

F.No. 380/07/DBK/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue 29/03/22

Order No. 106/22-Cus dated 29-03-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional 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. KOL/Cus/Port/VKG/49/2020 dated 22.10.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Port), Kolkata

Respondent : M/s Tushar International, Kolkata.

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**ORDER**

A Revision Application No.380/07/DBK/2021 dated 16.03.2021 has been filed by Commissioner of Customs (Port), Kolkata, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/Cus/Port/VKG/49/2020 dated 22.10.2020, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the abovementioned Order-in-Appeal, has allowed the appeal of M/s Tushar International, Kolkata, (herein after referred to as the Respondent) by setting aside Order-in-Original No. KOL/CUS/ADC/93/SIIB/2018 dated 16.03.2018, passed by the Additional Commissioner of Customs, SIIB (Port), Custom House, Kolkata.

2. Brief facts of the case are that the respondent filed 03 Shipping Bills Nos. 5095850 dated 30.03.2017, 5095816 dated 30.03.2017 & 5097116 dated 30.03.2017, under claim of duty drawback for the goods declared as "Cotton Fabrics (woven fabrics containing 85% & more by weight of cotton fibers) under drawback sl. No. 52082190A , Suiting Fabrics (Woven fabrics containing 85% & more by weight of artificial staple fiber) under drawback sl. no. 55169400A, Synthetic Fabrics (Dyed Fabrics) under drawback sl. No. 540702A and Dupatta under drawback sl. No. 621703A". On physical examination of the goods, it was found by the Applicant department that the goods appeared to be of cheap quality and value declared by the Respondent appeared to be on a higher side. Later on, the case was transferred to SIIB branch of the Commissionerate. On examination, representative samples were drawn from the consignments which were sent to Textile Committee to ascertain the composition of the fabrics. Textile Committee, vide their Test Report dated 23.05.2015, certified that no fabrics made of Cotton were found, whereas the Respondent had declared the goods description as Cotton fabric except synthetic fabrics. Accordingly, the classification of the goods was changed from, "Cotton Fabrics (woven fabrics containing 85% & more by weight of cotton fibers)" to drawback sl. No. 551505 for "other woven fabrics of synthetic staple fiber as of polyester staple fibers", from Suiting Fabrics (Woven fabrics containing 85% & more

by weight of artificial staple fiber) to drawback sl. No. 551505 for "other woven fabrics of synthetic staple fiber as of polyester staple fibres", from Synthetic Fabrics (Dyed Fabrics) to drawback sl. No. 551505 for "other woven fabrics of synthetic staple fiber as of polyester staple fibers' and Dupatta under drawback sl. No. 61170299 as of "Other made up clothing accessories, knitted or crocheted". During the course of investigation, the Respondent agreed for a joint market survey and also assured that they will agree on what ever rate will be found in market survey. Accordingly, on the basis of market survey, the average value was accepted by the adjudicating authority for the purpose of finalization of the case. The Respondent also, vide their letter dated 07.12.2017, agreed with value of the goods and also stated that they do not want any show notice. Vide the above said Order-in-Original dated 02.02.2018, the value of exported goods was re-determined as Rs.1,27,24,184/- for drawback purposes, as against the declared value of Rs. 2,55,49,694.05. Penalty of Rs. 25,00,000/- was also imposed on the Applicant under Section 114 AA of the Customs Act. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was allowed.

3. The instant revision application has been filed, mainly, on the grounds that the Commissioner (Appeals) had failed to appreciate that the case against the Respondent was of mis-declaration of description which resulted in the change of classification and over valuation of the goods as the cotton fabric has a higher unit value than polyester fabric.

4. Personal hearing was fixed on 21.02.2022, 11.03.2022 and 25.03.2022. Sh. Ansuman Parasar, Superintendent, appeared for the Applicant department in the hearing held, in virtual mode, on 25.03.2022. Sh. Ansuman Parasar reiterated the contents of the revision application. None appeared for the Respondent on any of the above mentioned dates nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for a decision based on records.

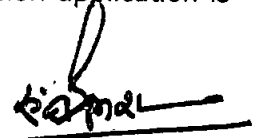
5.1 The Government has examined the matter carefully. The case of the Applicant department is that it was a case of mis-declaration of description of goods which eventually establishes the over valuation of goods. The Commissioner (Appeals) has, on the other hand, addressed the issue of over valuation of goods without taking due cognizance of and, therefore, without addressing the core issue of misdeclaration of description of the goods.

5.2 The Government overserves that no evidence has been placed on record to contradict the Test Report establishing the misdeclaration of description of export goods. As such, misdeclaration of description is conclusively established. In such a case, as permissible under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [the Rules] the inquiries were caused with the exporter, i.e., the Respondent herein, which disclosed that the exporter had not maintained consignment-wise details rather a consolidated ledger account was maintained. As such, the supplies made by the domestic manufacturers to the exporter and, consequently, the value of goods supplied could not be correlated with the value of export goods. In the conspectus of these facts, it cannot be disputed that there was a reasonable doubt about truth and accuracy of the value declared and, as such, it has to be held that the transaction value is deemed to have not been determined in accordance with Rule 3(1) of the Rules. There being misdeclaration of the description of goods, the value cannot be determined in accordance with Rule 4. Rule 5 also cannot be resorted to as due to the manner of account keeping by the exporter, as discussed above, the supplies made by the domestic manufacturers could not be correlated with the export goods. Thus, the value of the goods has to be determined as per Rule 6, i.e., as per the 'residual method'. The department has resorted to market survey to determine the value under 'residual method'. The market survey was done on a joint basis with the exporter, i.e., the Respondent herein and results thereof were accepted in writing as well as in his statement by the Respondent. It is also to be observed that the Applicant had sought waiver from show cause notice and personal hearing at the stage of adjudication of the case by the original authority, which also clearly exhibits

that the respondent had no grounds to contradict the department's case. As such, it is evident that the admission in respect of the value determined was a well considered decision of the Respondent. It is also evident that the Respondent has participated in the investigations and had an effective say during the investigations. Further, the Respondent during the investigations had not submitted any cost data to justify the correctness of the declared value.

5.3 In the facts and circumstances of the case and legal position, as above, no fault can, therefore, be found with the redetermination of value by the original authority on the basis of the joint market survey and it has to be held that Commissioner (Appeals) has incorrectly interfered in the case by completely misdirecting himself.

6. The impugned OIA is, accordingly, set aside and the revision application is allowed.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs (Port),  
15/1 Strand Road, Custom House,  
Kolkata - 700001.

Order No. 106/22-Cus dated 29-03-2022

Copy to:

1. M/s Tushar International , 8/1, Bal Mukund Macker Road, Kolkata – 700007
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. PS to AS(RA)
4. Guard File.
5. Spare Copy

Attested



(Lakshmi Raghavan)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

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**சென்னை மாநகராட்சி**  
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