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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.371/305/DBK/2021-RA
F.No.371/306/DBK/2021-RA
F.No.371/307/DBK/2021-RA

4915

Date of issue: 03.08.23

ORDER NO. 570-
572/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.7.2023
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.

Applicants : M/s. Javi Home Pvt. Ltd., Shri Gauri Shankar Mandal and
Shri Gurunath Gajanan Thakur

Respondent : Commissioner of Customs, NS-II, JNCH, Nhava Sheva

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 46 to
48(CAC)/2021(JNCH)/Appeals dated 16.07.2021 passed by
the Commissioner of Customs (Appeals), Mumbai-II.

ORDER

These Revision Applications are filed by M/s. Javi Home Pvt. Ltd., Shri Gauri Shankar Mandal and Shri Gurunath Gajanan Thakur, (hereinafter referred to as "the Applicants") against the Order-in-Appeal No. 46 to 48 (CAC)/2021(JNCH)/Appeals dated 16.07.2021 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Brief facts of the case are that the Applicants had filed 3 Shipping bills for export of 'Leather Carpets' classifying under HS code-42050090 claiming drawback under s.no.420599A. While scrutinizing the sealed samples of the export goods, the officials of Wildlife Crime Control Bureau, observed that the samples had been sealed using a forged seal and brought it to the notice of the Department. The matter was investigated by SIIB and after investigation a show cause notice was issued to the applicants. The adjudication authority, vide Order-in-Original (OIO) No. 581/2019-20/ADC/NS-II/JNCH/CAC dated 15.11.2019 passed Order:

- i. Confiscating the export goods covered under the 3 S/Bills having total FOB value of Rs. 10,96,538/- u/s 113(i) and 113(ia) of the Customs Act,1962 for misdeclaration of the RITC. Since, the goods were provisionally released for exportation, imposed Redemption Fine of Rs.5 lakhs under Section 125 of the Customs Act,1962.
- ii. Confiscating the export goods, covered under 84 shipping bills pertaining to past export having total FOB value of Rs.5,32,81,061.31 found to be mis-declared in term of RITC under the provisions of Section 113(i) and 113(ia) of the Customs Act, 1962. Since the goods were not physically available, refrained from imposing RF.
- iii. Rejecting the claimed drawback of Rs. 54,829/- covered under the 3 S/Bills and re-determined the same to be NIL. As the goods were found to be of wrong RITC, the same are to be classifiable under RITC 43039090 and drawback Sr. No. 430399A where the drawback is NIL.

- iv. Rejecting the claimed drawback of Rs. 15,99,625/- under 84 Shipping Bills pertaining to past export and re-determined the same to be NIL. If any drawback paid to the exporter may be recovered under Rule 16 and 16A of the Customs & Central Excise duties Drawback Rule, 1995 read with Section 75 of the Customs Act, 1962.
- v. Imposed penalty of Rs. 5 lakhs on M/s. Javi Homes Pvt. Ltd. (IEC No. 0510074588) under Section 114(iii) of the Customs Act, 1962 for their acts of omission and commission which rendered the impugned goods liable for confiscation.
- vi. Imposed penalty of Rs.2 lakhs on CB M/s. Dilip Kumar Thakur (11/1496) under Section 114(iii) of the Customs Act, 1962, for their acts of omission and commissions in rendering the said goods liable to confiscation and for violation of the CHA Licensing Regulation,2013 as aforesaid
- vii. Imposed penalty of Rs. 1 lakh each on Shri Gauri Shankar Kailash Mandal the G Card Holder of CB firm M/s. Dilip Kumar Thakur and Shri Gurunath Gajanan Thakur the employee of the CB firm M/s. Dilip Kumar Thakur under Section 114(iii) and 117 of the Customs Act, 1962 for their acts of omission and commission in tampering the Customs sealed RSS and use of fabricated seal.

