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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. 371/03-04/DBK/17-RA 13204 Date of issue: 28.07.2022

ORDER NO.222-223/2022-CUS (WZ)/ASRA/MUMBAI DATED 20.07.2022 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. Gayatri Group of Industries,
2. Shri Mukesh Kataria

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

Subject : Revision Applications filed, under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No. 119 & 121 (Adj-Exp)/2016(JNCH)-Appeal-I dated 30.08.2016 passed by Commissioner of Customs (Appeals-I), Mumbai Zone-II.

ORDER

1. These Revision Applications along with applications for condonation of delay are filed by M/s. Gayatri Group of Industries, Plot No. 4025/B, Phase III, Dared, Jamnagar, Gujarat – 361 005 and Shri Mukesh Kataria, Shivanjali Apartment, Shivam Society, Jamnagar, Gujarat – 361 005 (hereinafter both referred to as "the Applicant") against Orders-in-Appeal No. 119 & 121 (Adj-Exp)/2016(JNCH)-Appeal-I dated 30.08.2016 passed by the Commissioner of Customs(Appeals-I), Mumbai Zone-II.

2. In the application for condonation of delay, the Applicant has submitted that delay in filing the Revision Applications happened as they were under bona fide belief that the impugned order of Commissioner (Appeals), which was received by them on 19.09.2016, is appealable to the Hon'ble Tribunal as the issue involved was of classification of the goods. But at the time of filing of appeal they realized that the issue was of re-determination of drawback amount. Hence their application was delayed by 22 days. The Government is condoning this delay and is taking up the matter for deciding on merits.

3. Brief facts of the case are that the applicant had filed a shipping bill for export of 'Brass Builders Hardware item – insert' with total FOB value of Rs.11,32,512/- claiming drawback amounting to Rs.1,24,576/-. The goods were classified under RITC heading 83024190 and drawback was claimed under heading 830201A with a benefit rate of 11% of FOB value and with a benefit cap of Rs.120/Kg. However, on examination by SIIB, it was found that the subject goods, considering their nature and alliance to fasteners (bolts, nuts, rivets, etc.) were classifiable under the Tariff item 74152900 and not 83024190 which covered 'Base metal mountings, fittings and similar articles suitable for furniture, doors, windows, staircase and others'. Consequently, the impugned goods were covered under drawback heading 741599 and were therefore eligible for drawback at the rate of 2% of FOB value. The impugned

goods were therefore seized but subsequently released provisionally under bond and bank guarantee.

4. During further investigations, statement of Shri Mukesh Kataria, Managing Partner of M/s. Gayatri Group of Industries was recorded by SIIB wherein he confirmed that the correct RITC in this case was 74152900 and not 83024190 as declared in the impugned shipping bill. Investigations revealed that on previous shipments of impugned goods, having total FOB value of Rs.13,36,63,934/-, by adopting the same modus operandi, excess drawback of Rs.1,65,74,434/- was availed by the Applicant. Hence, a Show Cause Notice was issued to them proposing, interalia, confiscation of seized goods, recovery of excess drawback involved in previous exports of said item, and penalty on the firm as well as partners.

5. The Adjudicating Authority vide Order-in-Original No. 294/2014-15 dated 20-03-2015 held that the impugned goods were correctly classifiable under RITC 74152900 and drawback schedule Sr. No. 741599 and rejected the applicant's claim of drawback and also ordered for recovery of excess drawback sanctioned and disbursed for previous exports of the impugned goods. The adjudicating authority also imposed a redemption fine on the goods released provisionally in addition to imposing a penalty on the Applicant.

6. Aggrieved by the said Order, the Applicant filed an appeal with the Commissioner (Appeals) who vide impugned Orders-in-Appeal upheld the OIO and rejected the appeal.

7. Aggrieved, the Applicant filed the instant revision applications mainly on the following grounds:

a) It is a settled preposition of law that specific entry of goods should be preferred over a general entry under Tariff.

- In the case of the Applicant, the brass insert manufactured by them has slits or cuts on the inside as well on the outer part of the ring and is made out of brass used as fittings in doors and windows. Further, the impugned goods are used for a specific purpose i.e. it is used for the purpose of fitting a door or window in a civil structure. Further, it is quite identifiable and distinct from nails, tacks, rivets, nuts and bolts as defined under Chapter 7415 which is more of a general description. Thus, the impugned goods are merits for classification under chapter 83024190. In support of this the reliance is placed on the following judgments:
    - CC, Calcutta v/s Kitply Industries Ltd 2001 (128) ELT 534 (Tri. - cal.)
    - CCE, Madras v/s Tansi Engg Works 1998 (103) E.L.T. 264 (Tribunal)

b) It is a settled preposition of law that the classification of the goods once finalized by the custom authorities which has attained the finality cannot be changed without challenging the earlier finalized assessment in appeal before Higher Forum.

- In the light of following judgments issue of classification of the same goods which have been classified by the Customs Officials themselves under Chapter heading 83024190 cannot be reopened to re-classify only on the ground of change in opinion of the customs officers when there is no change in the description of the goods or its usage by the foreign buyer.
    - Priya Blue Industries Ltd v/s Commissioner of Customs 2004 (172) ELT 145 (S.C).
    - CCE, Kanpur v/s Flock (India) Pvt. Ltd 2000 (120) ELT 285 (S.C).
    - STI India Ltd v/s CCE, Indore 2008 (222) ELT 112 (Tri. - Del.)

c) The classification of brass builder hardware "inserts" is rightly classifiable under chapter heading 83024190 and wrongly classified by the original Adjudicating Authority under chapter heading 74152900.

i. In case of the Applicant, the goods brass builder hardware "inserts" are manufactured out of brass which is classifiable as miscellaneous articles of base metal. Section XV covers base metals and articles of base metals. The chapter 72 deals with Iron and Steel, Chapter73 deals with articles of Iron and Steel, Chapter 74 deals with copper and articles thereof, Chapter 75 deals with nickel and articles thereof, Chapter 76 deals with Aluminum and articles thereof, Chapter 77 is at present blank, Chapter 78 deals with lead and articles thereof, Chapter 78 deals with Zinc and articles thereof, Chapter 79 deals with zinc and articles thereof, Chapter 80 deals with tin and articles thereof, Chapter 81 deals with other metals and articles thereof, Chapter 82 deals with tools, implements, cutlery, spoons and forks of base metal, Chapter 83 deals with miscellaneous articles of base metal in which if the base metal is not covered in earlier any of entry are covered. More specifically chapter 8302 deals with base metal mountings, fittings and similar articles suitable for furniture, doors, stair cases, windows, blinds, coach work, Saddlery etc. The Applicant manufactures the brass inserts which has thread from inside as well as outside is used basically as fittings in a civil structure while fitting a door or windows. Therefore, they are rightly classified under minor chapter heading 830241 which contemplates other mountings, fittings, similar articles suitable for building and under the same minor heading more specifically it is classifiable under other 83024190.

ii. Both the lower Authorities have erroneously classified the said item under chapter 7415 which deals with nails, tacks, drawing pins, staples and similar articles of copper or of iron and steel with heads of copper, screws, bolts, nuts, rivets, cotters or copper. The subheading wrongly classified is 74152900 which is others. The original Adjudicating Authority has totally erred in not appreciating that to classify the goods into this heading the entire article should be made of 100% pure copper as a base metal is an essential requirement to classify the goods under chapter heading 7415 whereas the Applicant's impugned goods "inserts" which are made of brass and brass is a different base metal which is a mixture of zinc and copper.

d) Confiscation of the impugned goods under Section 113(i) and (ii) of customs Act, cleared under shipping bill no. 7218335 dated 21.1.2012 under provisional clearance is untenable.

- Section 113(i) contemplates improper exportation of the goods with respect to value or other material. The Applicant has bonafidely believed in earlier assessment orders passed by the Customs authorities in which the classification of the goods finalized by Custom authorities was under 83024190. The impugned Show Cause Notice has not disputed the value of the goods exported. The dispute is only of narrow compass with respect to the classification of goods. The said classification claimed by the Applicant is based on earlier assessed shipping bills. Therefore, the requisite ingredients to invoke the provisions of Section 113(i) are totally absent.

e) The order of imposition of redemption fine of Rs.1,00,000/- in terms of Section 125 of the Customs act with respect to the goods which are exported under Shipping bill no. 7218355 dated 21.1.2012 is

unsustainable since the provisions of Section 113 are not applicable to the impugned goods which are exported.

