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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. 371/063/DBK/16-RA 2117 Date of Issue : 20.4.2023
371/63A/DBK/16-RA

ORDER NO. 910-911 /2023-CUS /ASRA/MUMBAI DATED 30 -3-2023 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.

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| Applicant | : | 1. M/s. Anuvrat Textiles Pvt. Ltd<br>2. Shri Nirmal Gokhru, Director of M/s Anuvrat Textiles Pvt. Ltd. |
| Respondent | : | The Commissioner of Customs (Appeals), Mumbai-II. |
| Subject | : | Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order in Appeal No. 113 & 114 (Drawback)/2016(JNCH)-Appeal-I dated 10-08-2016 passed by the Commissioner of Customs (Appeals), Mumbai-II |

**ORDER**

These Revision Applications have been filed by M/s Anuvrat Textiles Pvt. Ltd (herein after referred to as 'main applicant' and Shri Nirmal Gokhru, Managing Director of M/s. Anuvrat Textiles Pvt. Ltd., 72, New Cloth Market, Pur Road, Bhilwara, Rajasthan-311001 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 113 & 114 (Drawback)/ 2016(JNCH)-APPEAL-I dated 10.08.2016 passed by the Commissioner Of Customs (Appeals-I), Mumbai-II.

2. The Brief facts of the case are that Intelligence was gathered by DRI that some of the Rajasthan based exporters were claiming higher rate of drawback under Serial No. 551202A of the drawback schedule on woven fabrics dyed P/V (Polyester/Viscose] exported by them, by way of mis-declaring the description of the goods in the invoices and consequently wrong mentioning of tariff item entry No. of the drawback schedule. The applicant having IEC No. 1303007525 was amongst the exporters who had claimed higher rate of drawback on the goods exported by them under claim of drawback under Serial No. 551202A of the drawback schedule by aforesaid methodology. The exporter had been exporting the Polyester Viscose woven fabrics under the tariff heading 5512 and claiming drawback under serial No. 551202A of the drawback schedule which read as under- "Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres". The exporter was exporting woven fabrics containing Polyester and Viscose in different composition. The analysis of HSN, Customs Tariff and Technical literature of Textile Committee Corroborated the intelligence with DRI and it appeared that the Viscose staple fibres do not fall under the definition of Synthetic staple fibre, instead it was covered by the definition of artificial staple fibre and therefore, to be eligible for drawback under Sr. No. 551202A exported goods i.e. blended

woven fabrics of Polyester and Viscose fibre should have Polyester staple fibre 85% or more by weight as Polyester staple fibre is the only synthetic staple fibre and remaining i.e. Viscose Fibre is artificial fibre. Shri Nirmal Gokhru, Managing Director of the said company admitted that they had wrongly claimed the drawback under serial No. 551202A, where the fabric was manufactured mainly of P/V/65/35 blend yarn or in blend P/V/70/30 and P/N/85/15 100% Polyester (PT) and PVT. The blend of their exported goods remained less than 85% of synthetic staple fiber. Shri Nirmal Gokhru, Managing Director was the active director of the company and the whole work related to export was being looked after by him, who was ultimate beneficiaries of the company and modus operandi was under the notice of them. Shri Nirmal Gokhru was aware and deliberately claimed the higher rate of drawback under Sl. No. 551202A instead of under Sl. No. 551502A to fetch the higher amount of drawback which was not due to them. On the basis of the investigations made by the customs department, it was alleged that main applicant, has availed excess drawback of Rs.3,77,812/- and a Show Cause Notice C.No. 840/JPR/DRI/19-XV (07)/2010/825 dated 12.05.2011 was issued, demanding the differential drawback amount of Rs.3,77,812/- claimed in excess by the exporter by claiming drawback under serial no. 551202A of the drawback schedule instead of serial no. 551502A should not be recovered from them in terms of provisions contained in Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 and also a personal penalty was proposed to be imposed on the applicant under Section 114 of the Customs Act, 1962. Subsequently the case was adjudicated by the ADDL. Commissioner of Customs (General), JNCH, Nhava Sheva vide his Order-in- Original Sr. No.2/15-16 dated 01.04.2015 whereby it was held that

i) Drawback amounting to Rs 42,69,263/- (Rupees Forty Two Lakh Sixty Nine Thousand Two Hundred Sixty Three Only) availed since 2009-10 by the main applicant on the blended woven fabric exported by them under claim of drawback serial No. 551202A was denied;

ii) Drawback calculated to Rs.38,91,451/- (Rupees Thirty Eight Lakh Ninety One Thousand Four Hundred Fifty One Only) on the blended woven fabrics exported by the main applicant since 2009-10, at the rate prescribed under serial No. 551502A of the drawback schedule was allowed;

iii) Ordered recovery of the differential Drawback amount of Rs.3,77,812/- (Rupees Three Lakh Seventy Seven Thousand Eight Hundred Twelve Only) claimed in excess by claiming drawback under Serial No. 551202A of the drawback schedule instead of Serial No. 551502A in terms of provisions contained in Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995;

iv) Ordered appropriation of the differential Drawback amount of Rs.1,47,374/- (Rupees One Lakh Forty Seven Thousand Three Hundred Seventy Four Only) deposited by the main applicant during the investigation, towards government account;

v) Ordered recovery of interest on differential Drawback amount under the provisions of Section 75A of the Customs Act, 1962;

(vi) Ordered confiscation under Section 113(h)(i) of the Customs Act, 1962, of the Polyester Viscose blended woven fabrics amounting to Rs.3,77,81,079/-. As the goods were not physically available for confiscation, no fine was imposed.

vii) Penalty was imposed amounting to Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) on the main applicant and penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the applicant, under Section 114 of the Customs Act, 1962.