Aggrieved, the Applicants filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3.1 Hence the Applicant, M/s. Javi Home Pvt. Ltd., has filed the impugned Revision Application mainly on the grounds:

- i. that the impugned Order-in-appeal as well as Order-in-Original are passed in violation of the principles of natural justice. It is a fact on record that the Order-in-Original appealed against was an ex-parte order because neither the investigating authority nor the Adjudicating Authority has bothered to provide the relied upon documents. Even the appellate authority has not ordered to direct the department to

provide the relied upon documents to the exporter. The exporter has received only two notices and met the Joint Commissioner and requested him to provide the relied upon documents. Moreover, the Applicant has not received the relied upon documents attached with the Show Cause Notice and received only two personal hearing. The Adjudicating Authority has passed the impugned Order arbitrarily without extending sufficient opportunity of personal hearing to the Applicant. Any order passed in violation of principles of natural justice may amount to violation of the Fundamental Right to Equality guaranteed under the Constitution of India. The Hon'ble Commissioner Appeal has also failed to take note of the fact that relied upon documents to the Show Cause Notice were not received by the exporter. This fact was specifically brought in the notice of the Hon'ble Commissioner Appeal in the appeal memorandum as well as at the time of hearing. But the Hon'ble Commissioner (Appeal) instead of asking the revenue to provide the relied upon documents in the Show Cause Notice passed the Order-in-appeal. The Applicant has received the relied upon documents (RUD) after the hearing before the Commissioner of the Customs (Appeals), but at that time the order in original has been issued by the Adjudicating Authority and the decision has already been formed by the Appellate authority. The applicant relies upon the following case laws:

- 2021 (47) G.S.T.L. 20 (Bom.) Landmark Associates Versus Union of India
 - 2020 (33) G.S.T.L. 3 (Ker.) Mozart Global Furniture Versus State Tax Officer (Intelligence), SGST Deptt., Nilambur
- ii. that they had declared the goods Indian Hand Made Leather Carpets under CTH 42050090 and claimed Duty Drawback under drawback Sr. No.420599A. The Adjudicating authority has failed to understand the nature of goods and reclassified the item under CTH 43039090 and put the item into NIL Duty Drawback under Drawback Sr. No.430399A. That they rely on Note 2(b) of Chapter 42 of Customs Tariff and Board Circular No.29/2015-Cus. Dated 16.11.2015 in this

regard. As per Para 2(b) of the Board Circular it is very clear that the Leather Carpet is only to be classified under Chapter 42. Accordingly, the Applicant had declared the goods 'Indian hand-made leather carpet' under CTH 42050090. Therefore, there is no misdeclaration done by the Applicant. The Adjudicating Authority has failed to understand the goods and also to explore the CBIC Circular No.29/2015-Cus dated 16.11.2015 yet he has passed the order in original. Similarly, the Hon'ble Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II has not applied his mind instead just upheld the order of the Adjudicating Authority. Therefore, the impugned Order in Appeal as well as Order in Original is liable to be set aside.

- iii. that the investigating officer has tried to make out the case against them on the basis of statements of Shri Devendra Kumar Goyal, Drawback Agent and Shri Gauri Shankar Kailash Mandal, an employee of the CHA. The Applicant would like to mention that Shri Devendra Kumar Goyal was not a Manager of the Applicant company; actually he was a Drawback agent only and he had no authority to give statement on behalf of the Applicant. His statement has no relevancy because he had no locus standi in adjudication of the matter. However, it is a well settled law that statement made under pressure/ threat/ coercion has no evidential value. It is a known fact that the SIIB officials with a motif to make out the case, creates huge pressure/ threat on persons concerned to draw statements rather compel the persons concerned to give statements as per the wish of Investigating Officer. It is highly impossible for a common person to dare to protest the forceful activities of SIIB officials because they know that they have to face the consequences if they go against the will of the investigating officials. Thus, the actual fact becomes covered under the shadow of the statements forcefully drawn by the Investigating Officers. In day to day business activities importers, exporters and their staff, Customs Brokers dare not to protest the forceful activities of SIIB officials because they know that they have to