- The Section 125 of the Customs Act under which the above redemption fine is imposed contemplates the imposition of redemption fine only in case of attempt to export the prohibited goods. As explained hereinabove, the Applicant has exported earlier the said goods which is an undisputed fact then in that case the said goods cannot be construed to be prohibited goods. Further, the Applicant has failed the shipping bill classifying the said product under the same classification entry under which the goods have been exported earlier and orders of granting the drawback under the said classification have not been challenged by the Department nor it has been set aside by any Appellate forum. Therefore under the bonafide belief the filing of drawback shipping claiming the drawback under the same classification cannot attract the provisions of Section 113 because the act of the exporter is based on the earlier orders passed by the customs authorities. Therefore, the charge of mi-declaration which is a requisite ingredient to invoke the provisions of Section 113 is absent. Under the circumstances the order imposing redemption fine or Rs. 1,00,000/- under Section 125 of the Customs Act, 1962 is unsustainable.

f) Re-Determination of Duty Drawback is untenable.

i. The order of re-determining duty drawback claim of Rs. 1,24,576/- for the goods covered under Shipping bill no 7218355 dated 21.1.2012 and rejecting the same is untenable since the earlier orders accepting the classification as well as accepting the claim of drawback at same entry at same sr. no. of drawback notifications have attended the finality or otherwise on merit also the goods which have been

exported by the Applicant merits the classification under Chapter heading 83024190.

ii. In order to understand the correct classification it is essential to analyses chapter 83 which inter-alia contemplates "miscellaneous articles of base metal" In case of the Applicant, the article "Insert" is made of brass material which is normally used in hinges of doors and windows or it is used in the glass glazing system which is a part of building. The major heading 8302 contemplates base metal mountings, fittings and similar article suitable for furniture, doors, stair cases, windows, blinds etc. The Applicant's product i.e. brass insert having a threading on outer surface as well as threading on inner surface which is used either in doors or windows as a joinder or binding the two parts. Therefore, the impugned goods are specifically classifiable under this heading because of its use in either doors or windows or glazing systems which are commercially known as a 'builders hardware' used by the builders in construction of civil structures or in repairs of civil structure.

iii. As against this the classification contemplated by the Department under Chapter 74 is totally wrong because Chapter heading 74 contemplates the materials of copper and chapter 7415 contemplates nails, tacks, drawing pins, staples other than those of heading 8305 and similar articles of copper or of iron and steel with the heads of copper, screw, bolts, nuts, screws hooks, rivet, cotters, cotter-pins, washers of copper. The minor heading which is contemplated by the department is 74152900. Under that other threaded articles. This entire chapter as well as major as well as minor heading contemplates that this article should be made of copper as base metal. Even though there is a mixture of steel

but heads of those steel pins of screws should be of copper. That means the existence of copper is essential so as to classify the product in this chapter heading 74152900. Whereas, Applicant's impugned goods are made of brass and not of copper at all. In the entire goods which is manufactured by the Applicant nothing of copper is used. It is purely of brass which gets correctly classifiable under chapter heading Miscellaneous articles of base metal, since the brass does not have separate chapter heading like copper has 74, aluminum has 73, iron and steel has 71. Therefore, the material of brass which is a base material which is classifiable under Chapter heading 83 as miscellaneous articles of base metal. Further, under Chapter heading 83 there is a specific heading 8302 which inter-alia contemplates any mountings or fittings and similar article suitable for doors staircases, windows which are.parts of the building structure and the "Insert" manufactured and exported by the Applicant made only of brass having thread on outward surface as well as in diameter are used as fittings in the doors, windows or in glazing panels which are mounted on civil structure i.e. building. Therefore said goods are rightly classified by the Applicant under Chapter heading 83024190 as "Other".

g) The order of confiscation of the goods cleared previously after due adjudication having carried out granted the drawback claims under Section 113(i) and (ii) of Customs Act, 1962 is unsustainable on the ground of suffering from serious legal infirmity of not considering the finality of earlier orders and ground of limitation.

h) The order of imposing the penalty on the Applicant firm under Section 114 (iii) of customs act is unsustainable in case of exported goods after due adjudication.

i. In case of Applicant, the goods which are previously exported have been exported with due adjudication with the due approval therefore the section 114 penalty which is attracted to the goods attempting to export wrongly. Whereas, the Applicant has exported the same goods with proper declaration without any mis-declaration therefore such export cannot be said to be attempted wrong exportation so as to invite the penalty under Section 114 (iii) of the Customs Act, 1962.

