ""**Articles of apparel and clothing accessories, not knitted or crocheted**". Assuming without admitting that the brasseries consist of mainly knitted fabric, the same would still be classifiable under Chapter Sub-heading 62.11 of the drawback Schedule which specially covers "**Ladies/Girls brasseries**".

b) **Brassieres whether knitted or not are classfiable under Chapter 62 :** The Chapter Note 2 [a] of Chapter 61 of the Customs Tariff Act, 1975 and

the Central Excise Tariff Act, 1985, records that "*This chapter does not cover the goods of heading 6212*". Subheading 6212 covers "*Brassieres, girdles, corsets, braces, suspenders, and similar articles and parts thereof, whether or not knitted or crocheted*". It is significant that the Chapter heading of Chapter 61 reads as "*Articles of apparel and clothing accessories, knitted or crocheted*". It is clear therefore that brassieres whether knitted, crocheted or woven are specifically excluded from Chapter 61 and therefore can only be classified under Chapter 62. Chapter Note 1 of Chapter 62 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, records that "This chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted (other than those of heading 6212). It is significant that even under Chapter 62, brassieres whether knitted or crocheted would have to be classified under subheading 6212. Even as per international classification brassieres are classified under Chapter 62. It is clear from Chapter 62 of the drawback schedule that only items under subheading No. 62.1 to 62.10 would cover articles of apparel and clothing accessories which are not **knitted or crocheted.** The fact that the items falling under Subheading Nos. 62.1 to 62.10 contain the word "**woven**" whilst under subheading nos. 62.11 to 62.25 the word "**woven**" is specifically omitted clearly postulates that items falling under Subheading Nos. 62.11 to 62.25 are not restricted to apparel and clothing accessories which are "woven" and would even include items which are knitted or crocheted.

c) **Main component of the Brassieres is woven straps :** Without prejudice to the aforesaid submissions i.e. that brassieres are classifiable under sub-heading 62.11 of the drawback schedule, it is submitted that even otherwise, the main component of the brassieres is elastic strapes which are made from narrow woven strips and are the principal material for the body support. It is therefore submitted that even otherwise, the brassieres are "woven" and not "knitted" as these strapes which are made from narrow woven strips are the main component of the brassieres and all the other components i.e. cup fabric, hooks, laces etc, which are made from knitted fabric are minor/ancillary opponents. It is submitted that the Respondent has erroneously relied upon the test report to come to the conclusion that the knitted component works out to 93.3% of the goods. The test report has not been provided to them in gross violation of natural justice and they are therefore unable to effectively deal with the same. It is however clear from the portion of the test report which has been quoted in the order-in original i.e. "*Knitted arrow strip made of nylon filament yarn – 48%*", that there is a typographical mistake. The brassieres do not contain any such "*knitted arrow strip made of nylon filament yarn*". The brassieres contain elastic straps which are made from narrow woven strips and are the principal material for the body support.

It appears that the test report incorrectly records the elastic tapes as "knitted" when in fact they are "woven".

d) **Alternatively, Brassieres would be classifiable under chapter 61 of the Drawback Schedule:** Without prejudice to the aforesaid, if it is held that they are not entitled to claim duty drawback under Chapter Sub-heading 62.11, then in such circumstances, they would then be entitled to duty drawback under Chapter Sub-heading 61.05 (for the year 2000-01) and under Chapter Sub-heading 61.09 (for the year 2002-04).

(a) Sub-heading 61.05 (for the year 2000-01) and under Chapter Sub-heading 61.09 (for the year 2002-04) of the drawback schedule reads as under:

Drawback Schedule 2001-02:

"61.05. All other knitwears and articles of hosiery made of cotton/polyester/ cellulosic yarn or knitted fabric."

Drawback Schedule 2002-03 and 2003-04:

"61.09. All other knitwears and articles of hosiery made of cotton/polyester/ cellulosic yarn or knitted fabric."

(b) As stated hereinabove, they are entitled to claim duty drawback under Chapter Sub-heading 62.11 of the drawback Schedule which specially covers "Ladies/Girls brasseries". In the alternative, if it is held that the brasseries exported by them cannot be classified under Chapter Sub-heading 62.11 of the drawback Schedule as it allegedly contains mostly knitted fabric, then in such event, they would still be entitled to claim duty drawback under Chapter 61.05/09 of the drawback schedule which covers "All other knitwear".

In the aforesaid circumstances, it is submitted that the impugned Order dated November 18, 2003, be set aside and the Revision Application be allowed.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused Order-in-Original and the impugned Order-in-Appeal. The applicant also filed Application for Condonation of delay on the following grounds that:-

- the impugned Order in Appeal dated 18.11.2003 was received by them on 25.11.2003. The said Order in Appeal dated 18th November, 2003 had a preamble to the Order, which contained "Notes for guidance" and

paragraph 1 of the said Notes read as under: An appeal against this Order shall be under Section 129(A) of the Customs Act, 1962 with the Customs, Excise and Service Tax Tribunal (CESTAT) within three months from the date of communication in terms of sub section (3) of Section 129(A) of the Customs Act, 1962. Therefore, it is clear from the above that the erroneous "Notes of guidance" misled them to file the Appeal before wrong forum. Therefore, they filed the appeal before the Hon'ble CESTAT on 24th February, 2004. The said Appeal bearing No. C/200/2004 before CESTAT was filed within time;

- the said Appeal came up for hearing before the CESTAT on 6th August 2013, when CESTAT dismissed their Appeal for want of jurisdiction, however, with the liberty granted to them to approach the appropriate forum within 30 days from the receipt of its Order, especially in view of the fact that the preamble of the impugned Order was erroneous;
- thereafter, they filed the present Revision Application with this forum on 5th September, 2013, therefore, the question of delay in filing the Appeal does not arise;
- in terms of letter 19.06.2014 received from this forum to the effect that they must file Application for condonation of delay, without prejudice to their rights and contentions and only by way of abundant caution they are making this Application for condonation of delay;
- it has been held in several judgments such as in case of Tata Oil Mills Co. Ltd. Vs Collector of Customs[1990(50) ELT 257 Tri] and Pooja Carrier V Commissioner of Customs (P) W.B. [2003(156)ELT933 Tri-Kolkatta] that delay in filing appeal due to wrong advice of the department must be condoned;
- one of the basic principles for condonation of delay laid down in the Limitation Act,1963 is that, the time during which the applicant has in good faith, been prosecuting with due diligence another proceedings, whether in a court of first instance or of appeal or revision against the same party for the same relief, such time shall be excluded for the computation of the period of limitation. Even otherwise, it is a principle of law and natural justice that a litigant should not be made to suffer for no fault of his own and / or of his Advocate;
- they have a very good case on merits, and if the case is not heard on merits grave and irreparable harm would be caused to them;

The applicant therefore prayed that :

-the delay, if any , in filing the present Revision Application be condoned;
-the Revision Application be heard and decided on merits

10. Government first proceeds to discuss issue of delay in filing this revision application. The chronological history of events is as under:

(a) Date of receipt of impugned Order-in-Appeal dated 18.11.2003 by the applicant	25.11.2003
(b) Date of filing of appeal before Tribunal	24.02.2004
(c) Time taken in filing appeal before Tribunal by the applicant	92 days
(d) Date of receipt of Tribunal order dated 06.08.2013	16.08.2013
(e) Date of filing of revision application by the applicant	05.09.2013
(f) Time taken between date of receipt of Tribunal order to date of filing of revision application	21 days

From the above position, it is clear that applicant has filed this revision application after 3 months and 23 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 129DD of Customs Act,1962 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay.

11. Government notes that Hon'ble High Court of Gujarat in W.P. No. 9585/11 in the case of M/s. Choice Laboratory vide order dated 15-9-2011, Hon'ble High Court of Delhi vide order dated 4-8-2011 in W.P. No. 5529/2011 in the case of M/s. High Polymers Ltd. and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in W.P. No. 10102/2011 [2013 (290) E.L.T. 364 (Bom.)] vide order dated 25-4-2012, have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgments is squarely applicable to this case. Government therefore keeping in view the above cited judgment considers that revision application is filed after a delay of 23 days which is within condonable limit. Government, in exercise of power under Section 129DD of of Customs Act,1962 condones the said delay and takes up revision application for decision on merit.

12. Government notes that the applicant has also filed **Application for amendment to Revision Application** dated 13.01.2020 wherein ground P-1 has been added after "P" at page 12 of the instant Revision Application which reads as under:-

> *P-1. "In the alternative, in the event it is held that the Applicants are not entitled to claim duty drawback under Chapter Sub-heading 62.11, then in such circumstances, the Applicants would then be entitled to duty drawback under Chapter Sub-heading 61.05 (for the year 2000-01) and under Chapter Sub-heading 61.09 (for the year 2002-04)".*

13. The main issue involved in the present revision application is whether the applicant's drawback claim under DBK SS. No. 62.11 of Drawback Schedule which reads *"Ladies / Girl Brassieres when Cenvat Facility has not been availed"* is proper or not. It must be borne in mind that the Drawback Schedule specifies the amount of drawback available to the exporter of a specific product. The description of the product or its mention in the drawback schedule entitles the exporter to drawback at the specified rate. On the other hand, the classification of the product under a specific heading is decided by the tariff description that suits it best. Government observes that the adjudicating authority from the test report from CRCL, New Customs House, Mumbai averred that the knitted component of the goods in question works out to 93.3%, therefore, the brassieres are knitted brassieres. The adjudicating authority further observed that in the absence of any statutory definition or any other provision laying down criteria for differentiation between woven and knitted fabrics, predominant composition of the final product alone can be taken for deciding whether the product should be considered to be knitted or woven and as the knitted component predominated i.e. more than 93% of the total composition, the brassieres are not eligible for DBK under Sub Sr. 62.11 because the said serial covers woven brassieres only.

14. Duty Drawback schedule for the relevant years and upto 2003-04, shows classification of "Ladies/Girls Brassieres under SS.No. 62.11 when the Cenvat facility Not availed and under SS No.62.12 when Cenvat Facility availed. There are no other headings other that these two in those Drawback Schedules which cover the said goods. Since the heading under Chapter 62 of Drawback Schedule read **"Articles of Apparel and Clothing Accessories "not knitted or crocheted"** the adjudicating authority rejected the drawback claim since the goods were knitted

brassieres which were not classifiable under sub-heading 62.11 which covered only woven, other than knitted and crocheted brassieres.

15. From perusal of Chapters 61 and 62 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, Government observes that Chapter 61 covers **"articles of apparel and clothing, accessories knitted or crocheted".** On the other hand, Chapter 62 covers the same items **when not knitted or crocheted.** It is obvious from the chapter headings itself that they are mutually exclusive in so far as goods which are knitted or crocheted are concerned. However, Chapter Note 2 [a] of Chapter 61 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, states that ***"This chapter does not cover the goods of heading 6212".*** At this point it would be relevant to note the goods; viz. brassieres, girdles, corsets, braces, suspenders and similar articles and parts thereof, whether or not knitted or crocheted, are covered in heading 6212. What the chapter note to chapter 61 is stipulating is that, notwithstanding the fact that these goods are knitted or crocheted; the expanse of heading 6212 would include these goods. On the other hand, Chapter Note 1 of Chapter 62 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985 states that 'this chapter applies only to made up articles of any textile fabric other than wadding excluding knitted or crocheted **(other than those of heading 6212)'**. The chapter note 1 to chapter 62 by making this exception specifies that **Brassieres..... whether or not knitted or crocheted** are classifiable under Chapter heading 6212 of the Customs/Central Excise Tariff Act. As such the classification of brassieres has been set out as product specific without any boundaries of the process used in its manufacture be it knitted or crocheted or woven. It can be seen from the chapter note to chapter 62 that it makes an exception to goods classifiable under chapter heading 6212 from the strict exclusion of knitted or crocheted goods in this chapter. Chapter notes of chapter 61 and chapter 62 harmonize to ensure that knitted or crocheted brassieres, girdles, corsets, braces, suspenders and similar articles and parts thereof would be classified within the confines of chapter heading 6212 without any exception.

