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SPEED POST



F.No. 373/51/DBK/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHICAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...9-4-14...

Order No. 68/13-cus dated 07.04.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

- Subject : Revision Application filed,  
under section 129 DD of the Customs Act  
1962 against the Order-in-Appeal No.  
83/ 2012 dated 26-11-2012  
passed by Commissioner of Custom (Appeals),Trichy.
- Applicant : M/s. Midway Hosieries,  
54/4, VSS Garden, SIDCO East Cross,  
Kngeyam Main Road, Tirpur-641606.
- Respondent : Commissioner of Customs,  
Customs House, New Harbour Estate,  
Tuticorin-628004.

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ORDER

This revision application is filed by M/s. Midway Hosieries, Tirpur against the Order-in-Appeal No. 83/ 2012 dated 26-11-2012 passed by Commissioner of Customs (Appeals), Trichy.

2. Brief facts of the case are that the applicants are engaged in the manufacture of cotton fabrics and they are also exporting certain quantity of their final product outside India. The applicants are holders of Importer Exporter Code No. 3204008614. During the period from 01-08-2010 to 31-07-2011 the applicants exported certain finished goods namely Cotton Knitted Mens T Shirts and Cotton Woven Mens Pant. The officers of SIIB carried out a detailed investigation in respect of goods exported by the applicants. It was observed by the SIIB officers that in respect of goods exported by the applicants that in the Invoice, applicants had declared the Cargo as 'Cotton Mens Pyjamas' and invoice values were mentioned separately. It is noted that only for one invoice description for the goods was inadvertently mentioned as 'Cotton Mens Pyjamas'. It is submitted that 100% cotton knitted T-Shirt and 100% Cotton woven pant were classifiable under different RITC codes and Drawback Sl. Nos. However both are packed in the same pack. It was alleged that pyjama set has been split up as Mens T-Shirt and pant, in order to avail excess drawback by claiming drawback with higher value cap of Rs. 36/-. It is alleged that if these items were classified as 'Pyjama Set', then it attracts value cap @ Rs. 26/- per set and not Rs. 36/- as claimed. Further it was alleged that in the present case goods exported are pyjama set containing 100% Cotton Knitted Men T-Shirts and 100% Cotton woven Mens Pants which are squarely covered under RITC 61072100 and drawback Sr. No. 61070101. The Additional Commissioner has passed the Order-in-Original based on the ground that goods were declared as 100% Cotton Knitted Mens T-Shirts and 100% Cotton Woven Mens Pants by the applicants for claiming higher drawback instead of classifying them as cotton pyjama set which rightly falls under RITC 61072100 and drawback Sl. No. 61070101. The applicants had paid back the excess drawback alleged by the department on these 3 shipping bills with interest liability i.e. drawback of Rs. 3,21,697/- and interest of Rs. 1491/- vide SC 47513 dated 19-08-2011. This fact is not under dispute. The Additional

Commissioner also imposed penalty of Rs. 5,00,000 under section 114 (iii) of the Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals), who reduced the penalty amount to Rs. 300000/-.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The Additional Commissioner has appropriated the amount paid by the applicants towards alleged undue duty drawback on the ground that goods exported by applicants viz., 100% Cotton Knitted Mens T-Shirts and 100% Cotton Woven Mens pant should be classified as 'pyjama set' under Customs Tariff Heading 6172100. The Commissioner (Appeals) upheld the same vide impugned order.

4.2 In this regard, it is submitted that the applicants are exporting the 100% Cotton Knitted Mens T-Shirts and 100% Cotton Woven Mens Pant as per orders received from its customers. The applicants are manufacturing 'Shirts and pants' using cotton as new material. Under the Customs Tariff there are specific tariff headings which cover goods manufactured by the applicants. While articles of apparel and clothing accessories, knitted or crocheted fall under chapter 61 and not knitted or crocheted fall under chapter 62 of CETA 1985.

4.3 Goods manufactured by the applicants can be sold independently to the different parties as both are recognized as different goods by the market. In other words, Mens T-Shirts can be sold in the market without combining it with Mens Pant and vice-versa. It means, those goods have their own market. In the present case, applicants exported both T-Shirts and pants together upon specific request from its customer. Sale of pant and T-Shirt together would not by itself make the garment exported as pyjama in sets. Pyjama in sets would generally have both shirt and pant either woven or knitted. A knitted shirt with a woven pant cannot be called pyjama

in set. For this reason itself the impugned order merits to be set aside. Hence what is exported is knitted shirt and woven pant and classified accordingly.