ii. In view of the facts stated hereinabove the impugned goods which have been exported earlier are correctly classifiable under Chapter heading 83024190 and the impugned order classifying those goods under chapter 741529.00 is wholly untenable since the impugned goods are not made of copper but which are made of brass. Under the circumstances the impugned order of re-classifying the goods under Chapter Heading 74152900 is itself is wrong and unsustainable the order of imposition of penalty under Section 114(iii) is untenable.

i) The order of execution of Bond and enforcement of Bank Guarantee submitted at the time of provisional release of goods for export towards the payment of fine and penalty is unsustainable.

i. In case of the Applicant, the Original Adjudicating Authority has passed the impugned Order-in-Original by reclassifying the goods under export and re-determining the sanctioned drawback on the basis of this classification without challenging of the earlier order is wholly unsustainable being bad ab-initio.

ii. The said order of finalization of Shipping Bill 7218335 dated 21.01.2012 by re-classifying the impugned goods under chapter heading 74152900 when the impugned goods are

made of Brass and not of copper therefore, the order of reclassification itself is untenable on the merit.

iii. Consequently order of redetermination of drawback of the present export and earlier export is also not tenable on merit as well on the ground of limitation and finality. Therefore, no penalty or fine is imposable on the Applicant and hence the order of encashment of bank guarantee is wholly unsustainable being ab-initio bad in law.

j) Penalty is not imposable.

- It is settled proposition of law that penalty under Section 114(iii) of Customs Act, 1962 is not imposable in the matter of interpretation of a notification.
- The Applicant submit that they have furnished the correct information with respect to the description of the goods and value thereof. There is no dispute that the Applicant has suppressed any material information from the department which tantamount to change in the opinion of the Assessing office to conclude the classification of the goods.
- In the present case there is a mere change in opining of the Assessing Officer while assessing the Shipping Bill on the same set of facts and information. There is no change in the information. Hence, it cannot be said that he has suppressed any facts from the department avail the alleged benefit of Drawback at higher rate
- Therefore, in the absence of contents under Section 113 of the Customs Act, 1962 the impugned goods are not liable to confiscation and thereby penalty under Section 114(iii) of the Customs Act, 1962 is not imposable

k) It is settled preposition of law that unreasoned order not sustainable.

- It is submitted the impugned Order confirming penalty on Applicant partner without giving any findings is in violation of principle of natural justice and hence impugned order on this count itself is unsustainable

l) It is a settled preposition of law that penalties on partnership firm and individual partners are not imposable simultaneously.

- In case of Applicant, the penalty has been imposed on partnership firm under Section 114(iii) of Customs Act, 1962, and in addition to that the penalty has been imposed on the partners under Section 114(iii) of the Customs Act, 1962. Such imposition of penalty on the partners in addition to the penalty on the firm is legally not sustainable as a partnership firm is not a separate legal entity from its partners. In support of this contention and the ground, reliance is placed o n the following judgments:
  - Union of India v/s Mohd. Hanif Abdul Aziz 2012 (286) E.L.T. 25 (Bom.)
  - CCE&C Surat-II v/s Mohammed Farookh Mohammed Ghani 2010 (259) ELT 179 (Guj)
  - CCE v/s Jai Prakash Motwani 2010 (258) ELT 204 (Guj)
  - Commissioner of Customs (E.P.) v/s Jupiter Exports
  - Kamdeep marketing Pvt. Ltd. v/s CCE, Indore

In view of above submissions, the applicant prayed:- to set aside the impugned Order-in-Appeal; to hold the goods namely brass builder hardware item 'insert' is rightly classifiable under chapter heading 83024190 and not under chapter heading 74152900; to hold that Applicant is entitled to drawback under Entry No. 830201A of Drawback Schedule @ 11% and not under Entry at Sr. No. 741599 @ 2% which deals with copper; to hold that Penalty under Section 114(iii) of Customs Act, 1962 is not imposable on the Applicant; to hold that separate penalty on partner is not imposable when the

firm is penalized for the same cause and to pass any order or orders as deemed fit on the merits of the case.

8. A Personal hearing was held in this case on 16.11.2021. Shri D.A. Bhalerao, Advocate and Shri Jeffry Caleb, Advocate appeared on behalf of the Applicant for the hearing and reiterated their earlier submissions. They submitted that delay in filing the revision application may be condoned. They submitted that Rule 16 cannot determine the erroneous drawback. They submitted that the Department had all the information therefore drawback of past period was incorrectly demanded. They also filed additional submissions.