face the officers at every step till they are in this business/ profession. The Applicant submits that the SIIB officers had mounted tremendous pressure on him to sign certain typed papers which they call as voluntary statement under Section 108 of the Customs Act, 1962. The Applicant submits that statements under pressure cannot be ruled out and such statements given under pressure, threat or coercion, though not retracted, have no evidentiary value and unilaterally reliance on these statements is otherwise also bad in law. Although, the statements recorded under Section 108 of the Customs Act, 1962 are not comparable to the confession recorded by the Magistrate under Section 164 of the CRPC and as such the statements recorded under Section 108 of the Customs Act, 1962 are required to be corroborated by supportive documentary evidence. The stated statements recorded by the Investigating Agency in this case however cannot be given any credence since the Department has not corroborated by supportive documentary evidence. The Noticee submits that he has been falsely implicated in this case. Since, reasonable opportunity has not been provided by the department, the Applicant has lost the chance to cross examine the SIIB officials who recorded his statements, relied upon to falsely implicate the Applicant in this case. Also according to Section 30 of Indian Evidence Act, 1882 itself, it can be taken into consideration, but it does not say that conviction can be based solely on the confession of accused. These statements are not confessions recorded by a Magistrate under Section 164 of the Code of Criminal Procedure by the statements made in answer to a notice u/ s 171A of Sea Customs Act. As they are not meant subject to the safeguard under which confessions are recorded by the Magistrate, they must be specially; scrutinized into finding out if they were made under threat or promise from someone in authority. If after such scrutiny, they are considered to be voluntary, they may be received against the maker and in the same way as confessions are received, also against a co-accused jointly tried with him". In the said Judgments the view taken was that when

statements under section 108 of the Customs Act, 1962, are recorded, the safeguards provided under section 164 are required to be followed and in case the same are not followed, the statements under section 108 of the Customs Act would become inadmissible. It has been held that the statement recorded under section 108 of the Customs Act, 1962, is not a confession within the meaning of section 24 of the Indian Evidence Act, yet in view of the decision of the Apex Court in Haroom Haji Abdulla v. State of Maharashtra, A. I. R. 1968 S. C. 832, such statements which are not made subject to safeguards under which confessions are recorded by a Magistrate, are required to be specially scrutinized to find out whether the same are voluntary or not. The Applicant relies on the following case laws:

- Vinod Solanki Versus Union of India {2009 (233) E.L.T. 157 (S.C.)}
- iv. that the goods in all the 84 consignments, already exported earlier, the goods were assessed and examined and the representative samples were also drawn by the then proper officer and after fulfilling all the parameters the then proper officers had given Let Export Order. At the time of export the then Proper officers had not raised any objections because the goods were found as declared. If there were any discrepancy in the goods or declaration, the then Proper Officers would have raised the objections during that long period of export. But that had not happened because there was no discrepancy in the goods as well as in the declaration. It is very strange that after more than 6 years of exportation of the goods, the department is raising the question of misdeclaration hypothetically on the basis of assumption and presumption and without seeing the goods. Both the Adjudicating Authority and the Hon'ble Commissioner of Customs(Appeals), Mumbai Zone-II have not applied their minds and passed the order with a preconceived notion. If at all there were any misdeclaration and wrong goods were exported, had the department made any enquiry against the then Proper Officers of the Customs department who had assessed the goods, examined the goods and allowed to export by

giving Let Export Orders and verified their doubt and taken any vigilance action against the officers? If the department had not done any verification from the then Proper Officers of the Customs department who had assessed the goods, examined the goods and allowed to export by giving Let Export Orders and not taken any vigilance action against the officers, it clearly shows that there were no misdeclaration in the goods already exported under 84 Shipping Bills. Hence, no demand of Duty Drawback can be raised against those 84 Shipping Bills.

