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SPEED POST



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. 373/255/DBK/2020-RA / 5485 Date of Issue : 24.09.2021

ORDER NO. 230/2021-CUS (SZ)/ASRA/MUMBAI DATED 16.09.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : M/s Hijaz Kuroda Gloves Company Pvt. Ltd.
No. 17/7, Wuthucatan Street,
Periamet, Chennai - 600 003.

Respondent : Commissioner of Customs, Chennai-IV.

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal No. SEAPORT C.CUS.II
No. 810/2020 dated 09.06.2020 passed by the Commissioner of
Customs (Appeals-II), Chennai.

ORDER

This Revision Application is filed by M/s Hijaz Kuroda Gloves Company Pvt. Ltd., No. 17/7, Wuthucatan Street, Periamet, Chennai - 600 003 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. SEAPORT C.CUS.II No. 810/2020 dated 09.06.2020 passed by the Commissioner of Customs (Appeals-II), Chennai.

2. The issue in brief is that the Applicant, had filed a Shipping Bill No. 2156912 dated 19.02.2019 for export of 16128 pairs of Leather Gloves Leather WRK Series PRM CWHD Style No. 51029 for a value of Rs. 77,01,015/- and claimed duty drawback @ 3.6% of FOB Value or Rs. 6/- per pair, whichever is less, under Sr. No. 420305B of the Drawback Schedule issued vide Notification No. 95/2018-Customs (NT) dated 06.12.2018 for Rs. 2,77,237/- (Rupees Two Lakh Seventy Seven Thousand Two Hundred Thirty Seven Only). The Drawback Sanctioning Officer, while processing the claim, noticed that the description was declared by the applicant as Leather Gloves but classified the same under CTH No. 42032910 which is applicable for Gloves for use in Industry only. However, Sr. No. 420305 of DBK Schedule covers not only Gloves for use in Industry but also cut resistant gloves, heat resistant gloves, garden gloves, work gloves, welding gloves, water resistant gloves and driving gloves made of leather with or without cotton / synthetic material and awards the exporters drawback @ 3.6% of FOB value or Rs. 6.1/- per pair whichever is lesser.

2.1 The drawback sanctioning authority noticed that the applicant had been exporting both leather and synthetic gloves regularly but they failed to declare such leather gloves as being meant for use in industry of the specified purposes. It was also found that they had exported identical description viz. Goatskin Leather Gloves until mid-2017 under various shipping bills but classified them under CTH 42132110 or 42032920 and claimed drawback under the DBK Sr. No. 420306 only which is applicable for leather gloves for

sports and others and not under CTH 42032910 or DBK Sr. No. 420305A, which covers leather gloves for use in industry and specified purposes respectively. However, since September 2017, they classified the same description as leather gloves under CTH 42032910- which is applicable for use in industry- but without any reference to the endues and claimed higher drawback under DBK Sr. No. 420305 and availed as well, as evident from the shipping bills.

2.2 The drawback sanctioning authority found that the exporter was aware that their goods were not meant for industrial use but to avail higher percentage of drawback, they misclassified the goods under CTH 42032910 and misdeclared the DBK Sr. No. 420305B and availed the excess drawback to the tune of Rs. 13,86,636/- (Rupees Thirteen Lakhs Eighty Six Thousand Six Hundred Thirty Six Only). As such, a demand cum SCN dated 18.03.2019 for recovery of the erroneously sanctioned and paid drawback. The adjudicating authority vide Order in Original No. 68939/2019 dated 16.05.2019 confirmed the demand along with interest at an applicable rate.

3. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals-II), Chennai. The appellate authority vide Order in Appeal No. C. Cus. II No. 810/2020 dated 09.06.2020 rejected the appeal filed by the applicant. The Appellate Authority while passing the impugned Order in Appeal observed that :-

3.1 The CTH 42032910 is for "Gloves for use in industry" whereas the applicant had mentioned the description as "Leather Gloves" only in the shipping bills which do not specifically place the goods under CTH 42032910 as the possible CTH for leather gloves can be any one of the CTH among 42032110, 42032920 & 42032910.

3.2 It is bounden duty of the applicant to prove beyond doubt to the query raised by the department.

3.3 The classification is a function of description and when description is not specific that to when specific one is available in the tariff, the decision of

the Adjudicating Authority to put the goods under 42032920 instead of 42032910, is proper.

3.4 The appellant argument that after verification of the correctness of the declaration, the proper officer has permitted export and hence to verify the correctness again is not tenable for the reason that there is provision under Rule 17 of Customs & Central Excise Duties Drawback Rules, 2018 read with Rule 16 of Customs, Central Excise & Service Tax Drawback Rules, 1995 to demand an amount of drawback with interest, if any, which has been paid erroneously in respect of past consignment.

4. Aggrieved, the Applicant filed instant Revision Application contesting the impugned Order in Appeal on the following grounds :-

4.1 The CTH declared was as per the WTO standards accepted worldwide and the CTH can only be changed based on the verification of goods. The goods having been allowed by the proper officer based on the declared description and supporting documents, to negate the CTH at this stage without verifying the goods is against law.

