

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76325 of 2025

(Arising out of Order-in-Appeal Nos. KOL/CUS/PORT/KS/155-156/2025 dated 11.04.2025 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Lucky Goldstar Co. Limited : Appellant
19, R.N. Mukherjee Road,
Kolkata – 700 001

VERSUS

Commissioner of Customs (Airport & Admn.) : Respondent
Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 76326 of 2025

(Arising out of Order-in-Appeal Nos. KOL/CUS/PORT/KS/155-156/2025 dated 11.04.2025 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Manoranjan Mondal, Director, : Appellant
M/s. Lucky Goldstar Co. Limited
19, R.N. Mukherjee Road,
Kolkata – 700 001

VERSUS

Commissioner of Customs (Airport & Admn.) : Respondent
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Amit Kumar, Advocate,
For the Appellant(s)

Shri Subrata Debnath, Authorized Representative,
Shri Sameer Chitkara, Authorized Representative,
For the Respondent

CORAM:

HON’BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77526-77527 / 2025

DATE OF HEARING: 26.09.2025

DATE OF DECISION: 14.10.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeals have been filed by M/s. Lucky Goldstar Co. Limited and its Director, Shri Manoranjan Mondal against the Order-in-Appeal Nos. KOL/CUS/PORT/KS/155-156/2025 dated 11.04.2025 whereby the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001 has upheld the Order-in-Original No. 19/2019 ADC dated 20.02.2019.

1.1. The facts of the case are that M/s Eastern Silk Industries Ltd. (herein after referred as ESIL) having its unit at Falta Special Economic Zone, Falta, 24 Parganas (South), West Bengal were engaged in export of silk fabrics through Kolkata. Intelligence gathered by the officers indicated that ESIL has been exporting the goods by mis-declaring its description and value to avail higher duty drawback by the DTA supplier, i.e. M/s Lucky Goldstar Co. Ltd. (hereinafter referred to as the “appellant”/ “company”) which belongs to the same group of companies. The information further indicated that twenty one (21) shipping bills for export of such fabrics were filed by M/s Eastern Silk Industries Ltd. and the goods were stuffed in three containers having Numbers SIKU 2973668, CRXU 3339803 and RFCU 2009614 for export through N.S. Dock, Kolkata. The Custom House Agent for the export consignments of the said 21 shipping bills was M/s Continental Carriers Pvt. Ltd. The details of the impugned consignments are as under: -

Shipping Bill No.	Date	Declared item	Declared price per mtr.	Container No.
6004909 to 6004916 (SEA) FSEZ	10-02-2011	Natural Fabrics Silk	US\$ 29.65, Rs.1,335.00	CRXU – 3339803
6004917 to 6004924 (SEA) FSEZ	10-02-2011	Natural Fabrics Silk	US\$ 27.75, Rs.1,250.14	RFCU – 209614
6004961 to 6004965 (SEA) FSEZ	11-02-2011	Natural Fabrics Silk	US\$ 25.40 Rs.1,144,27	SIKU – 2973668

1.2. On the basis of the said intelligence, search of the office premises of ESIL was conducted on 18.02.2011. On search, documents related to procurement of fabrics by ESIL at Falta SEZ under the cover of bills of export were recovered and seized under section 110 of the Customs Act, 1962. The enquiry was also caused on 18.02.2011 at the premises of ESIL at Falta SEZ.