- v. that goods which have already been taken out of India is not the 'export goods'. The Applicant also submit that 'Assessment'; 'export'; 'export goods' and 'imported goods' have been defined under Section 2 of Customs Act, 1962. It is apparent from above definition of 'export goods' that the goods which have already been taken out of India do not remain export goods instead are referable as exported goods. The definition of imported goods' makes things more than clear that goods which have already been cleared are not "imported goods". Similarly, goods which have already been exported are no more 'export goods'. In the definition part as well in the various Sections of 1962 Act and Rules made thereunder, we find that word imported goods' or 'export goods' has been used which shows true intention of the legislature. Valuation Rules are applicable to 'export goods' and these Rules are not enabling provisions to frame re-assessment. Section 14 empowers to frame Rule to reject declared value and re-determine value of export goods. The Valuation Rules, 2007 are framed in exercise of power conferred by Section 14 of 1962 Act. Rule 1 (3) and 8 of Valuation Rules permit to reject value of 'export goods'. As per definition of export goods, the goods which stand exported are not 'export goods' so Valuation Rules, 2007 are not applicable to goods already exported. Valuation Rules, 2007 would come into play as soon as the proper officer gets power to reassess already assessed shipping bill. Prior to 08.04.2011, it was proper officer who used to frame assessment and w.e.f. 08.04.2011 he gets first opportunity to doubt the self-assessed

value at the time of export and, secondly, he may prefer an appeal before Appellate Authority. A team of Customs officers at the time of export of goods verify different particulars including value declared by an exporter. The declared value may be accepted or reassessed and in case re-assessed value is not accepted by exporter, proper officer has to pass speaking order. Thus, as per scheme of the 1962 Act, department is not remediless and Courts are bound to interpret law as such. Courts while interpreting law can neither add nor subtract any word from the plain language irrespective of consequences. It is the legislature who has to rectify, repair or amend the law in case any judgment interpreting law is not acceptable or is contrary to intent and purport of enactment. On plain reading of Sections 17, 50 and 51 with Valuation, we find that Respondent is neither vested with power of re-assessment of goods already exported under Rule 16 of Drawback Rules, 1995 nor Valuation Rules, 2007. The goods which stand exported do not fall within ambit of 'export goods' as defined under Section 2(19) of 1962 Act, thus Respondent cannot invoke Rules 6 & 8 of Valuation Rules, 2007. In view of judgment of Hon'ble Supreme Court in the case of ITC Vs CCE (supra), we find that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both sides. The department by way of show cause notice under Rule 16 and / or rule 16A of Customs, Central Excise and Service Tax Duties Drawback Rules, 1995 cannot modify assessed shipping bill because mechanism of recovery is absent in Duty Drawback Rules, 1995 thus demand under Rule 16 of Drawback Rules, 1995 is not sustainable. Therefore, the order for rejection of claimed drawback of Rs.5,99,625/- is not legally sustainable. Reliance is placed on the following case law:

- Jairath International Versus Union of India [2019 (370) E.L.T. 116 (P & H)]

- vi. The Applicant would like to submit that they have declared the goods as Leather Carpet. The goods were also found as leather carpet.

Moreover, as mentioned above that as per Para 2(b) of the above mentioned Board Circular it is very clear that the Leather Carpet is only to be classified under Chapter 42. Accordingly, the Applicant had declared the goods 'Indian hand-made leather carpet' under CTH 4205 0090. Therefore, there is no misdeclaration done by the Applicant. The Adjudicating Authority has failed to understand the goods and also to explore the CBIC Circular No.29/2015-Cus dated 16.11.2015 yet he has passed the order in original. Similarly, the Hon'ble Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II has not applied his mind instead just upheld the order of the Adjudicating Authority. Therefore, the impugned Order in Appeal as well as Order in Original is liable to be set aside. On the basis of above it is very clear that goods are not liable to confiscation under Section 113(i) & 113(ia) of the Customs Act, 1962. The Applicant relies on the following case law:

- 2019 (369) E.L.T. 1606 (Tri. - Hyd.) Vasudha Pharma Chem Ltd. Versus Commr. of Customs, Hyderabad]

vii. that they have declared the goods rightly as Leather Carpets as per the CBIC Circular No.29/2015-Cus dated 16.11.2015. The Adjudicating Authority and the Hon'ble Commissioner of Customs (Appeals) have failed to appreciate the fact. Since, there is no such gross misdeclaration the goods are not liable to confiscation under Section 113(i) & 113(ia) of the Customs Act, 1962. Hence, penalty under Section 114(ii) under the Customs Act, 1962 should not be imposed on the Applicant. The Applicant relies on the following case laws:

- 2020 (373) E.L.T. 692 (Tri.-Hyd.) Commr of Cus., C. EX. & S.T., Hyderabad-II Versus G.M.K. Products Pvt. Ltd.
- 2018 (362) E.L.T. 270 (Tri.-Chennai) Harshit Enterprises Versus Commissioner of Customs, Tuticorin

viii. that they had neither received any copy of SCN nor RUD before the passing of Order in Original by the Adjudicating Authority; because of that they had lost the chance to cross examine the relevant persons, whose statement or report had been relied by the department. There is

catena of judgments on the subject Denial of cross examination of the co-Applicants is violation of Principle of Natural Justice. The Applicant relies on the following case laws:

- Soumendu Saha Versus Union of India [2015 (322) E.L.T. 462 (Cal.)]
- Commissioner of Central Excise Versus Kurele Pan Products Pvt. Ltd. [2014 (307) E.L.T. 42 (All.)]
- P. Thiyagarajan Versus Commissioner of Customs, Chennai [2009 (238) E.L.T. 633 (Tri. - Chennai)]

3.2 The Applicants, Shri Gauri Shankar Mandal and Shri Gurunath Gajanan Thakur, have filed the impugned Revision Application on following additional grounds, apart from grounds mentioned at aforementioned para 3.1(i) to 3.1(iii):

i. that the combined penalty imposed under Section 114(iii) and 117 is not legally sustainable. The Applicant relies on the following case laws:

- 2009 (246) E.L.T. 518 (Tri. - Mumbai) Pradeep S. Mehta Versus Commissioner of Central Excise, Thane-I
- 2002 (148) E.L.T. 1220 (Tri. - Chennai) Algappa Cements (P) Ltd. Versus Commissioner of Central Excise, Trichy
- 2001 (132) E.L.T. 41 (Tri. - Del.) Punjab Recorder Ltd. Versus Commissioner of Central Excise, Chandigarh

ii. that they have only filed the Shipping Bill as per the declaration made by the Exporter. Their goods were examined by Customs Department in its DYCC laboratory and analysis revealed that goods were leather carpet having different composition. When the Department itself, only on the basis of chemical analysis, was able to ascertain that the goods attempted to be exported was of different composition, how can a CHA be expected to know of the exact composition of the product at sight. The Applicant would like to submit that there was no evidence of abetment with exporter to misclassify exported goods so as to avail inadmissible drawback; that in absence of any evidence of omission or commission of the act on the part of CHA, penalty not imposable on him merely for wrong classification of exported goods - Section 114 of Customs Act, 1962. Moreover, there is no evidence on record to show involvement of

CHA in fraudulent transaction. Hence, the Applicant has not done anything which can render the goods liable to confiscation. Therefore, no penalty was imposable on the Applicant under Section 114(iii) of the Customs Act, 1962.