3. Aggrieved by the impugned Order-in-Original, both the Applicants filed the appeals with the Commissioner Of Customs (Appeals-I & II) JNCH, Nhava Sheva, Mumbai-II who vide OIA No. 113 & 114(DRAWBACK)/ 2016(JNCH)-Appeal-I dated 10.08.2016 decided the case as under:

a) upheld the Order-in-Original No. 02/2015-16 dated 01.04.2015 and asked the adjudicating authority to quantify the liability again as discussed in the OIA.

b) Remanded the Order-in-Original No. 02/2015-16 dated 01.04.2015 for limited purpose of specifying the provision of Section 114 of Customs Act, 1962 under which the OA intends to impose penalty and quantification of amount of drawback and interest to be recovered.

4. Aggrieved by the said Order-in-Appeal, both the Applicants filed the present appeals.

A) The grounds filed by the main applicant i.eM/s Anuvrat Textiles Pvt. Ltd. are as follows:

i) that the impugned fabrics are rightly classifiable under sub-heading 551502A of the Drawback Schedule, as it contains more than 85% of synthetic fabrics; that Synthetic and artificial have the same meaning when used in relation to textile materials since as per Chapter Note 1 of Chapter 54 of the schedule to the Customs Tariff Act, 1975, polyester is a synthetic fabric and viscose is an artificial fabric. However, this chapter note further provides that, the terms "man-made," "synthetic" and "artificial" shall have the same meaning when used in relation to textile materials." Therefore, the impugned fabrics, which contains more than 85% of polyester and viscose, have been correctly classified by the applicant under heading 5512, and the order-in-appeal is liable to be set aside.

ii) That reliance is placed on the letter no. EB/442/2007-08 dated 20.02.2008 issued by the Synthetic and Rayon Textile Export Promotion Council ("SRTEPC") (set up by the Government of India, Ministry of Textile) wherein they have clarified that the product "Polyester/Viscose Suiting – 65/35" falls under DBK Sr. No. 551202.

ii) That the applicant has deposited Rs.1,47,374/- during investigation towards the Government Account which is mentioned in the impugned Order. The balance amount of Rs.2,30,426/- has already been deducted

while sanctioning their claim of the drawback. No amount of drawback as alleged by the department to be claimed in excess, has actually been retained by the applicant.

iii) That correct classification is the duty of the department and no adverse inference can be drawn against the applicant on account of the incorrect classification; that the Customs Authorities were allowing drawback under 551202A of the drawback schedule; That since the Customs itself was after proper examination, clearing the goods under heading no. 551202A, there was no reason for the applicant to believe that the classification was wrong in any manner. That the applicant relied on the following case laws:

a) Hindustan Ferodo Limited vs. Collector of Central Excise, Bombay reported in 1997 (89) E.L.T. 16 (S.C.);
b) Union of India vs. Garware Nylons Ltd. reported in 1996 (87) ELT 12 (S.C.);
c) Bombay Paints and Allied Products Ltd. v Union Of India, reported in1985 (21) E.L.T. 663 (Bom.);
d) Hindustan Lever Limited, Bombay v Collector of Central Excise, Bombay reported in 1985 (19) E.L.T. 562 (Tri.);
e) Jay Kay Exports & Industries vs. C.C. (Port), Kolkata, reported in 2004 (163) E.L.T. 359;

Therefore, in view of the above judgments, it is evident that there is no mis-declaration, mala fide intention and wilful suppression on the part of the applicant because of wrong classification, if any.

iv) That the demand in the impugned SCN relates to the period between 10.09.2009 to 24.02.2010, meaning that the impugned SCN was issued after fourteen months of the last date of export; that reasonable period of limitation has to be read into Rule 16 of the Drawback Rules; that law has been laid down by the Hon'ble Supreme Court of India in Government of

India vs. Citedal Fine Pharmaceuticals, Madras reported in 1989 (42) E.L.T. 515 (S.C.), that in the absence of any period of limitation, it is well settled that every authority is to exercise the power within a reasonable time. The applicant also placed reliance on the following cases, wherein it has been held that where a statutory provision does not prescribe any period of limitation for exercise of power there under, a reasonable period has to be read therein:

i. Pratibha Syntex Ltd. Vs. Union of India reported in 2013 (287) E.L.T. 290 (Guj.)
ii. Gemini Dyeing & Printing Mills Ltd. Vs. Commissioner reported in 2014 (304) E.L.T. 51 (Kar.), and affirmed in 2015 (316) ELT 11 (Karnataka High Court)
iii. Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd. reported in 2000 (118) E.L.T. 311 (S.C.);
iv. Torrent Laboratories Pvt. Ltd. v. Union of India reported in 1991 (55) E.L.T. 25 (Guj.)

In view of the above, the applicant submitted that they have been classifying the impugned fabrics correctly and was claiming the drawback benefit, under a bona fide belief in conformity with the practice prevailing all over the industry. There was absolutely no mis-declaration with regard to the composition and description of the impugned fabrics. Therefore, the extended period cannot be invoked. Mere failure to pay duty cannot be held against the applicant, so as to apply extended period of limitation

v) In light of the following submissions, the impugned show cause notice is to be quashed and held invalid. Once the same is done, the very substratum of all the orders passed pursuant thereto, including the impugned Order-in-Appeal would fall, rendering the same unsustainable.

vi) That the Hon'ble C(A) has confirmed a penalty of Rs.2,50,000/- on the applicant and Rs.1,00,000/- on the Managing Director, even though neither the impugned SCN nor the impugned order-in-original mentioned the

provision of law under which the penalty has been imposed under Rule 16 read with Section 114(iii) of the Act.

vii) that in the absence of specific allegation/provision in the SCN, the SCN is liable to be dropped as absence of a specific allegation disables a noticee from defending the SCN, which leads to denial of natural justice. Thus the impugned proceedings based on the said SCN are not maintainable. The applicant relied, in the case of CCE, Raipur vs. Shyam Enterprises reported in 2011 (23) S.T.R. 29 (Tri. - Del.) and also the Hon'ble Supreme Court in the case of CCE, Bangalore vs. Brindavan Beverages (P) Ltd. reported in 2007 (213) E.L.T. 487 (S.C.).

ix) That the present case involves interpretation of the tariff entries and their respective scope. No penalty can be imposed in disputes relating to classification. Reliance is placed on Bahar Agrochem & Feeds Pvt. Ltd vs. Commissioner of C.Ex., Pune, 2012 (277) E.L.T. 382 (Tri-Mum); Further, it has been held by the Hon'ble CESTAT in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions. Some of these cases are as under:

i. Auro Textile vs. Commissioner of Central Excise, Chandigarh [2010 (253) ELT 35 (Tri.-Del.)];
ii. Hindustan Lever Ltd. vs. Commissioner of Central Excise, Lucknow [2010 (250) ELT 251 (Tri.-Del.)];
iii. Prem Fabricators vs. Commissioner of Central Excise, Ahmedabad-II [2010 (250) ELT 260 (Tri.-Ahmd.)];
iv. Whiteline Chemicals vs. Commissioner of Central Excise, Surat [2009 (229) ELT 95 (Tri.-Ahmd.)];
v. Delphi Automotive Systems vs. Commissioner of Central Excise, Noida [2004 (163) ELT 47 (Tri.-Del.)].
vi. Digital Systems vs. Commissioner of Customs, [2003 (154) ELT 71]
vii. Collector of Central Excise v. West Glass Works, [1984 (17) E.L.T. 368 (Tri.)]

viii. Indocom Projects Equipments Ltd. v C. C. E., [2005 (185) E.L.T. 291 (Tri.)]

ix. Goodyear (India) vs. CCE, [2003 (157) ELT 560]

x. Anand Metal Industries v. C. C. E., [2005 (187) E.L.T. 119 (Tri.)]

In view of the above, the applicant submitted that the impugned order-in-appeal has wrongly confirmed imposition of penalty on the applicant under Section 114. Acting under a bona-fide belief is not a basis for imposing of penalty on the applicant as has been held in catena of judgments of the Hon'ble Supreme Court, the Hon'ble High Court and the Tribunal.

x) That imposition of penalty is the result of quasi-criminal adjudication. Consequently, the element of mens rea or malafide intent must be necessarily present, in order to justify imposition of penalty. The applicant relied on the landmark decision of the Supreme Court in Hindustan Steel Ltd. vs. State of Orissa (1978(2) ELT J-159). This decision was subsequently followed by the Apex Court in Akbar Badruddin Jiwani Vs. Collector of Customs (1990 (47) ELT-161). Thus, no penalty may be imposed on the applicant in the complete absence of mens rea.

xi) In the foregoing paragraphs, it has been submitted in detail that no drawback is recoverable/payable. For the same reasons, no interest can be charged. In fact, interest amount is interlinked with the duty demand. If the drawback duty itself is not recoverable, then the question of charging the interest thereon does not arise. Therefore, the impugned order is liable to be set aside on this ground too.

B) The grounds filed by the applicant i.e M/s Nirmal Ghokru against the penalty imposed on him are as follows:

i) That a revision application has been filed by the main applicant, and the grounds taken by the main applicant in the said revision application are

applicable in the instant case also and may be taken on record and considered for this application also.

ii) that the impugned order-in-original and the SCN imposed a penalty on the applicant without specifying the sub-section under which it was imposed, thereby denying the applicant the opportunity to defend himself.

iii) That the law is well settled that penalty is not imposable when director/employee/agent of a Company is not benefited from the acts of the Company. In the case at hand, the applicant cannot simply divert the funds from corporate accounts to their personal accounts in the name of remuneration. Therefore, the observation that the Directors, including the applicant, were the ultimate beneficiaries of the main applicant is erroneous. The decision of the Hon'ble Delhi Tribunal in R.K. Srivastava vs. Commissioner of Customs, New Delhi reported in 2008 (225) E.L.T. 523 (Tri. - Del.) has held that there was no evidence suggesting that employee has been benefited with the fraud, and therefore no penalty was imposed

iv) that in case penalty is imposable on the main applicant, no penalty can be imposed on the applicant. The applicant placed reliance on the Tribunal decision in the case of DCW Ltd. vs. CCE, Madurai reported in 1997 (89) E.L.T. 212 (Tri.), wherein it was observed that once the company has been penalised, there is little cause for separate penalty to be imposed on its Vice President.

v) that it is a trite law that penalty cannot be imposed in disputes relating to classification. The dispute in the case at hand pertains to the classification of the impugned fabrics and interpretation of tariff entries. In light of this, no penalty can be imposed on the applicant.

vi) That the letter no. EB/442/2007-08 dated 20.02.2008 issued by the Synthetic and Rayon Textile Export Promotion Council ("SRTEPC") (set up by the Government of India, Ministry of Textile), SRTEPC has itself clarified that the product "Polyester/Viscose Suiting – 65/35" falls under DBK Sr. No. 551202, it cannot be said that the applicant acted with a mala fide

intention to claim drawback at higher rates. Hence no mens rea can be attributed to the applicant for the alleged wrong classification of the impugned fabrics. The same was a trade practice and was confirmed by SRTEPC. The applicant cannot be penalized for the irregularity in filing the claims, if any. Hence, the applicant submitted that the imposition of penalty is erroneous and liable to be set aside.