9. In the additional submissions, the Applicant has inter alia contended that:

a. It is a settled preposition of law that in the absence of recovery mechanism under Rule 16 of DBK Rules demand under Rule 16 is unsustainable.
b. It is a settled preposition of law that specific entry will prevail over the general entry.
c. It is settled preposition of law that during the era of department assessment once the classification is approved by way of assessment of shipping bill consistently for more than 5 years then the department is precluded from taking contrary stand unless there is change in law or nature of goods
d. It is a settled preposition of law that in case of a change in classification it operates prospectively and not retrospectively to fasten duty liability for past periods.
e. Extended period of limitation not invocable.
    - In case of Applicant, without prejudice to the contention that the impugned goods are covered by tariff entry under Ch. 83024190 as Builder Brass Hardware, it is submitted that the demand of differential amount of drawback allegedly determined by the Original

Adjudicating Authority is barred by limitation. It is submitted that Rule 16 of Drawback contemplates principle of re-institution i.e. in case of excess or erroneous drawback is granted to the Applicant then it is to be restored to the government treasury along with interest. It is also pertinent to note that said Rule 16 or any other rules under the DBK does not provide for determination of excess or erroneous drawback. Thus, in the absence of a mechanism to determine excess or erroneous drawback the impugned proceedings initiated by the department is beyond the statutory provisions.

f. It is a settled preposition of law that in the absence of suppression of facts or mis-declaration, penalty is not imposable under Section 114(iii) of Customs Act, 1962.

- It is submitted that claim of classification per se cannot be tantamount to misdeclaration so as to attract the penal provisions of Section 113 read with Section 114 of Customs Act, 1962.

10. 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.

11. Government observes that the issue involved is whether the item 'Brass Builders Hardware - Insert' was misclassified by the Applicant.

12. Government observes that builders hardware is a group of metal hardware specifically used by the construction industry. It usually supports fixtures like windows, doors, and cabinets.Common examples include door handles, door hinges, deadbolts, latches, numerals, letter plates, switch plates, and door knockers. Builders hardware is commonly available in brass, steel, aluminium, stainless steel, and iron. Government observes that the impugned product - a brass insert is a fastener that is inserted into an object to add a threaded/non-threaded hole in soft materials such as wood and plastic.

Government observes that whereas the Applicant had classified this product brass 'Insert' under RITC 83024190, the authorities have re-classified it under RITC 74152900.

13.1 Government observes that both the impugned headings viz. 83024190 and 74152900 are covered under Section XV of the Customs Tariff Act,1975 covering *'Base metal and articles of base metal'*. The relevant extract of these headings are reproduced hereunder:-

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
1	2	3	4	5
8302	BASE METAL MOUNTINGS, FITTINGS AND SIMILAR ARTICLES SUITABLE FOR FURNITURE, DOORS, STAIRCASES, WINDOWS, BLINDS, COACHWORK, SADDLERY, TRUNKS, CHESTS, CASKETS OR THE LIKE; BASE METAL HAT-RACKS, HAT-PEGS, BRACKETS AND SIMILAR FIXTURES; CASTORS WITH MOUNTINGS OF BASE METAL; AUTOMATIC DOOR CLOSERS OF BASE METAL			
	Other mountings, fittings and similar articles			
830241	- Suitable for buildings			
83024190	others	KG	15%	-
7415	NAILS, TACKS, DRAWING PINS, STAPLES (OTHER THAN THOSE OF HEADING 8305) AND SIMILAR ARTICLES, OF COPPER OR OF IRON OR STEEL WITH HEADS OF COPPER; SCREWS, BOLTS, NUTS, SCREW HOOKS, RIVETS, COTTERS, COTTER-PINS, WASHERS (INCLUDING SPRING WASHERS) AND SIMILAR ARTICLES, OF COPPER			
7415 29 00	Others	KG	10%	

13.2 The applicant has claimed that *'Chapter 83 deals with miscellaneous articles of base metal in which if the base metal is not covered in earlier any of entry are covered. More specifically chapter 8302 deals with base metal mountings, fittings and similar articles suitable for furniture, doors, stair cases, windows, blinds, coach work, Saddlery etc. The Applicant manufactures the brass inserts which has thread from inside as well as outside is used basically as fittings in a civil structure while fitting a door or windows. Therefore, they are rightly classified under minor chapter heading 830241 which contemplates other mountings, fittings,*

similar articles suitable for building and under the same minor heading more specifically it is classifiable under other 83024190.' Government finds this claim of the Applicant incorrect in view of Note 5 & 6 of the Section XV of the Customs Tariff Act,1975 which reads as under:

> *5. Classification of alloys (other than ferro-alloys and master alloys as defined in Chapters 72 and 74):*
>
> ***(a) an alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals;***
>
> *(b) an alloy composed of base metals of this Section and of elements not falling within this Section is to be treated as an alloy of base metals of this Section if the total weight of such metals equals or exceeds the total weight of the other elements present;*
>
> *(c) in this Section, the term "alloys" includes sintered mixtures of metal powders, heterogeneous intimate mixtures obtained by melting (other than cermets) and intermetallic compounds.*
>
> *6. Unless the context otherwise requires, any reference in this Schedule to a base metal includes a reference to alloys which, by virtue of Note 5 above, are to be classified as alloys of that metal.*

Government observes that the alloy 'brass' is primarily composed of metal 'Copper' alongwith varying percentage of metal 'Zinc' or 'Tin' and therefore is rightly classifiable under chapter 74 which covers base metal 'Copper and articles thereof'. This fact is further strengthened by clarifications in the sub-heading note to Chapter 74 which read as under:

SUB-HEADING NOTE:

In this Chapter the following expressions have the meanings hereby assigned to them:

(a) Copper-zinc base alloys (brasses)

***Alloys of copper and zinc, with or without other elements.** When other elements are present:*

- *i. zinc predominates by weight over each of such other elements;*
- *ii. any nickel content by weight is less than 5%. [see copper-nickel-zinc alloys (nickel silvers)]; and*
- *iii. any tin content by weight is less than 3%. [see copper-tin alloys (bronzes)].*

13.3 Further, as regards the claim of the applicant that the impugned item 'insert' was meant to be used in civil structures, Government observes that the consignee of Shipping bill 7218335 dated 21.01.2012 M/s. Tarunsika Inc, Ontario, Canada is a supplier of various Parts such as 'Screws Machine parts', 'Forged Parts', 'Molded Rubber parts', and 'Heat Shrink Tubings'. Thus the end use of the item exported confirms these goods to be general purpose articles. Therefore, the Government arrives at the conclusion that the decision taken by original authority to reclassify impugned item brass 'insert' under chapter 74 is correct.

14. In respect of contentions of the Applicant that *classification of the goods once finalized by the custom authorities which has attained the finality cannot be changed without challenging the earlier finalized assessment in appeal before Higher Forum*, and *extended period is not invokable*, Government observes that the Appellate authority has already addressed the issues at para 11 and 12 of impugned Order-in-Appeal, which is reproduced hereunder:

> *11. I have examined the submissions made by the Appellants in this regard. From the Statement dated 9.3.2012 of the Managing Partner, Shri Mukesh Kataria, where it has clearly emerged that Shri Kataria, upon being shown the copies of the relevant pages of the ITC HS classification of import and export items, agreed with the investigations conducted by the officers that the item in question was correctly classifiable under RITC 74152900 and not 83024190 as declared in the shipping bill. However, I find that Shri Mukesh Kataria was unable to give satisfactory evidence in support of his stand as to how the item in question was a specialized fastener requiring higher workmanship, precision and finishing than an ordinary rivet, bolt or any other similar fastener deserving of higher drawback. I also find sufficient force in the findings of the OA that in view of clause 2(b) of the General Rules of Interpretation of Tariff read with notes 5 & 6 of Section XV were classifiable under chapter 74 and*

considering its nature and alliance to fasteners (bolts, nuts , rivets, etc) , were classifiable under the heading 7415 and CTH 74152900 and not 83024150 which covers, 'Base Metal Mountings, fittings and similar articles suitable for furniture, doors, windows, staircase and others. Further, I find that the Apex court in the case of Priya Blue ((2004 (172) ELT 145(SC)) and other identical judgments pertained to a case of filing of refund claim under the provisions of Section 27 of the Customs Act, 1962 wherein it was mandatory on the part of the refund claimant to file an appeal against the assessment order in order to be eligible for grant of refund under the said Section. In the present case, we are concerned with a case of ineligible drawback due to the classification of the goods resulting in excess drawback having been sanctioned, which facts have not been disputed by the Appellants.