- 2017 (358) E.L.T. 1004 (Tri. - Del.) P. D. Prasad & Sons Pvt. Ltd. Versus Commissioner of Cus. (Export), New Delhi
- 2017 (358) E.L.T. 817 (Tri.-Mumbai) Apson Enterprises Versus Commissioner of Cus. (EP),ACC, Mumbai
- 2017 (358) E.L.T. 669 (Tri.-Mumbai) Freight Wings & Travels Ltd. Versus Commissioner of Cus. (Export),ACC, Mumbai
- 2017 (358) E.L.T. 542 (Tri.-Mumbai) Sarosh Nagarwala Versus Commissioner of Cus. (Export),Nhava Sheva

- iii. that considering the aforesaid reasons, facts and circumstances the impugned Order in Appeal No. 46 to 48(CAC)/2021(JNCH)/Appeals dated 16.07.2021 issued on 16.07.2021, passed by the Commissioner of Customs (Appeals), Mumbai Zone-II, JNCH, Nhava Sheva, Tal — Uran, Raigad which was received by the Applicant on 03.08.2021 is illegal, incorrect, without any basis, bad in law and without jurisdiction and therefore liable to be set aside.

In the light of the above submissions, the applicant prayed to set aside the impugned OIA with consequential relief.

4. Personal hearing in the matter was held on 07.06.2023. Shri Sanjay Kalra, Advocate appeared on behalf of the applicants and submitted that in this case no relied upon documents were given to them. He further submitted that for past consignments, drawback has been denied without any basis or evidence. He further submitted that applicants have been penalized without any ground. He requested to allow the application.

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

6. On perusal of records, Government observes that M/s. Dilip Kumar Thakur, a Customs House Agent, had filed 3 Shipping bills all dated 20/3/2015 on behalf of the applicant M/s. Javi Home Pvt. Ltd. for export of 'Indian Hand Made Leather Carpets, 80% Finished Leather, 20% Polypropylene' classifying under HS code-42050090 claiming drawback under s.no.420599A @5%. While scrutinizing the sealed samples of the export goods, the officials of Wildlife Crime Control Bureau, observed that the samples had been sealed using a forged seal. The matter was investigated by the Department and on the basis of report from DYCC, it was adjudicated that the export goods are classifiable under HS code-43039090 and drawback s.no.430399A @Nil. Therefore, drawback claim of the applicant M/s. Javi Home Pvt. Ltd. was rejected and the consignment was confiscated along with recovery of drawback on past consignments exported under 84 shipping bills. A penalty of Rs. 1 lakh each was imposed on the applicants - Shri Gauri Shankar Kailash Mandal and Shri Gurunath Gajanan Thakur the employees of M/s. Dilip Kumar Thakur for their acts of omission and commission.

7. Government observes that there are basically two issues involved in the instant matter – classification of export goods and appropriate HS code for drawback and tampering of seals on samples drawn from export goods which were sent to Wild Life Crime Control Bureau (WCCB).

8.1 Government observes that in the impugned shipping bill, the description of export goods is mentioned as – 'Indian Hand Made Leather Carpets - 80% Finished Leather, 20% Polypropylene' and in the two DYCC reports the same is mentioned as - 'Leather with stitched woollen hair – 56.4%, 60.2%, and 60.8%' in respect said 3 export consignments. Government observes that in the impugned OIO, said percentage in respect of latter 2 export consignments is incorrectly mentioned as 52.4% and 51.8%. The mistake happened probably because the two DYCC reports cover five different samples, three of which pertain to the instant matter.

8.2 Government observes that the applicant had classified the export goods under Tariff item 420599A of the Drawback Schedule, as applicable in March 2015, the month of impugned exports, vide Notification No. 110/2014-Cus.(N.T.) dated 17.11.2014. This Tariff item reads as under:

Tariff Item	Description of goods	Unit	A		B	
			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.
1	2	3	4	5	6	7
420599	Other articles of leather/ composition leather or of leather in combination with other materials (including woven mesh/ mats/panels/carpets in rolls or sheets/woven belts/braids strips/laces/ cords in rolls or cut pieces)	Kg	5%	45	1.9%	17.1