In view of the above, both the applicants requested to set aside the impugned Order-in-Appeal that is against the applicant and allow the revision application in full with consequential relief's to the applicant;

5. A personal hearing in this case was given on 13-12-2022. Mr Anand Bhattacharya, Advocate, appeared online and submitted that viscose fibre should also be considered as synthetic fibre. He further submitted that excess drawback has already been submitted, therefore, penalty imposed should be set aside. He reiterated his earlier submissions

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original, Orders-in-Appeal as well as oral, written submissions and the Revision Applications.

7. Government observes that in the impugned case the issue to be decided is (i) whether the fabrics exported viz 'PV woven fabrics' has been misclassified by the applicant to claim higher drawback; (ii) whether penalty imposed on the Director of the firm is proper.

8. Government observes that whereas the Applicant had classified this product Polyester Viscose Woven fabric under Tariff heading 551202, the department have re-classified it under Tariff heading 551502 and demanded the differential drawback availed by the applicant.

The Customs Tariff Heading 5512 covers Woven Fabrics Of Synthetic Staple Fibers, Containing 85% or more by weight of Synthetic Staple Fibers

i) Containing 85% or more by weight of polyester staple fibers

ii) Containing 85% or more by weight of acrylic or modacrylic staple fibres

The Customs Tariff Heading 5515 covers Other Woven Fabrics Of Synthetic Staple Fibers

i) Of Polyester staple fibres (mixed with viscose rayon staple fibre, manmade filaments, wool or fine animal hair

ii) Of acrylic or modacrylic staple fibres (mixed with manmade filaments, wool or fine animal hair etc.)

iii) Other woven fabrics (mixed with man made filaments)

In view of the above two entries it is understood that for the goods to fall under Heading No. 551202A, they should contain by weight 85% or more of synthetic staple fibres, and for classification under 551502A they should contain 85% or more of manmade staple fibre.

Chapter Note 1 to Chapter 54 of the Schedule to Customs Tariff Act, 1975, reads as follows :

> 1. Throughout this Schedule, the term 'man made fibres' means staple fibres and filaments of organic polymers produced by manufacturing processes either:
>
> (a) by polymerisation of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process [for example, poly (vinyl alcohol) prepared by the hydrolysis of poly (vinyl acetate) ]; or
>
> (b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates.

The terms "synthetic" and "artificial", used in relation to fibres, mean synthetic fibres as defined at (a) and artificial fibres as defined at (b).

The terms "man-made", "synthetic" and "artificial" shall have the same meaning when used in relation to "textile materials";

The above referred chapter note explains that manmade fibres include both artificial and synthetic fibres. However for the classification purpose distinction has been made "artificial fibres" and "synthetic fibres". Hence the above referred entries of Drawback Schedule when use the phrases "synthetic staple fibre" and "manmade fibre", they definitely refer to the distinction between the synthetic and artificial fibres.

9. In the instant case, Government observes that the applicant during the period Sept. 2009 to Feb., 2010, exported ten consignments of woven fabrics dyed Polyester/ Viscose totally under various description in the shipping bills either as "Woven Fabric of synthetic staple fibre 85% or more by weight of syn. staple fibre(dyed) 70% Poly 30% Vis- Trident" or "Woven Fabric of synthetic staple fibre 85% or more by weight of syn staple fibre(dyed) woven fabric of polyester suiting" or "woven fabric of polyester suiting" or "Woven Fabric of synthetic staple fibre 85% or more by weight of syn. Poly. The exporter had claimed drawback under serial No. 551202A of the drawback schedule which reads as "Dyed Woven fabrics of synthetic staple fiber, containing 85% or more by weight of synthetic staple fibre. Detailed investigation and analysis of the HSN, Customs Tariff and technical literature of Textiles Committee showed that the Viscose staple fibres do not fall under the definition of Synthetic staple fibre, instead, it is covered by the definition of Artificial staple fibre. It is clear from the description given in the drawback schedule against serial No 551202A that to qualify in the drawback serial No 551202A, the fabric should contain 85% or more by weight of synthetic staple fibre. Therefore, to be eligible for drawback under the drawback serial No. 551202A, the exported goods i.e. blended woven fabrics of Polyester and Viscose fibre, should have 85% or more by weight of

Polyester staple fiber, as Polyester staple fibre is the only synthetic staple fiber and remaining fibre i.e. Viscose fibre, is artificial fibre. The classification of the blended woven fabrics of Polyester and Viscose having blend 65%/35%, 70%/30% PV and 85%/15%PV under the description "Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres" is not correct in as much as Viscose is not a synthetic staple fibre and its weight cannot be added while calculating the weight of synthetic staple fibre in the fabric