4.4 Further, it is submitted that chapter headings of drawback schedule is aligned with the chapter headings of the Customs Tariff Act, 1975 (CTA) chapter 61 of CTA consists of various products of apparel and clothing accessories whether knitted or crocheted. Chapter Note No. 1 to chapter 61 states that this chapter applies only to made up knitted or crocheted articles. It means, only knitted or crocheted articles are classifiable under chapter 61.

4.5 Chapter 62 of CTA consists of various products of apparel and clothing accessories which are not knitted or crocheted. Chapter Note 1 to Chapter 62 covers articles of textiles fabrics other than wadding, excluding knitted or crocheted. It means all articles of textile fabric excluding knitted or crocheted are classifiable under chapter 62.

4.6 Section Note 14 to section XI of the Customs Tariff also stipulates that, "Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even it put in sets for retail sale. For the purpose of this Note, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 62111."

4.7 Thus, the applicants have no other option to classify the goods under different headings. In this regard, the applicants submit that wherever both the shirt and the trousers are knitted, the applicant had been classifying the goods as Pyjama sets.

4.8 Even though the goods can be called as pyjama sets, neither of the headings can accommodate pyjama which is of knitted shirts and pant-woven. Therefore the garment exported even if they are reckoned as pyjama cannot get classified under Sl. No. 6107 of DBK schedule as held in the impugned order and for this reason itself the order merits to be set aside.

4.9 In view of the above, the impugned order passed by the Commissioner (Appeals) is liable to be set aside and the drawback surrendered as if excess drawn to be refunded.

4.10 The rate of Drawback applicable is 7.5% which is the same applicable for T-Shirts and trousers. The Drawback claimed by the applicant at 7.5% is also within the drawback cap fixed for each item. The Order-in-Original has taken both the items of apparel together as a set and restricted the drawback to the cap of Rs. 26/- which is applicable to one piece.

4.11 If the goods are classified under heading 610701 as pyjama sets, then they have to be treated as two pieces since the pyjama sets actually contains two items. The invoice and packing list also declares individual pieces. Just because both the pieces are put up in the same packing both articles cannot be regarded as a single piece.

4.12 In this regard the applicant relies upon circular No. 11/2002-Cus. dated 11-02-2002 wherein is reproduced below:-

**" Drawback Circular No.11/2002-Cus.**  
**F.No.609/18/2002-DBK**  
Government of India  
Ministry of Finance  
Department of Revenue

**Subject: All Industry Rate of Drawback in respect of Ready-made Garments – regarding.**

*Representations have been received from the Apparel Export Promotion Council and the trade in general that the field formations are applying a single drawback rate and drawback cap to the goods which are clearly defined in different entries of the Drawback Table under Chapter 62, on the premise that the same constitute as Set. Trade has, however, resented this practice as it results in grant of lower drawback compared to their actual entitlement.*

2. *The issue has been examined in the Board. It appears that the field formations are applying the instructions contained in Drawback Circular No.10/2001-Cus dated 23.2.2001.*

3. *It is clarified here that the Circular No.10/2001-Cus was issued in the perspective of previous Drawback Table i.e.2000-2001 when the entries were generic. This was intended to restrict drawback only in respect of Babies' Garments or certain other Ladies' Garments which though were exported in sets but availed duty drawback as single garment and had*

*the limitation drawback cap of Rs.65/- per piece i.e. individually. Therefore, it was decided that such garments if packed together and also billed together could be eligible for drawback only as "Sets" and not as individual garments.*

4. *However, in the current Table 2001-2002, many specific entries have been created with individual drawback rates and caps. Moreover, the word 'Set' has not been mentioned. Therefore, SS. Nos. 62.09 and 62.10 are intended to cover only those items which do not find specific mention SS Nos. 62.01 to 62.08 of Chapter 62 of the Drawback Table.*

5. *Suitable public notice for information of the trade and standing orders for guidance of the staff may kindly be issued accordingly.*

6. *The receipt of this Circular may kindly be acknowledged. "*

4.13 Thus, in terms of the above circular, it is submitted that once the word 'set' has not been mentioned in the drawback schedule, each component of the set has to be treated as single piece and duty drawback granted accordingly. Thus even if knitted shirt and woven pant together is classified as pyjama set under 610701, the value cap for grant of drawback has to be reckoned at Rs. 26 per piece and not Rs. 26 per set as held in the Order-in-Original. The Commissioner (Appeals) has not considered any of the above submissions and for this reasons itself the impugned Order-in-Appeal merits to be set aside.