1.3. During the course of enquiry, statement of Shri A. K. Kanji, Manager and In-charge of the unit of M/s Eastern Silk Industries Ltd. (ESIL) at Falta SEZ was recorded under Section 108 of the Customs Act, 1962. In his statement dated 18.02.2011 he stated *inter alia* that they used to maintain records for all Incoming and outgoing goods in their unit; that the incoming and outgoing registers were not updated since 03.02 2011 and August 2010 respectively; that they were also maintaining stock register of the goods where details of all the incoming and outgoing goods were recorded; that the said stock register did not reflect the names of the DTA suppliers but invoice numbers

of the DTA suppliers were recorded there; that the invoice number starting with the Code No.072 indicated that the DTA supplier was M/s Lucky Goldstar Co. Ltd. and the invoices starting with the code No.0121 were issued by M/s Eastern Silk Industries Ltd; that similarly, the invoice number starting with the code No.092 and 042 were issued by M/s Ethics Commercial Ltd and M/s P.K Textiles Ltd, respectively. Shri A. K. Kanji submitted that the DTA suppliers were the sister companies of M/s Eastern Silk Industries Ltd. and the DTA suppliers were being identified by the code numbers as mentioned in the invoices and incorporated in the stock register. He tendered the current stock register being maintained by them and stated that only checking, counting and packing were done in respect of the export goods in question. He also submitted that they were manufacturing curtains, design covers, etc. He was asked whether payment to the above DTA suppliers were made, to which he replied that it was done from the head office at 19, R. N. Mukherjee Road, Kolkata – 700 001.

1.4. The statement of She G. L. Mishra of M/s Eastern Silk Industries Ltd. (ESIL) was recorded on 18.02.2011 under section 108 of the Customs Act, 1962 wherein he *inter alia* stated that he was working as an executive in M/s Eastern Silk Industries Ltd.; that he was looking after direct tax, Income Tax matters. He was asked to provide details of the procurement made by the DTA supplier along with the payment particulars for the said procurement in respect of the export consignments intercepted by DRI to which he replied that the same would be in 2-3 days Subsequently, on 24.02.2011 he submitted copies of the bills of export along with the relevant

invoices issued by M/s Lucky Goldstar Co. Ltd. in respect of supply of the goods to M/s Eastern Silk Industries Ltd. at Falta SEZ which were attempted to be exported through NS. Dock, Kolkata under the cover of Shipping Bills No.6004909) (SEA) FSEZ 5004921 (SEA) FSEZ all dated 10-02-11 and 6004961 (SEA) FSEZ to 6004965 (SEA) FSEZ all dated 11-02-11. He also submitted the statement showing the goods attempted to be exported to Hong Kong and Canada by M/s Eastern Silk Industries Ltd. along with the copies of the shipping bills and the relevant invoices. He further submitted names and address of the Directors both M/s Eastern Silk Industries Ltd. and M/s Lucky Goldstar Company Ltd.

1.5. The examination of the aforesaid documents revealed that the goods attempted to be exported by M/s Eastern Silk Industries Ltd. under the cover of Shipping Bills No.600/1909 (SEA) FSE7, to 6004924 (SEA) FSEZ all dated 10.02.2011 and 6004961 (SEA) FSEZ to 6004965 (SEA) FSEZ) all dated 11.02.2011 through N.S. Dock, Kolkata were obtained from M/s. Lucky Goldstar Co. Ltd. (DTA supplier and sister unit of M/s Eastern Silk Industries Ltd.) under the cover of six (6) bills of export under claim of duty drawback collectively Rs.51,97,134.00.

1.6. On examination of the said bills of export, it was found that the appellant claimed duty drawback @ Rs.330.00 per Kg. as 'Silk fabrics containing 85% or more by weight of silk or of silk waste other than Noil Silk', under Tariff item 500701 of the drawback schedule and had also claimed classification of the said goods under Chapter Sub-heading No. 5007 2090 of Export Tariff i.e., Schedule - II to the Customs Tariff Act, 1975.

1.7. ESIL vide letter dated 01.03.11 was requested to make necessary arrangement for examination of the consignments at N.S. Dock, Kolkata which were attempted to be exported to Hong Kong and Canada under the cover of Shipping Bills No.6004909 (SEA) FSEZ to 6004924 (SEA) FSEZ all dated 10.02.2011 and 6004961 (SEA) FSEZ to 6004965(SEA) FSEZ all dated 11.02.2011. The aforesaid export consignments were examined on 04.03.2011 by the officers of Customs in presence of the officers of DRI, the Custom House Agent and two independent witnesses. On examination, the goods were found to be silk fabrics of different shades in rolls packed in cartons which were wrapped with HDPE woven sacks. Representative samples were drawn for further investigation.