The relevant sub heading of the aforesaid Tariff items of the Schedule of All Industry Rates of Duty Drawback are as under:

| Tariff Item | Description of goods | Unit | Drawback when Cenvat facility has not been availed | | Drawback when Cenvat facility has been availed | |
|---|---|---|---|---|---|---|
| | | | Drawback Rate | Drawback cap per unit in Rs | Drawback Rate | Drawback cap per unit in Rs |
| 5512 | Woven fabrics of synthetic staple fibres,containing 85% or more by weight of synthetic staple fibres | | | | | |
| 551201 | Grey | KG | 9.6% | 26 | 2.2% | 6 |
| **551202** | **Dyed** | **Kg** | **11.3%** | **34** | **2.6%** | **7.8** |
| | | | | | | |
| 5515 | Other woven fabrics of synthetic staple fibres | | | | | |
| 551501 | Containing 85% or more by weight of Man-made Staple Fibre and/ or Man-made Filament Yarn (Grey) | Kg | 9.2% | 27 | 2.2% | 6.5 |
| **551502** | **Containing 85% or more by weight of Man-made Staple Fibre and /or Man-made Filament yarn** | **Kg** | **10.3%** | **30** | **2.6%** | **7.6** |

From the aforesaid tariff schedule, as classified by the department, the tariff item number pertaining to impugned item is 551502 which pertains to other woven fabrics of synthetic staple fiber containing 85% or more by weight of Man-made staple fiber and/or Man-made Filament yarn (Dyed)" in as much as Polyester and Viscose both are Man-made fibre.

10. Government finds that the DRI along with the jurisdictional officers have done the detailed analysis of the impugned goods and found that these exported fabrics do not contain 85% or more of synthetic fibre, the description clearly shows that it is a composition of polyester and viscose of different percentage. They have in detail explained how Viscose is not a synthetic fibre. During this period, DRI detected many Exporters following the modus operandi of misclassifying the fabrics under 551202 and claiming more drawback. This modus operandi was rampant during that period and many exporters were investigated and found that they were misclassifying the product for availing higher drawback.

11. In view of the above observations the Government finds that the lower authorities have correctly classified the fabrics under 551502 and do not find any reasons to modify the classification.

12. Government finds that the facts and the legal position of the impugned case has been disposed by the Cestat, West Zonal Bench, Mumbai in an identical case vide Order no. A/86789-86790/2019-WZB, dated 10-10-2019 in respect of Sunil Kumar Gilra *Versus* Commissioner of Cus. (Exp.), Nhava Sheva with the following observations:

> ***"4.2*** *The first issue for determination is whether the goods exported by the appellant will fall under Sl. No. 551202A of the Drawback Schedule or under 551502A. The two entries are reproduced below :*
>
> *551202A : Dyed Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres ;*
>
> *551502A : Other woven fabrics of synthetic staple fibres, containing 85% or more by weight of manmade staple fibre and/or manmade filament yarn (grey).*

*From the plain reading of the above two entries it is quite evident that for the goods to fall under Heading No. 551202A, they should contain by weight 85% or more of synthetic staple fibres, and for classification under 551502A they should contain 85% or more of manmade staple fibre. Chapter Note 1 to Chapter 54 of the Schedule to Customs Tariff Act, 1975, reads as follows :*

*1. Throughout this Schedule, the term 'man made fibres' means staple fibres and filaments of organic polymers produced by manufacturing processes either :*

*(a) by polymerisation of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process [for example, poly (vinyl alcohol)prepared by the hydrolysis of poly(vinyl acetate) ]; or*

*(b) by dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates.*

*The terms "synthetic" and "artificial", used in relation to fibres, mean : synthetic : fibres as defined at (a); artificial : fibres as defined at (b). Strip and the like of Heading 5404 or 5405 are not considered to be man-made fibres.*

*The terms "man-made", "synthetic" and "artificial" shall have the same meaning when used in relation to "textile materials".";*

*From the above referred chapter note it is quite evident that manmade fibres include both artificial and synthetic fibres. However for the classification purpose distinction has been made "artificial fibres" and "synthetic fibres". Hence the above referred entries of Drawback Schedule when use the phrases "synthetic staple fibre" and "manmade fibre", they definitely refer to the distinction between the synthetic and artificial fibres. If the arguments of the appellants were to be accepted then entry at Sl. No. 551502A will become otiose and the entry at 551202A will cover all the goods containing 85% or more by weight of "manmade staple fibres". In our view 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 Basavannewwa, 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."*

***4.3*** *There is no dispute in respect of the principles of law laid down by the Hon'ble Apex Court in case of Hindustan Ferodo Ltd. and Garware Nylons. Plain reading of para 3 to para 11 of the Show Cause Notice reproduced below will make it clear that the revenue has discharged the onus cast on them to establish that the goods under dispute were correctly classifiable under Sl. No. 551502A of the Drawback Schedule.*

*"3. The matter was intensely examined with reference to Customs Tariff, Duty Drawback Schedule, Harmonized System of Nomenclature & other technical sources to judge the legality of claim of the exporter under drawback serial No. 551202A.*

*3.1 The exporter has been exporting the Polyester Viscose woven fabrics under the tariff Heading 5512 and claiming drawback under serial No. 551202A of the drawback schedule which reads as under :*

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

*3.2 It is clear from the description given in the drawback schedule against serial No. 551202A that to qualify in the drawback serial No. 551202A, the fabrics should contain 85% or more by weight of synthetic staple fibre. The exporter is exporting woven fabrics containing Polyester and Viscose in different composition.*

*3.3 Since the item exported is blend of two fibres i.e. Polyester and Viscose, therefore, initially it is required to ascertain as to whether,*

*(a) 'Polyester fibres & Viscose fibres' are covered under the definition of 'synthetic fibres' or covered under the definition of artificial fibres or any other?*