16. It is also pertinent to note that the Drawback Schedule 2005-2006 was notified aligning tariff items in the Schedule with those in the Customs tariff vide Circular No. 22/2005-Cus. Dated 2nd May, 2005 issued under F.NO. 609/38/2005-DBK, and para 4 of the said Circular read as under :

4. The existing Drawback Schedule is based on a mixed classification that has grown out of precedent and convenience over the decades. Basically, the first two digits reflect the chapter heading while the subsequent two digits are in most cases arbitrary, derived from precedent and convenience. It has been felt that the classification system to be used for notifying the All Industry Rates of Duty Drawback should be insulated from any charge of classificatory confusion. It has, therefore, been decided to adopt the HS classification as the basis for fixing drawback rates. Thus, the new Drawback Schedule is now fully aligned with the HS Nomenclature at the four digit level. While for major export items the drawback rates have been worked out at four digit/six digit/eight digit level, for others a mixed classification, based on precedent and convenience, has been used for prescribing the drawback rates. In several cases, a residual entry has been created so that no export item is left out from a particular heading.

Accordingly, in Drawback schedule 2005-06, Description of Goods before Tariff Item 6212 was shown identical with that appearing in the Customs Tariff i.e. ***"Brassieres, girdles, corsets, braces, suspenders, and similar articles and parts thereof, whether or not knitted or crocheted".*** Therefore, even though the heading of Chapter 62 remained same under Drawback schedule 2005-06 as in previous Drawback schedules i.e. **"Articles of Apparel and Clothing Accessories "not knitted or crocheted"** the brassieres whether or not knitted or crocheted **have been shown to be classified under Tariff Item 6212 of the said Drawback schedule.** If the intention of the revenue was not to allow Drawback to knitted and crocheted Brassieres under Chapter 62 which exclusively meant for "Articles of Apparel and Clothing Accessories "not knitted or crocheted" there would have been a different Tariff Item (in Chapter 61 which deals with "Articles of Apparel and Clothing Accessories "knitted or crocheted") in newly notified Drawback Schedule 2005-06, which is not the case here. The continuation of classification of Brassieres, whether or not knitted or crocheted, under Chapter 62 in the drawback schedule 2005-06 supports the earlier classification of Brassieres under broad SS No. 6211 of the Drawback Schedules even prior to 2005-06 as it is clarified in the aforementioned circular that previously, the first two digits reflected the chapter heading while the subsequent two digits were in most cases arbitrary, derived from precedent and convenience.

17. In view of the discussion in preceding paras, Government observes that once brassieres are classifiable under Chapter heading 6212, whether or not knitted or crocheted" in both Central Excise and Customs Tariff, and when there is no other SS Nos. for "knitted and crocheted" brassieres they are rightly classifiable under SS

No. 62.11 (when Cenvat Facility not availed) of drawback schedules for the relevant time under heading "Ladies/Girls Brassieres, despite the fact that the heading of Chapter 62 of Drawback Schedule does not cover "Articles of Apparel and Clothing Accessories, knitted or crocheted".

18. Government, therefore, holds that the applicant is eligible to avail drawback of duty at the rate applicable to the goods of SS. No. 6211 of Drawback Schedule which was originally claimed by them during the relevant period.

19. Accordingly, Order in Appeal No. 169/2003 (JNCH) dated 18.11.2003 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II is set aside.

20. The revision application is allowed.

21. So, ordered.

(SEEMA ARORA)
Principal Commissioner &/Ex-Officio
Additional Secretary to Government of India.

ORDER No. 196 /2020-CUS(WZ) /ASRA/Mumbai DATED 14.09.2020.

To

M/s Juliet Industries Ltd. (Previously known as M/s Juliet Products Ltd.),
Juliet House, 5/238, T.J. Road Junction,
Sewari Naka, Sewari (W), Mumbao 400 015.

Copy to :

1. Commissioner of Customs (G), New Customs House, Ballard Estate, Mumbai.
2. The Commissioner (Appeals-II) Jawaharlal Nehru Custom House, Sheva, Tal- Uran, Dist: Raigad, Maharashtra: 400707.
3. Assistant Commissioner of Customs. ICD Mulund (Export and Admin.), Mulund (East) Mumbai 400081 .
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.