

**SPEED POST**



F. No. 373/127-129/DBK/2018-R.A.  
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 14/03/23

Order No. 93-95 / 23-Cus dated 14-03-2023 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. 981-983/2017 dated 30.11.2017, passed by the Commissioner of Customs (Appeals), Bengaluru.

**APPLICANT :**

1. M/s Buildmet Fibres Pvt. Ltd., Bengaluru.
2. Sh. S. Ramakrishnan, Managing Director, M/s Buildmet Fibres Pvt. Ltd.
3. Sh. Udai Raj, Finance Manager, M/s Buildmet Fibres Pvt. Ltd.

**RESPONDENT :** The Commissioner of Customs, City Customs, Bengaluru.

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**ORDER**

Three Revision Applications, bearing Nos. 373/127-129/DBK/2018-RA all dated 13.03.2018, have been filed by M/s Buildmet Fibers Pvt. Ltd, Bengaluru (hereinafter referred to as the Applicant-1), Sh. S. Ramakrishnan, Managing Director, M/s Buildmet Fibres Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant-2 ) and Sh. Udairaj, Finance Manager, M/s Buildmet Fibres Pvt. Ltd., Bengaluru (hereinafter referred to as the Applicant-3), against the Order-in-Appeal No. 981-983/2017 dated 30.11.2017, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 623/2015 dated 27.08.2015, passed by the Additional Commissioner of Customs, ICD Whitefield, Bengaluru.

2. Brief facts of the case are that the Applicant-1 had claimed drawback in respect of 04 Shipping Bills, filed during September 2011 - October 2011, for the goods exported, i.e., Flexible Intermediate Bulk Containers (FIBC)/Bulk Containers Liners items, under SL. No. 630502 A of the Drawback Schedule, and received the drawback accordingly. Subsequently, on scrutiny, it was found that the Applicant-1 in collusion with other Applicants had wrongly classified the items exported under DBK Schedule 630502A instead of 3923000099 as all items made of plastic shall be classifiable under the CTH 3923, as mentioned in the Board's Circular No. 42 -Cus dated 22.09.2011. Accordingly, show cause notice was issued to Applicant-1 to show cause as to why the excess paid drawback along with applicable rate of interest should not be demanded and recovered in terms of Section 75 of the Customs Act, 1962, and rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Further, as to why the penalty should not be imposed on all the Applicants under Section 114 and Section 114AA of the Customs Act, 1962. Additional Commissioner of Customs, ICD, Whitefield, Bengaluru, vide the above mentioned Order-in-Original, ordered that the items exported shall be classified under DBK Schedule Sl. No. 3923000099 and not under DBK Schedule 6305 and also confirmed the recovery of the erroneously excess paid drawback amount of Rs. 4,10,637/-. Further, penalty of Rs. 6,00,000/- was imposed on the Applicant-1 under Section 114 of the Customs Act, 1962 and penalties of Rs. 7,00,000/- each were imposed on the Applicant-2 and Applicant-3, respectively, under Section 114 and Section 114 AA of the Customs Act, 1962. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected.

3. The revision application has been filed, mainly, on the grounds that the item exported is rightly classifiable under CTH 6305 and not under CTH 3923 as the DGFT, vide their Order dated 25.07.2013, had clarified that the FIBC are rightly classifiable under ITC(HS) Code 63; that the penalty imposed on the Applicants are not warranted as the goods exported were rightly classifiable under CTH 6305.

4. Personal hearing in the matter was held on 13.03.2023, in virtual mode. Sh. Ramesh Ananthan, Advocate, appeared for the Applicants and requested that the written submissions dated 10.03.2023 may be taken on record. He reiterated the contents of the revision applications and the written submissions dated 10.03.2023. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. It is observed that the Board, vide Circular No. 42/2011-Cus dated 22.09.2011, issued in consequence to the revised All Industry Rates of Duty Drawback 2011-12, notified vide Notification No. 68/2011-Cus (N.T.) dated 22.09.2011, has in Para 13 clarified that *"FIBC which are made of manmade textile material would be classifiable under drawback tariff item 630502. FIBCs which are big or bulk bags or super sacks made of polymers of ethylene and other plastic material would however, be classifiable under Chapter 39 of the drawback schedule."* Thus, it has been unequivocally clarified that only those FIBC, which are made of manmade textile material would be classifiable under drawback tariff item 630502 whereas the FIBC, made of polymer of ethylene and other plastic material would fall under Chapter 39 of the Drawback Schedule. In the present case, there is no dispute that the FIBCs exported were made out of polyethylene and polypropylene granules, Master Batch, UV stabiliser, LDPE and LLDPE granules. Further, the original authority has also pointed out that a specific entry no. "3923909001 Flexible Intermediate Bulk Containers" had been inserted in the Drawback Schedule by virtue of notification no. 75/2011-Cus (NT) dated 28.10.2011. The Government observes that out of the four shipments involved herein, the one covered by Shipping Bill No. 6025948 dated 28.10.2011 is made when this specific entry had been introduced in the Drawback Schedule. Therefore, in respect of this shipment there can be no manner of doubt that the drawback would be payable in this case under 3923909001. Other shipments are also squarely covered by the clarification issued by the Board.