*(b) The fabric containing Polyester and viscose in different composition, being exported by the exporter, falls under the category of woven fabrics of synthetic staple fibres containing 85% or more by weight of synthetic staple fibre and is eligible for drawback under serial No. 551202A of the drawback schedule or otherwise?*

*4. In the Harmonized System of Nomenclature (hereinafter referred as HSN also) the Synthetic Fibres have been explained at page no. 825 as under :*

*"The basic materials for the manufacture of these fibres are generally derived from coal or oil distillation products or from natural gas. The substances produced by polymerization are either melted or dissolved in a suitable solvent and then extruded through spinnerets (jets) into air or into a suitable coagulating bath where they solidify on cooling or evaporation of the solvent, or they may be precipitated from their solution in the form of filaments.*

*At this stage their properties are normally inadequate for direct use in subsequent textile processes, and they must then undergo a drawing process which orientates*

*the molecules in the direction of the filament, thus considerably improving certain technical characteristics (e.g. strength).*

*The main synthetic fibres are :*

*(i) Acrylic*

*(ii) Modacrylic*

*(iii) Polypropylene*

*(iv) Nylon or other polyamides*

*(v) Polyester*

*(vi) Polyurethane*

*(vii) Polyurethane*

*Other synthetic fibres include : chlorofibre, flurofibre, polycarbamide, trivinyl and vinylal."*

*4.1 In the HSN the Artificial Fibres have been explained at page No. 826 as under :*

*"The basic materials for the manufacture of these fibres are organic polymers extracted from natural raw materials by processes which may involve chemical modification."*

*4.2 The main artificial fibres are :*

*(A) Cellulosic fibres, namely :*

*(i) Viscose rayon*

*(ii) Cuprammonium rayon*

*(iii) Cellulose acetate*

*(B) Protein fibres of animal or vegetable origin, including*

*(1) Those produced by dissolving mil casein in an alkali.*

*(2) Other fibres produced in similar manner from the proteins of ground nuts, soya beans, maize (zein), etc.*

*(C) Alginate fibres : Chemical treatment of various types of seaweed gives a viscous solution, generally of sodium alginate, this is extruded into a bath which converts it into certain metallic alginates. These include :*

*(1) Calcium chromium alginate fibres, these are non- inflammable.*

*(2) Calcium alginate fibres...."*

*4.3 Hence, technical description given in HSN indicates that the Viscose Rayon is a man made fibre and falls under the category of Artificial fibre and not under the category of Synthetic fibre whereas the Polyester falls under the category of Synthetic fibre.*

*5. To strengthen the technical description given in HSN, matter has been further reinforced by examining on the parameters given in Chapter Note 1 of Chapter 54 of the Customs Tariff Act, 1975 wherein the definitions of Synthetic/Artificial and man made fibre are given. For ease of reference Chapter Note 1 of Chapter 54 of the Customs Tariff is extracted below :*

*Throughout this Schedule, the term 'man made fibres' means staple fibres and filaments of organic polymers produced by manufacturing process either;*

*(a) By polymerization of organic monomers to produce polymers such polyamides, polyesters, polyolefins, or polyurethanes, or by chemical modification of polymers produced by this process (for example, poly (vinyl) prepared by the hydrolysis of poly (vinyl acetate); or*

*(b) By dissolution or chemical treatment of natural organic polymers (for example cellulose) to produce polymers such as cuprammonium rayon (cupro) or Viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid) to produce polymers such as cellulose acetate or alginates.*

*The term "synthetic" and "artificial", used in relation to fibres, mean : synthetic fibres as defined at (a): artificial fibres as defined at (b) Srip and the like of Heading 5404 or 5405 are not considered to be man-made fibres.*

*The term "man-made", "Synthetics" and "artificial" shall have the same meaning when used in relation to "textile materials".*

*5.1 Thus from the term "man made fibre" defined in Chapter Note 1 of Chapter 54 of the Customs Tariff Act, 1975, two distinctive separately identifiable terms having different technical characteristics i.e. 'synthetic' and 'artificial' emerges. In view of Chapter notes of Chapter 54 Polyester falls under the category of 'synthetic' whereas 'Viscose rayon' falls under the category of 'artificial'. It is also mentioned in the chapter notes that these notes are applicable to the goods falling under Chapter 55 also as the same definition extends to throughout the schedule when used in relation to 'textile materials'.*

*6. Above discussed technical parameters are further reinforced by definition of the fibre and its classification as per the book 'Basics of Textile & Visual Inspection Systems' published by the Textile Committee and the same is reproduced below :*

*"A textile raw material generally characterized by flexibility, fineness and high ratio of length to thickness is called a fibre. Fabric or garment is usually identified by the fibre used for its manufacturing. Thus the cotton cloth is the product made out of the cotton fibre, the woolen cloth from the wool fibre and so on. However, we also find the fabrics manufactured from two or more different types of fibres, which are normally called as blended or mixed fabrics. Besides we also come across multi fibre fabrics where in different types of fibres are used for making the fabrics."*

*The Fibres are classified according to their*

*I. Source*

*II. On the basis of their length and diameter.*

*(A) Classification of fibre (According to its source):*

*(i) NATURAL*

*(i) Vegetable (cotton, Linen, Jute, Hemp & Ramie etc.)*

*(ii) Animal (wool, silk etc.)*

*(iii) Mineral (Asbestos, glass and Metal etc.)*

*(ii) MAN-MADE*

*(i) Regenerated or Artificial (viscose rayon, cuprammonium rayon, Acetate rayon etc.)*