4.2 The appellate authority has not appreciated the fact that the goods are proved to be mis-classified beyond any doubt the declared CTH cannot be changed.

4.3 The authority without any reasoning and only for the missing of the term 'Industrial' has rejected the claim for drawback under the category of the Industrial Leather Gloves.

4.4 The appellate authority had not bothered to elaborate why the evidences submitted were not satisfactory.

4.5 The exporter may manufacture hundreds of styles of gloves and uploading all the types on website may not be feasible due to constraint in the space and to think about uploading each and

every style of glove and other leather articles manufactured by them over the years is next to impossibility and would spoil the elegance and purpose of the website. The photos uploaded are only for representative purpose and does not carry any other motive. The photos are only to prove that the exporter is capable of manufacturing any type of gloves and leather articles and it is not meant to be a virtual museum of the goods manufacture by the applicant.

4.6 Classification is not function of the description and it is akin to description. The classification is a universal code meant for description approved by the World Customs Organization and accepted by the countries of the world as a coding system for description including India being one of the signatories of the agreement. The goods are to be appropriately classified and for want of information cannot be placed at some assumed tariff heading. Even assuming that the department felt that the description is not clear enough to complement the declared tariff heading they could have advised the exporter at the time of export to amend the description from 'Leather Gloves' to 'Industrial Leather Gloves'. The verification of tariff heading and the description is under the purview of the officer allowing Let Export Order and once accepted by the department, the same cannot be challenged at the point when the goods are not there to verify.

4.7 Nothing has been proved in the past consignments as well the present consignment for the change of classification for which the drawback authorities have no authority and the change is only on assumption and not based on facts. The drawback authorities have no authority to change the tariff heading of goods which had been exported.

4.8 The parameters considered sensitive in a shipping bill should be handled with adequate care at the time of export and not at the time of disbursing drawback amount.

4.9 The role of the drawback section is limited when compared to that of the proper officer at the time of export whose approval is the important aspect. If there is nothing contrary found by the proper officer, then, the drawback section is bound to sanction the drawback amount unless something extraordinary emerges from any investigation.

4.10 Having accepted that the tariff heading and the drawback schedule serial no. show the end-use of the item, the order has been passed contrary to the findings.

5. A personal hearing in the case was held on 19.02.2021. Shri E. Ramesh, Consultant attended the same on behalf of the applicant. He reiterated the earlier submissions on the subject. He submitted that gloves under dispute are used for gardening, driving etc. these are all purpose gloves. He requested to allow drawback as claimed as the gloves were correctly classified.

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

7. Government observes that the core issue for determination is whether the goods exported by the applicant will fall under Sl. No. 420305 of the Drawback Schedule or under 420306. The relevant entries are reproduced below :

Tariff Item	Description of Goods	Unit	Drawback Rate	Drawback cap per unit in Rs.
(1)	(2)	(3)	(4)	(5)
4203	Articles of apparel and clothing accessories, of leather or of composition leather			
420303	Gloves, specially designed for use in sports namely Golf Gloves made of leather	Piece	2.4%	5.6
420304	Gloves, specially designed for use in sports namely Golf Gloves made of leather in combination with textile materials	Piece	2.4%	5.6
420305	Gloves for use in industry including cut resistant gloves, heat resistant gloves, garden gloves, work gloves, welding gloves, water resistant gloves and driving gloves, made of leather with	Pair	3.6%	6.1
	or without cotton. / synthetic material			
420306	Other gloves made of leather		1.5%	

7.1 From the above table, it is observed that the 'Leather Gloves' are placed under Tariff Item 4203 and they can be placed under either 420303, 420304, 420305 or 420306 based on their end use thereby attracting the drawback at applicable rate. The very fact that the 'Leather Gloves' have different entries under Drawback schedule attracting drawback at different rates depending upon their composition and usage. Thus, the end use of the product viz. 'Leather Gloves' plays crucial role in classifying the said product under drawback schedule while determining the rate of drawback.

7.2 Now, from the plain reading of the two entries, which are relevant in the instant case, i.e. 420305 and 420306, it is obvious that for the goods, to fall under both these headings, should be made out of leather. However, the distinct part between two heading is the end use of the leather gloves exported.

7.3 It is found that the goods viz, 'Leather Gloves', in order to classify under Entry No. 420305, should necessarily be used in Industry. Further, the description of the goods under this entry specifies that the gloves used for industrial purpose are cut resistant gloves, heat resistant gloves, garden gloves, work gloves, welding gloves, water resistant gloves and driving gloves, made of leather with or without cotton / synthetic material.

7.4 Whereas the description of the goods classified under 420306 is other gloves made of leather. Which clearly states that the 'Leather Gloves' not covered under any other entry shall be classified under this entry.

7.5 Thus, from the description of the items under these two entries it is quite evident that for the classification purpose distinction has been made between "~~Leather Gloves for Industrial Use~~" and "~~Other Leather Gloves~~". Hence the above referred entries of Drawback Schedule when use the phrases "for use in industry" and "other gloves", they definitely refer to the distinction between the 'Leather Gloves for use in Industry' and 'Other Leather Gloves' i.e. not for use in industry.