5.2 The Government observes that the contemporaneous exposition of law is a well recognised principle of interpretation of statutes. Hon'ble Supreme Court has, in the case of Collector of Central Excise, Guntur vs. Andhra Sugar Ltd. {1988 (38) ELT 564 (SC)}, held that *"It is well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment."* In the case of *Oswal Agro Mills Ltd. vs. Collector of Central Excise* {1993 (66) ELT 37 (SC)}, the Hon'ble Supreme Court has observed that *"But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly persuasive."* Similarly, in the case of *Indian Metal & Ferro Alloys Ltd.* {1991 (51) ELT 165 (SC)}, Hon'ble Supreme Court has held that *"a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of expressions used in a statutory instrument."* Similar observations have been made by the Hon'ble Allahabad High Court in the case of *Shahnaz Ayurvedics vs. Commissioner of Central Excise* {2014 (173) ELT 337 (All.)} wherein the Hon'ble High Court has held that *"Circulars of the Board are binding on the Tax department, they are in the nature of contemporaneous exposition furnishing legitimate aid to the construction to the relevant provisions."* Thus, the Government finds that in interpreting the entries in the Drawback Schedule, the contemporaneous clarification issued by the Board should be followed.

5.3 The Applicants have, however, disputed the view taken by the authorities below on the basis of DGFT's order indicating that the correct classification of the FIBC is under ITC(HS) code 63 and not under ITC (HS) code 39. The Government, however, observes that DGFT's clarifications are applicable in respect of the schemes administered by them and not in respect of Drawback Scheme, which is administered by the CBIC.

5.4 The decisions of Hon'ble Madras High Court and CESTAT in the case of Karur KCP Packagings Pvt. Ltd. as reported in 2015 (317) ELT453 (Mad.) and 2016 (331) ELT 604 (Tri-Chennai) have also been relied upon. The Government, however, observes that the decision of Hon'ble Madras High Court relates to drawback claims for the period from 18.02.2010 to 24.09.2010 whereas the period involved in the case before CESTAT related to 2008-2009 and 2009-10. In the present case, on the other hand, the period involved is September-October 2011. Thus, the aforesaid decisions have no applicability in the facts of the present case, as these decisions pertain to a period when earlier Drawback Schedules were effective.

5.5 In view of the above, there is no doubt that the items exported i.e., FIBC are rightly classifiable under Heading 3923 of the Drawback Schedule and not under Heading 6305.

5.6 However, keeping in view the facts and circumstances of the case, and specifically the nature of dispute involved, the penalties imposed on the Applicants herein are reduced from Rs. 6,00,000/- to Rs. 40,000/-, in the case of Applicant-1; and from Rs. 7,00,000/- each to Rs. 45,000/- each, in the case of Applicant -2 and 3.

6. The revision applications are, accordingly, rejected, except to the extent of reduction in penalties imposed as indicated in para 5.6 above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s Buildmet Fibres Pvt. Ltd.  
No. 42, Industrial Area,  
Doddaballapur,  
Bengaluru Rural-560052.
2. Sh. S. Ramakrishnan, Managing Director  
M/s Buildmet Fibres Pvt. Ltd.  
No. 42, Industrial Area,  
Doddaballapur,  
Bengaluru Rural-560052.
3. Sh. Udairaj, Finance Manager,  
M/s Buildmet Fibres Pvt. Ltd.  
No. 42, Industrial Area,  
Doddaballapur,  
Bengaluru Rural-560052.

Order No. 93-95/23-Cus dated 14-03-2023

Copy to: -

1. The Commissioner of Customs, City Customs, C.R. Building, Queen's Road, P.B. No. 5400, Bengaluru-560001.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
3. Sh. Ramesh Ananthan, Advocate, 586, 44<sup>th</sup> Cross, Jayanagar 8<sup>th</sup> Block, Bengaluru-560082.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



14.03.2023

(लक्ष्मी राघवन)

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