*(ii) Synthetic (Nylon, Polyester, Acrylic, Polypropylene etc.)*

*6.1 From the above definition given in respect of classification of fibre, it appears though both Polyester and Viscose are the man made fibre but these two fibres are further categorized under two different categories namely Synthetic and Artificial respectively.*

*7. Hence analysis of HSN, Customs Tariff and technical literature of Textile Committee corroborate the intelligence of this office and it appears that the Viscose staple fibres do not fall under the definition of Synthetic staple fibre, instead it is covered by the definition of artificial staple fibre. Therefore, to be eligible for duty drawback under the drawback serial No. 551202A, exported goods i.e. Blended woven fabrics of Polyester and Viscose fibre should have Polyester staple fibre 85% or more by weight as Polyester Staple fibre is the only synthetic staple fibre and remaining i. e. viscose fibre is artificial fibre.*

*As such, the exporters who are exporting blended woven fabrics of Polyester and Viscose having blend i.e. 65%/35%, 70%/30%, 80%/20% etc. are mis-declaring the description of the exported goods that the exported woven fabrics contained 85% or more by weight of synthetic staple fibre in as much as Viscose is not a synthetic staple fibre and after deducting the weight of viscose from the total weight of fabrics, weight of polyester staple fibre remained less than 85%.*

*Similarly, texturise yarn is nothing but filament yarn and the exporters who are exporting blended woven fabrics of spun yarn (Polyester or Polyester/Viscose) and texturise yarn are also mis-declaring the description of the exported goods that the exported woven fabrics contained 85% or more by weight of synthetic staple fibre in as much as texturise yarn is nothing but filament yarn and weight of above yarn cannot be added while calculating the weight of yarn of synthetic staple fibre.*

*8. Further, the General Note 1 of the drawback schedule [Inserted vide Notification No. 81/2006-Cus. dated 13-7-2006 as amended and superseded time to time vide Notification No. 68/2007-Cus. (N.T.) dated 16-7-2007 & 103/2008-Cus. (N.T.) dated 29-8-2008] states that the tariff items and description of goods in the said schedule are aligned with the tariff items and description of goods in the First Schedule to the Customs Tariff Act, 1975 to the four digit level and General Note 2 stipulates that the General Rules of Interpretation of the First Schedule to the said Customs Tariff Act, 1975 shall mutatis mutandis apply for classifying the export goods listed in the said schedule. Therefore, classification of the impugned item under Customs Tariff Act, 1975 would be applicable to the drawback schedule at four digit level.*

*9. Therefore, to find out the correct tariff item number of the drawback schedule pertained to blended woven fabrics of Polyester and Viscose in the ratio 65/35, 69/31, 70/30, 80/20 (herein after referred to as the 'impugned item' also), it is necessary to take resort of Customs Tariff Act, 1975. The Customs Tariff defines the Chapter Heading 5512 and 5515 as under :*

*The Chapter Heading 5512 covers, "Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibre" -*

*I. Containing 85% or more by weight of polyester staple fibres*

*II. Containing 85% or more by weight of acrylic or modacrylic staple fibres*

*Whereas the Chapter Heading 5515 coves, "Other woven fabrics of synthetic staple fibres" -*

*(i) Of polyester staple fibres (mixed with viscose rayon staple fibre, man-made filament, wool or animal hair etc.)*

*(ii) Of acrylic or modacrylic staple fibre (mixed with man made filament, wool or animal hair etc.)*

*(iii) Other woven fabrics (mixed with man made filament, wool or animal hair etc.).*

*10. From the above, it appears that the impugned items are classifiable under Customs Tariff 5515 as "other woven fabrics of synthetic staple fibres mixed with Viscose rayon staple Fibre" in as much as Polyester staple fibres has been mixed with Viscose staple fibre and synthetic staple fibres remained less than 85%. Similarly, if the item manufactured from Polyester spun yarn/Viscose staple fibre and Polyester texturise yarn, the same is classifiable under Chapter 55 as Polyester spun yarn and Viscose staple fibre falls under Chapter 55 whereas Polyester texturise yarn falls under Chapter 54.*

*Therefore applying the General Note 1 & 2 of the drawback schedule, there appears that the impugned item falls under the tariff item Number 5515 of the drawback schedule as both Customs Tariff and the drawback schedule are aligned. Similarly the item of Polyester/Viscose and Polyester texturise yarn (man made filament) also falls under the tariff item Number 5515 of the drawback schedule.....*

*From the above drawback schedule, the appropriate tariff item number of the drawback schedule pertaining to impugned item appears to be 5515 02 which pertains to "other woven fabrics of synthetic staple fibre containing 85% or more by weight of Man-made staple fibre and/or Man made Filament yarn (Dyed)" in as much as Polyester and Viscose both are Man made fibre and Polyester predominant over the viscose in the blended fabrics exported by the exporter."*

*Commissioner has in paras 30 to 35 (reproduced below) of the impugned order referred to the material evidences available on record to hold that the goods are correctly classifiable under Sl. No. 551502A of Drawback Schedule.*

*"30. I find from the details provided by the exporter in respect of yarn purchased during the year from 2006-07 onwards proved that the exporter had purchase polyester viscose yarn in which polyester and viscose contents were in the ratio of 65%:35%only. I further find that the above blend of yarn was further used in the manufacture of grey fabrics and after processing of the same, resultant finished woven fabrics was exported under claim of drawback under tariff item No. 551020A if the drawback schedule. I find that besides above, the exporter had also purchased 100% polyester texturised yarn.*