Thus, carpets in rolls or sheets made of 'leather in combination with other material' are classified under said TI. As per DYCC report the impugned item has 3 layers - 'Leather with woollen hair stitched' - around 59%, 'Polyethylene foam/Expanded PE sheet' - around 30% and 'non-woven felt made of Polyester' - around 11%. Thus, it is observed that leather is predominant material in the impugned export item. The lower authorities have on the basis of DYCC test reports and chapter notes classified the export goods under TI 430399A, which reads as under:

Tariff Item	Description of goods	Unit	A		B	
			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.
1	2	3	4	5	6	7
4303	Articles of apparel, clothing accessories and other articles of fur skin					
430301	Articles of apparel, made of leather and lining of fur skin/artificial fur	Per piece	9.5%	696	1.9%	139.2
430399	others		Nil		Nil	

Thus, Government observes that the heading covers articles of fur skin. However, the DYCC report does not mention anything regarding fur skin while giving details of composition of impugned export item, neither do the impugned shipping bills make any such claim. The DYCC report also does not specify percentage of 'woollen hair' stitched on the leather which would have led to arrive at conclusion that impugned article is made of artificial fur. Therefore, Government does not find sufficient evidence to agree with lower authorities as regards re-classification of impugned export goods under TI 430399 and concurs with the classification claimed by the applicant.

9. As regards the other issue in the instant case viz. tampering of seals on samples drawn from export goods by the applicants - Shri Gauri Shankar Mandal and Shri Gurunath Gajanan Thakur, employees of the M/s. Dilip Kumar Thakur, Customs House Agent of the applicant - M/s. Javi Home Pvt. Ltd., Government observes that the Department has concluded that *the act of the CB in forging the seal and getting the sample sealed by one rupee coin is an act of omission and commission to favour the exporter to avail the undue benefit of drawback*. Government notes that the purpose of sending samples to WCCB is to ensure that there is no violation of provisions of Wild Life (Protection) Act, 1972 or CITES or the EXIM Policy of the Government and obtain an NOC. Government observes that the Departmental enquiry does not point out that the samples of product sent to WCCB were different from the export goods to support their theory that the seal forging was carried out to favour their client, M/s. Javi Home Pvt. Ltd., to avail undue drawback. Further in their statements, both the applicants have stated having no knowledge regarding use of any such seal, and thus are inconclusive in nature. The statements further lose their relevance being not supported by any corroboratory evidence. Therefore, Government concludes that it is not established that the applicants had any hand in putting unauthorized seal on the said samples to render them liable for any penalty.

Since samples remained same, there does not appear to be any reason for using unauthorized seal. The penalty imposed on them is therefore quashed.

10. In view of the above discussion and findings, the Government sets aside the Order-in-Appeal No. 46 to 48(CAC)/2021(JNCH)/Appeals dated 16.07.2021 passed by the Commissioner of Customs (Appeals), Mumbai-II and allows the instant Revision Applications.

Shrawan
31/7/23
(SHRAWAN KUMAR)

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

ORDER No. *570-572*/2023-CUS (WZ)/ASRA/Mumbai dated *31.7.23*

To,

1. M/s. Javi Home Pvt. Ltd.,
Alipur Khalsa Khotpura Road,
P.O. Kaimala, Tehsil – Gharaunda,
Karnal, Haryana – 132 114.
2. Shri Gauri Shankar Mandal,
B-4, Om Swarupanand CHS,
Kopar Road, Sakharam Nagar,
Dombivli, Thane – 421 202
3. Shri Gurunath Gajanan Thakur,
Khalchi Ali, Hanuman Mandir,
Dighati, Kelavane, Raigad – 410 206.

Copy to:

1. Commissioner of Customs,
Nhava Sheva-II,
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka: Uran,
Dist.: Raigad, Maharashtra – 400 707.
2. M/s. KPS Legal
D-414, 4th Floor, Braham Shopping Centre,
Plot No.53, opp. D'Mart, Sector-15,
CBD Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file