

SPEED POST



F. No. 373/110/DBK/2016-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 12/01/23.

Order No. 05/ 23-Cus dated 12-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application, filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 396/2015-16 dated 11.03.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s Hansa International, New Delhi.

RESPONDENT : The Commissioner of Customs, Cochin.

ORDER

A Revision Application No. 373/110/DBK/2016-R.A. dated 09.06.2016 has been filed by M/s Hansa International, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 396/2015-16 dated 11.03.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Original, upheld the Order-in-Original No. 36/2015 dated 11.06.2015, passed by the Deputy Commissioner of Customs (Drawback), Customs House, Cochin whereby supplementary drawback claim in respect of goods described as "Power loom 100% Cotton Chair Pads filled with polyester fibre" was rejected.

2. Briefly stated, the Applicants herein had exported goods declared as (i) power loom 100% Cotton Chair Pads filled with polyester fibres and (ii) power loom 100% Cotton Floor Cushions filled with polyester/acrylic fibres, under Shipping Bill No. 6206355 dated 22.11.2014, under the claim of drawback. The Applicants claimed drawback under Serial No. 940401A @ 9.1% of FOB value with a value cap of Rs. 1.07 per Kg as 'Pillows/Cushions/Quilts/pouffles filled with poly-fill' but the drawback was sanctioned under 940499A as 'Others' @ 5% of the FOB value with a value cap of Rs. 20 per Kg. Consequently, as against total claim of Rs. 1,03,289/-, drawback amount sanctioned was Rs. 55,892/-. The Applicants herein, thereafter, filled supplementary claim for drawback on 02.03.2015, claiming drawback in respect of the above said exported goods under 940401A @ 9.1% of the FOB value. The original authority treated 'Chair Pads' as not to be 'cushions', and accordingly, denied the supplementary claim in respect thereof but allowed the claim in respect of 'Floor Cushions'. The Commissioner (Appeals) has upheld the Order-in-Original and rejected the appeal filed by the Applicant herein.

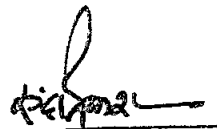
3. The revision application has been filed, mainly, on the grounds that the Heading No. 9404 of the Drawback Schedule is divided into two categories, i.e., 940401 and 940499; that Serial No. 941401 covers the "Pillows, Cushions, Quilts, Pouffles filled with Polyfil"; whereas, Serial No. 940499 is residuary; that the "pillows, cushions, pouffles" is a generic description and covers items where fibres are stuffed in cloth covering to form different shapes; that the authorities below have mechanically attempted to match the declaration given in the invoice/shipping bill with the text of the description given in the Drawback Schedule for determining the applicability of the drawback rate ignoring the characteristics and construction of the items; that 'Chair Pads' are being denied the correct rate of drawback under Serial No. 940401 simply because the word 'Cushions' is not appearing in the description given in the invoice/ shipping bill; that the 'Cotton Chair Pads' are also cloth coverings filled with fibre in the nature of 'Cushions' but described in the invoice and shipping bills as 'Chair Pads' to meet the commercial requirement of order placed by buyer; that as per Merriam-Webster dictionary "'Cushion' is a soft pillow or pad used for sitting, reclining, or kneeling"; that, therefore, denial of supplementary claim in respect of 'Chair Pads' was incorrect.

4. Personal hearing in the matter was held, in virtual mode, on 11.01.2013. Sh. Sanjiv Suri, Partner appeared for the Applicant and stated that the goods exported, i.e., Chair

Pads are nothing but 'cushions' with strings attached with which these could be tied to the chair. The chairpads have fillings and are nothing but cushions. Sh. Ajith Kumar, Appraiser stated that the goods were described as 'Chair Pads', which are not covered by the RITC 940401 and, hence, are correctly placed as 'Others'.

5. Government has carefully examined the matter. The question that arises for consideration is whether 'Chair Pads' are to be treated as 'Cushions' for the purposes of drawback under Serial No. 940401A. As already brought out hereinabove, the said serial no., inter-alia, covers 'Cushions'. The original authority has brought out that while 'Chair Pads' are goods with ties which are positioned in chairs by tying whereas 'Cushions' are without ties and are positioned in chairs etc. without any aid. On the other hand, the Applicant has brought out that 'Chair Pads' are nothing but 'Cushions' with ties/strings so as to tie them to the chair. It has also been brought out that as per Merriam-Webster Dictionary 'Cushion' means "a soft pillow or pad usually used for sitting, reclining, or kneeling". The Government also observes that, as per Collins English Dictionary, 'Cushion' means "A cushion is a soft pad or barrier, especially one that protects something" whereas, as per Cambridge Dictionary, 'Cushion' is "a bag made of cloth, plastic, or leather that is filled with soft material, often has an attractive cover, and is used especially on chairs for sitting or leaning on". Thus, it is clear that the 'Cushion' is a soft bag or pad made of cloth etc., which is filled with soft material so as to provide comfort to the person using it. It is pertinent to note that as per Merriam-Webster Dictionary and Collins English Dictionary 'cushion' also includes 'pad'. Only difference that the authorities below have found between the two is that 'Chair Pads' have ties/strings attached whereas 'Cushions' are without ties/strings. The Government is of the opinion that merely because a cushion can be tied, so as to prevent it from slipping, it does not cease to remain a cushion. As such, the Government finds that the orders of lower authorities cannot be sustained.

6. In view of the above, the Revision Application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

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24-B/6, Desh Bandhu Gupta Road,
Dev Nagar, New Delhi-110005.

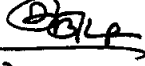
Order No. 05 /23-Cus dated 12-01-2023

Copy to:-

1. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-682009.
2. The Commissioner Customs (Appeals), Custom House, Cochin-9.

3. P.S to A.S (RA)
4. Guard File
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ATTESTED



12.01.2023

(लक्ष्मी कृष्ण)
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Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi