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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, Cuff Parade,
Mumbai- 400 005

F. NO. 373/246/DBK/14-RA / ²⁰²5983 Date of Issue: 16-10-2020
~~09-2020~~

ORDER NO. /²⁰²2020-CUS (SZ) /ASRA/Mumbai DATED 15.09.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s Charankattu Coir Mfg. Co. Pvt. Ltd.,
A.S. Road, Cherthala, Alappuzha- 688 524

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962 against the Order in Appeal No. COC-CUSTOM-000-APP-036-14-15 dated 09.04.2014 passed by the Commissioner of Customs (Appeals), Cochin.

ORDER

This revision application is filed by M/s Charankattu Coir Mfg. Co. Pvt. Ltd. ,A.S. Road, Cherthala, Alappuzha- 688 524(hereinafter referred to as "the applicant") against Order in Appeal No. COC-CUSTOM-000-APP-036-14-15 dated 09.04.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Brief facts of the case are that the applicant had filed 232 shipping bills for export of 100% Hand Woven Coir Geo Textiles for the period from September 2008 to June 2011 and had claimed AIR of Drawback under the Drawback Serial No. 5702 99A for the period upto 29.10.2010 and under 5702 99A thereafter at the appropriate rate of 2.5% and 3.5% respectively. The Drawback Sanctioning Authority while scrutinizing the claims observed that the Notification No. 109/2008 NT dated 24.09.2008 amended the Entry 5321 of the Customs Tariff Act, 1975 to include the subheading 53110015 whereby the Heading 5311 reads as - Woven fabric of other vegetable textile fibers, woven fabric of paper yarn and subheading 53110015 --- of coir including log form and geo textiles. Hence w.e.f. 24.09.2008, the item coir geo textiles are classifiable under the chapter 53 of Indian Customs Tariff and thereby said goods fall under Sr. No. 5311 A/B of drawback schedule and are eligible for drawback @ 1%. Accordingly, demand notices were issued to the applicant under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 for recovery of excess drawback amount of Rs. 21,49,257/- (Rupees Twenty One Lakh Forty Nine Thousand Two Hundred Fifty Seven Only). The original authority confirmed the said demand vide Order in Original No. S34/68/2011 Part-2/DBK CUS dated 28.09.2011.

3. Aggrieved by the impugned Order in Original, the applicant filed an appeal before the Commissioner of Customs (Appeals), Cochin. The Appellate Authority vide Order in Appeal No. COC-CUSTOM-000-APP-036-14-15 dated 09.04.2014 rejected the appeal and upheld the Order in Original. The Appellate Authority while passing the impugned order observed that :-

3.1 There is no assessment involved in the case of export goods.

3.2 While claiming the drawback the goods are listed under a corresponding drawback serial no. for the purpose of determining the drawback rates.

3.3 The demand was raised under Rule 16 of the Drawback Rules, 1995, hence it is not incumbent upon the department to go on appeal prior to changing the drawback listing as no assessment is involved.

4. Contesting the impugned Order in Appeal, the applicant have filed instant revision application on following grounds :-

4.1 The Appellate Authority had not touched the classification issue at all and had rejected the appeal only on the ground that there is no assessment in case of export of goods.

4.2 The two issues involved in the impugned case are

4.2.1 Classification :- The pivotal issue in this case is a dispute as to whether the item of export would fall under Chapter 53 or 57 which is undoubtedly a matter of classification.

4.2.2 The item exported by the applicant is woven coir geo textile manufactured by weaving process and is predominantly used for erosion control.

4.2.3 A more sophisticated version of this product achieved through various other processes like stenciling, tucking, latex backing, dyeing etc. is used as carpets or floor coverings on floors. On the other hand their product is used under the floor in the mother earth terrain.

4.2.4 Coir Board and BIS is the authority to fix and specify the standards of coir products relating to their production process and finished goods. Coir Board being the designated technical authority on matters pertaining to coir, the publication in consultation with BIS may be accepted as an authentic piece of evidence having sufficient strength to prove the veracity of their submissions.

4.2.5 The department has not indicated any valid reason for changing the accepted classification of the product from Chapter 57 to 53.

4.2.6 The data referred by the Adjudicating Authority do not conclusively establish that Geo Textiles are not floor coverings.

4.3 The department cannot change assessed classification suo moto without challenging the assessment through filing of an appeal.

4.4 The drawback rules are subject to the provisions of Customs Act and hence alleged excess payment can be demanded only after the Shipping Bills are modified through Appeals.

4.5 The Appellate Authority had erred in stating that there is no assessment involved in the case of export of goods.

4.6 The applicant have relied on several case laws in support of their arguments.

5. A Personal hearing in the matter was scheduled on 22.10.2018, 13.09.2019 and 12.12.2019. Shri Balagopal M., Advocate appeared for hearing on behalf of the applicant on 12.12.2019. No one appeared for the personal hearings so fixed on behalf of the department.

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

7. On perusal of the Show Cause Notice issued to the applicant by the department, it is observed that the applicant had filed 72 Shipping Bills for export of 100% hand woven coir geo textiles during the period from June 2010 to June 2011. The applicant had claimed drawback under the drawback serial no. 570299A for the period upto 29.09.2010 and under 570206A thereafter under the heading for hand woven floor covering / matting of coir.