*31. I find that the scrutiny of loon cards provided by the exporter, containing the details regarding type of yarn used in warp & weft pattern for manufacture of exported woven fabrics, proved that the polyester content in the exported woven fabrics was less than 85% by weight of synthetic staple fibers(dyed).*

*32. the material evidence on record proved that the exporter had procured yarn of polyester and viscose viz, 65/35 wherein polyester staple fiber contained in blended yarn is less than 85% and the said yarn was further used in the manufacture of grey fabrics and after processing of the same, finished woven fabrics was exported under claim of drawback under Serial No. 551202A. therefore, the woven fabrics exported by the exporter contained polyester and viscose staple fiber as the exporter had procured blended yarn of polyester and viscose only.*

*33. It is confirmed from the above that since blended yarn from which the blended fabrics have been manufactured was the bend of polyester and viscose 65/35, the resultant fabrics manufactured out of above blended yarn couldn't have synthetic staple fibre i.e.*
*polyester staple fibre 85%or more by weight of woven fabrics as whatsoever number of threads/yarn is used in warp or weft, polyester staple fiber which is the only synthetic staple fibers in the resultant woven fabrics always remained less*

*that 85%. Therefore, the blended woven fabrics manufactured by the exported by them under claim of drawback under tariff item No. 551202A could not satisfy the description of the item eligible for drawback schedule as in the blended woven fabrics, polyester staple fiber is the only synthetic staple fiber. Accordingly, the exporter had wrongly claimed the drawback under the serial No. 551202A on the polyester viscoes blended woven fabrics exported by them.*

*34. I find that the texturise yarn is nothing but a filament yarn manufactured by applying certain process on synthetic filament yarn and such yarn falls under Chapter 54 to the Customs Tariff Act, 1985. Therefore, if 100% polyester texturise yarn is used in the manufacture of blended woven fabrics along with PV yarn, then in such case also synthetic stale remained less than 85% as polyester contained in the PV yarn is the only synthetic staple fiber and polyester contained in texturised yarn is the filament yarn. The weight of polyester filament/texturise yarn cannot be added while calculating weight of polyester staple fiber. As such, in case where PV yarn is mixed with polyester texturise/filament yarn, resultant blended fabrics could not have synthetic staple fiber i.e. polyester staple fiber 85% or more by weight of woven fabrics.*

*35. As per the above discussions it is confirmed that the appropriate tariff item number of the drawback schedule pertaining to impugned item should be 551502 which pertained to other woven fabrics of synthetic staple fiber containing 85% or more by weight of man made staple fiber and/or man made filament yarn (dyed) in as much as polyester and viscose both are man made fibre and polyester predominant over the viscose in the blended fabrics exported by the exporter. I find that drawback rates under Serial Number 551202A is lower than the drawback rates under Serial Number 551202A. Therefore, the exporters had availed drawback in excess of that they actually were entitled."*

*Hence we do not find any merits in the submissions made by the appellants challenging the classification made by the revenue under Drawback Schedule.*

***4.4** From the above it is quite evident that the classification determined by the revenue is not solely based upon the statement of Shri Sunil Kumar Gilra , but is based on material evidences and facts. Hence we do not find any merits in the submissions made by the appellants relying on the decision of Hon'ble Madras High Court in case of Sainul Abideen Neelam.*

Government finds that the impugned case is exactly similar to the above case and in the same manner, the Adjudicating Authority and the Appellate Authority has established that the goods exported were correctly classifiable under Serial No. 551502A and not 551202 of the Drawback Schedule as claimed by the applicant.

13. Both the applicants have also filed appeal against the penalty imposed upon the Main Applicant and Shri Nirmal Gokhru, Managing Director of M/s. Anuvrat Textiles Pvt. Ltd. Government finds that the applicants were aware of the fact that the impugned being in the trade of the woven fabrics had knowingly misclassified the impugned goods which they had admitted

during the investigation. Further the Applicants being exporter of fabrics, they are required to be aware of the details of the fabrics and ignorance of the same cannot be accepted. Government therefore finds that the penalty imposed is legal and proper.

14. Government observes that the Commissioner Appeal has remanded the impugned Order-in-Original No. 01/2015-16 dated 01.04.2015 for limited purpose of specifying the provision of Section 114 of Customs Act, 1962 under which the Adjudicating Authority intends to impose penalty and quantification of amount of drawback and interest to be recovered which is legal and proper. Government therefore does not find any reason to interfere in the impugned Commissioner of Customs (Appeal)'s Orders in Appeal No. 113 & 114(Drawback)/2016(JNCH)-APPEAL-I dated 10-08-2016.

15. Revision Application filed by the applicant is disposed off in the above terms.

Shrawan 30/3/23

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

ORDER No. 910-911 /2023-CUS/ASRA/Mumbai DATED 30-3-2023

To,

1. M/s. Anuvrat Textiles Pvt. Ltd, 72, New Cloth Market, Pur Road, Bhilwara, Rajasthan-311001.
2. Shri Nirmal Gokharu, 12-13, Mahaveer Colony, Jawahar Nagar, Bhilwara, Rajasthan-311001
3. The Commissioner of Customs, Nhava Sheva-II, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707

Copy to:

1. The Commissioner of Customs(Appeals-I), Mumbai-II, Nhava Sheva, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707
2. The Additional Commissioner of Customs, Nhava Sheva-II, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707
3. Shri Anand Bhattacharya, Advocate,49, Shastri Marg, Udaipur-313001
4. Sr. P.S. to AS (RA),Mumbai
5. Spare Copy
6. Notice Board.