4.14 With regard to the above, it is submitted that the applicants have not intentionally mis-declared the impugned goods. In fact, that the applicants were under the bonafide belief that the 100% Cotton Knitted Mens T-Shirts and 100% cotton woven mens pants are rightly classifiable under tariff headings 61091000 and 62034200 respectively.

4.15 The rate of drawback prescribed for the headings under which applicants classified their exported goods and departments alleged heading is same i.e. 7.5%. Therefore, applicants are eligible for the same rate of drawback in both the headings. Hence, there is no intention to claim excess drawback on the part of the applicants.

4.16 There is no allegation that the data submitted at the time of export was insufficient or incorrect. The goods correspond to the value and description given by

applicants in the respective shipping bills. The declaration in the shipping bill was made as per the description in the invoice. The applicants had correctly the exported goods in the shipping bill submitted to the department at the time of export. The alleged claim for higher rate of value cap for duty drawback cannot be isolated from the other facts of the case and treated as mis-declaration.

4.17 The goods exported are classifiable as pyjama set or pant and shirt is at best a matter of interpretation. A claim for classification and rate of drawback under a particular entry of Drawback schedule is a matter of belief of the exporter and no penalty can be imposed on the grounds that the rate of drawback as per the entry is ineligible. Further once the mistake was pointed out and the applicants have admitted the mistake and paid the excess drawback with interest voluntarily the question of imposition of penalty does not arise.

5. Personal hearing scheduled in this case 21-03-2014 at Chennai was attended by Shri R. Shrinivasan, Advocate on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

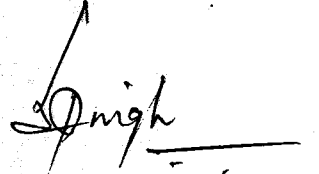
7. In the instant case, applicants exported the said goods by classifying them as Mens T-Shirts and Mens Pants under RITC 61091000 and 62034200 claiming higher drawback on both items. During investigation of case it was found that export goods were Pyjama sets classifiable under RITC 61072100 and DBK Sr. No. 61070101 attracting drawback at lower rate. Applicant has already repaid the excess drawback claimed. But he has contested the impugned Order-in-Appeal on the grounds stated in para 4 above. Applicant has claimed that the goods were rightly classified by him under RITC 61091000 and 62034200 and they were entitled for drawback claim at higher rate as claimed by them. Applicant has cited CBEC circular No. 11/02-Cus dated 11-02-2002 F.No. 609/18/2002-DBK in support of their contentions. Government notes that the said circular has clarified the issues

pertaining to drawback in r/o Readymade Garments exported in sets. The said circular is not considered by the lower authority while deciding the case. The case is required to be decided by considering the applicability of said circular.

8. In view of above position, Government set aside the impugned order to the extent of denying the part drawback claim and remands the case back to the original authority to decide the disputed drawback claims by taking into account the above said CBEC circular. A reasonable opportunity of hearing will be afforded to the parties before deciding the matter.

10. The revision application is disposed off in terms of above.

11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Midway Hosierys,  
54/4, VSS Garden, SIDCO East Cross,  
Kngeyam Main Road, Tirpur-641606.

Attested

(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi



Order No.        /13-Cx dated 7-4-2014

Copy to:

1. Commissioner of Customs, Customs House, New Harbour Estate, Tuticorin-628004.
2. Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappali-620001.
3. Additional Commissioner of Customs, New Harbour Estate, Tuticorin-628004.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

*A. H. esnl*  
(गामदत शर्मा/Assistant Commissioner)  
सहायक सारुवेत/Assistant Commissioner  
C.B.E.C.-O.S.D. (Revision Appellate)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नए पथ/ New Path