12. I find that the appellants have raised doubts over application of extended period of recovery of alleged excess drawback payments particularly when the assessments were confirmed by the department. In this regard I find that the O.A. has confirmed recovery of excess paid drawback under section 75A(2) of the Act read with Rule 16A of the Customs, Excise & Service Tax Drawback Rules, 1995 and not under section 28(4) of the Acts. The provisions laid under Section 75A(2) and Rule 16A ibid do not provide for any upper period restrictions for recovery of drawback paid erroneously. Hence, the appellants' contention in this regard is found without any legal basis.

15. However, Government observes that as regards absence of upper period restrictions for recovery of drawback under Rule 16 of the Customs, Excise & Service Tax Drawback Rules, 1995, the Hon'ble Supreme Court in the case of *Citedel Fine Pharmaceuticals* [1989 (42) E.L.T. 515 (S.C.)] had held that *in the absence of any period of limitation it is settled that authority is to exercise powers within a reasonable period and what would be the reasonable period*

would depend upon the facts of each case .... [para 6]. Further, from the case laws relied upon by the applicant, Government observes that Hon'ble High Court of Punjab & Haryana has in the case of M/s. Famina Knit Fabs [2020 (371) E.L.T. 97 (P & H)] and Jairath International [2019 (370) E.L.T. 116 (P & H)] held that as limitation period in the Rule 16 of the Customs, Central Excise and Service Tax Duties Drawback Rules,1995, is not specified hence five years from the relevant date is the reasonable period. Accordingly, Government restricts the demand for recovery of excess drawback granted in the past, to five years from the date of issue of impugned Show Cause Notice, viz. 04.07.2014.

16. As regards the contention of the applicant that *in the absence of recovery mechanism under Rule 16 of DBK Rules demand under Rule 16 is unsustainable,* Government finds that in the instant matter, the applicant had mis-classified the export goods. The Department after carrying out necessary investigations, issued the Show Cause Notice (SCN) No.94/2014 dated 04.07.2014 inter alia proposing to reclassify the export goods from RITC heading 83024190 to RITC heading 74152900. During adjudication of said SCN the correct classification of the impugned goods exported by the applicant has been decided as RITC heading 74152900. Hence provisions of Rule 16 of DBK Rules have been rightly invoked to recover the excess drawback erroneously given to the applicant. Government observes that the case laws quoted in the matter by the applicant are in respect of re-determination of value of export goods, and hence not applicable in the instant matter wherein main issue is mis-classification of export goods.

17. The other contention of the applicant is that penalty under Section 114(iii) of Customs Act, 1962 is not imposable in the matter of interpretation and penalty on partnership firm and individual partners are not imposable simultaneously under Section 114(iii) of Customs Act, 1962. Government observes that section 114 of the Customs Act, 1962 reads as under:

Section 114. Penalty for attempt to export goods improperly, etc. -

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

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iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

Government finds that the partner, viz. the applicant Shri Mukesh Kataria, has in his statement admitted that he was aware that the correct RITC of the impugned item brass 'insert' was 74152900 and not 83024190. Further, he abetted by allowing preparation of export documents showing incorrect classification and thereby receiving higher drawback. Therefore, the Government finds no discrepancy in the decision of the original authority to impose a separate penalty on him.

18. In view of the above findings, Government amends Orders-in-Appeal No. 119 & 121 (Adj-Exp)/2016(JNCH)-Appeal-I dated 30-08-2016 passed by the Commissioner of Customs (Appeals-I), Mumbai Zone-II as far as limitation period is concerned and partially allows the revision application filed by the applicant.

19. The Revision Application is disposed of on the above terms.

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

ORDER No.222-223 /2022-CUS(WZ)/ASRA/Mumbai dated 25.7.2022

To,

1. M/s. Gayatri Group of Industries
   Plot No. 40251B, Phase III,
   Dared, Jamnagar,
   Gujarat- 361 005

2. Shri Mukesh Kataria,
   Shivanjali Apartment,
   Shivam society, Jamnagar,
   Gujarat – 361 005

Copy to:

1. Commissioner of Customs,
   Nhava Sheva-II,
   Jawaharlal Nehru Custom House,
   Nhava Sheva, Taluka: Uran,
   Dist.: Raigad, Maharashtra – 400 707.

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

4. Notice Board.