8. The core issue involved in the present revision application is whether the applicant's drawback claim under DBK Sr. No. 570299A or 570206A of Drawback Schedule which reads as "Carpets and other Textile Floor Coverings of coir / others' 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. The

Government finds that the item exported by the applicant is Woven Coir Geo Textile manufactured by weaving process and is primarily used for erosion control. They have the strength and durability to protect the slopes from erosion while allowing vegetation to flourish. From perusal of Chapters 53 and 57 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, Government observes that Chapter 53 covers **'Other vegetable textile fibers; paper yarn and woven fabrics of paper yarn'**. On the other hand, Chapter 57 covers **'Carpets and other textile floor coverings'**. Thus it is obvious from the chapter headings itself that they are mutually exclusive in so far as goods are 'fabrics' or 'carpets / floor coverings'. However, the Chapter note (1) of Chapter 57 of the Customs Tariff Act, 1975 and the Central Excise Tariff Act, 1985, states that **'For the purposes of this Chapter, the term "carpets and other textile floor coverings" means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.'** At this point it would be also relevant to note the goods covered in Chapter 53 viz. **'Other vegetable textile fibers; paper yarn and woven fabrics of paper yarn'**. Therefore, what the chapter note to chapter 57 is stipulating is that, notwithstanding the fact these goods are geo textile, they may possess different utility than the products covered thereunder i.e. floor coverings. It is evident that the products covered under Chapter 57 are Carpets and other textile floor coverings, rugs etc. used mainly for indoor furnishing. Whereas it is found that the goods exported by the applicant are hand woven coir geo textiles i.e. coarse fabric in running length of larger mesh size manufactured by process of hand weaving of Coir Ropes. By no stretch of imagination, the impugned product can be used as Carpets or Floor coverings as claimed by the applicant. Thus chapter notes of Chapter 53 and 57 harmonize to ensure that the exported goods i.e. '100% hand woven coir geo textiles' would be classified within the confines of Chapter heading 53110015 without any exception.

Further by virtue of the Notification No. 103/2008-NT dated 29.08.2008 which determines the rate of Drawback for the respective period, the tariff items and the description of goods in the said schedule are aligned with the tariff items and the description of goods in the said schedule are aligned to 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.

In view of above, it is held that the product '100% Hand Woven Coir Geo Textiles' exported by the applicant is correctly classified under 53110015 of Custom Tariff Act, 1975 and thereby covered under 5311A/B of drawback schedule.

9. The applicant have further contended on the ground that the demand of excess Drawback arises only if the classification is modified through an appeal. It is therefore pertinent to refer the relevant statutory provisions. From the perusal of Section 75 of the Customs Act, 1962 and Rule 16 / 16A of the Drawback Rules, 1995. It is observed that Drawback Rules, 1995 have been framed in exercise of powers vested in terms of Section 75 of the Customs Act, 1962. Section 75 of the Customs Act, 1962 contains provisions in respect of entitlement of drawback. Further, in order to facilitate the drawback procedures, Section 75 also empowers the Central Government to make rules. As such, the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 have been framed by the Government. Drawback, being an incentive as against duty recoverable, the impugned Rules contain provisions for recovery of excess / erroneous payment thereof. Under said rules, Rule 16 of the Drawback Rules provides that where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs, repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of Section 142 of the Customs Act, 1962. Rule 16 of the Drawback Rules, 1995 does not provide for any time limit for making recovery of excess drawback paid erroneously. The Government opines that the excess drawback is sanctioned mainly on two grounds i.e on overvaluation or on wrong classification of the exported goods. It must, therefore, follows that the excess drawback arising out of these two basic grounds can be recovered under the provisions of Rule 16 of


the Drawback Rules, 1995 read with the Section 75 of the Customs Act, 1962 even without taking recourse to challenging the assessment or modifying the classification of the goods. Needless to say, there can be no case of contend that Section 28 would have overriding effect or would supersede the provisions of Section 75 which is part of the same statute and instituted to specifically provide for sanction of Drawback and recovery of wrongly sanctioned drawback alongwith interest.

10. Further, Section 75A(2) of the Customs Act, 1962 contemplates where any drawback has been paid to the claimant erroneously, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under Section 28AB from the date of expiry of the said two months to the date of recovery of such drawbacks. In view of the said provisions, the applicant in the instant case is liable to pay interest on the inadmissible drawback amount received by them. Therefore, the Government holds that the contention of the applicant on this ground is also not maintainable.

11. In view of above position, Government does not find any infirmity in the impugned order-in-appeal and therefore upholds the same.

12. The revision application is thus rejected being devoid of any merit.

13. So ordered.


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

ORDER No.202/2020-CUS (SZ) /ASRA/Mumbai DATED 5.09.2020

To,
M/s Charankattu Coir Mfg. Co. Pvt. Ltd.,
A.S. Road, Cherthala, Alappuzha- 688 524.

Copy to:

1. The Commissioner of Customs, Cochin, Customs House, Willington Island, Kochi - 682 009.
2. The Commissioner of Customs (Appeals), Customs House, Willington Island, Kochi - 682 009.
3. The Deputy Commissioner (Drawback), Customs House, Cochin, Willington Island, Kochi - 682 009.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.