7.6 The applicant has contended that the Authority without any reasoning and only for the missing of the term 'Industrial' has rejected the claim of drawback under the category of the Industrial Leather Gloves. If the arguments of the applicant are to be accepted then entry at Sl. No. 420306 will become otiose and the entry at 420305 will cover all the types of 'Leather Gloves'. The Government holds that the distinction made in the law needs to be noted for determining the rights of the parties in any proceedings. In case of Dilip Kumar and Company [2018 (361) E.L.T. 577 (S.C.)], Hon'ble Supreme Court laid down as follows :

"19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 S.C. 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi-Basavanneewa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation."

7.7 Therefore, it is clear from the description given in the drawback schedule against serial No. 420305 that to qualify in the drawback serial No. 420305, the Leather Gloves cleared for export should be designed for Industrial use. The exporter may manufacture hundreds of style of gloves which are meant for different purposes. However, 'Leather Gloves' meant for industrial use can only be classified under Entry No. 420305 of the Drawback Schedule and therefore the word 'Industrial' is very crucial and indispensable in the instant case.

7.8 The Government observes that the applicant have mentioned the description of the exported goods in all the relevant export documents as 'Leather Gloves'. Hence, plain reading of description of exported goods indicates that the 'Leather Gloves' are general leather gloves and not specific for industry and thus can be placed under Entry 420306 of the Drawback Schedule and not under 420305 i.e. 'Leather Gloves for use in Industry'.

7.9 The Government finds that the applicant has not provided any technical clarification/write up in support of their plea but preferred to turn down the said opinion on different grounds. It is opined that the applicant, being beneficiary of the scheme, is obligated to satisfy any query raised by the drawback sanctioning authority to form his opinion about end use of the impugned exported goods. As such, the onus to prove that the impugned exported goods have been used in Industry clearly lies on the applicant and they cannot escape the responsibility to do so by simply denying the facts on vague grounds. In the instant case, the applicant rather than producing the supportive documents / technical write up, have questioned the authority of ~~the department to change the tariff heading of goods exported by them.~~ The Government opines that the Drawback Scheme is export incentive scheme and applicant, being beneficiary of the scheme, the onus is cast upon them to establish that the goods under dispute were correctly classifiable under Sl. No. 420305 of the Drawback Schedule. In this regard, the Government has gone through the photographs of the 'Leather Gloves' enclosed by the applicant along with this revision application. On perusal of said

photographs, it is observed that the brochures / photographs merely explain the material used for manufacturing the product, its technical composition and comfort the product is offering while its usage. However, nothing corroborates the said product being used for any of the 'Industrial purpose' as specified under Entry No. 420305 of the Drawback Schedule.

7.10 The Government holds that the fundamental requirement for claiming drawback under Entry No. 420305 of the Drawback Schedule i.e. the impugned goods should be for use in Industry. The applicant have conveniently used the generic term 'Leather Gloves' without any rationale being put forth for not mentioning the correct description of the goods. The applicant was required to provide explanation in this regard to the drawback sanctioning officer to arrive at correct rate of drawback. It is observed that the applicant have failed to submit evidence to prove that the exported goods, as declared in the export documents, have been used in Industry.

7.11 It is also found that drawback rate under Serial Number 420306 is lower than the drawback rate under Serial Number 420305. The Government, therefore, opines that there is reason to believe that the applicant had deliberately not mentioned the full and correct description of the goods in the export documents issued for export of impugned goods in as much as they were aware of the fact that the impugned goods were not meant for 'use in Industry'. Hence the Government do not find any merits in the submissions made by the appellants challenging the classification made by the revenue under Drawback Schedule.

7.12 Perusal of the Order in Original, further brings out that the classification determined by the department is not solely based upon the rate of drawback but is based on material evidences and facts.

7.13 From the above discussion, it is held that the impugned goods have rightly been placed under appropriate tariff item number of the drawback schedule pertaining to impugned item 420306 which pertains to "other gloves made of leather" by the adjudicating authority.

7.14 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.

8. In view of the above, Government finds no infirmity in Order-in-Appeal No. SEAPORT C.CUS.II No. 810/2020 dated 09.06.2020 passed by the Commissioner of Customs (Appeals-II), Chennai and therefore refrains from exercising its revisionary powers in the instant case.

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

Shrawan
16/9/21

(SHRAWAN KUMAR)

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

ORDER No 230/2021-CUS (SZ) /ASRA/Mumbai DATED 16.09.2021

To,

M/s Hijaz Kuroda Gloves Company Pvt. Ltd.
No. 17/7, Wuthucatan Street,
Periamet, Chennai - 600 003.

Copy to:

1. The Commissioner of Customs, Chennai-IV, Custom House, 60, Rajaji Salai, Chennai - 600 001.
2. The Commissioner of Customs (Appeals-II), Chennai, Custom House, 60, Rajaji Salai, Chennai - 600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.