1.8. Three samples drawn from each of the three containers, viz. No. CRXU 3339803, RFCU 2009014 and SIKU 2973668, consignees being M/s Cathay Silk Ltd., M/s Glamour Textile Ltd. and M/s Tiffany Textile Ltd. respectively, were forwarded to the Central Silk Board, Kolkata vide letter under DRI F No.10/KOL/APP/2011/871 dated 09.03.2011 for testing and to ascertain its constituents by weight, nature of the fabrics, its specification etc. Central Silk Board. Another three samples drawn from each of the three containers were forwarded to the Central Silk Technological Research Institute, Central Silk Board under the Ministry of Textiles, Government of India at Bangalore under the cover of letter under DRI F No.10/KOL/APP/2011/1221 dated 06.04.2011 for similar test. The Central Silk Technological Research Institute, Bangalore vide letter No. CSB/CSTRI/Report/Custom/TTL/10-11 dated 05.05.2011 forwarded the result of which was found

to be similar to that received from the Central Silk board, Kolkata vide letter no. CSB/RO/KOL/4/2010-2011/EPS Vol-III dated 11.03.2011.

1.9. On the basis of the Test Reports received, it is alleged by the Revenue that the fabrics attempted to be exported by M/s Eastern Silk Industries Ltd. (ESIL) from Special Economic Zone at Falta under the cover of Shipping Bills No.6004961 (SEA) FSEZ to 6004965 (SEA) FSEZ all dated 11.02.2011 and stuffed in container No. SIKU 273668 which were obtained from the DTA supplier, i.e. M/s Lucky Goldstar Co. Ltd. under the cover of Bills of Export No.3869 DTA(Claim) FSEZ and 3870 DTA(Claim)FSEZ both dated 05.07.2011 contained 100% 'Noil Silk Yarn' by weight. The fabrics stuffed in other two containers i.e., CRXU 3339803 and RFCU 2009614 contained 100% 'Mulberry Silk yarn' by weight as per the test reports.

2. M/s. Ben St Industries Ltd. vide letter dated 16.03.2011 informed that the overseas buyers have cancelled the export orders and therefore, they wanted to take back the impugned three containers to Special Economic Zone at Falta for destuffing and storage of the goods under export in their premises at Falta. Their request was considered and the goods attempted to be exported was allowed for storage in any Bonded Warehouse at Kolkata instead of premises at Falta SEZ and was communicated vide letter dated 17-03-2011. Subsequent response to another letter dated 06-04-11, M/s Eastern Silk Industries Ltd. were allowed for de-stuffing of the cargo from impugned three containers in their godown at Falta SEZ for storage. The containers No. CRXU 3339803, RFCU 2009614 and SIKU 2973668 were accordingly sent

back to Falta SEZ by M/s Eastern Silk Industries Ltd. and were de-stuffed on 20.05.2011.

3. The investigation conducted revealed that the appellant got the goods manufactured by the job workers / weavers from Bangalore. The investigation revealed that mulberry raw silk was imported and were supplied to the different weavers at Bangalore and the fabrics produced out of the said mulberry raw silk were supplied to M/s Eastern Silk Industries Ltd. for export.

3.1. The classification of a product under Customs Tariff is done based on the basis of physical and chemical characteristics, its nature and composition, its end-use, etc. Fabrics made of 100% Noil Silk yarn are classifiable under Chapter Sub-heading No 5007 1000 of Customs Tariff. Test of samples drawn from the consignments attempted to be exported vide Shipping Bills No.6004961 (SEA) FSEZ to 6004965 (SEA) FSEZ all dated 11.02.2011 by M/s Eastern Silk Industries Ltd. indicated that the silk fabrics contained 100% Noil Silk Yarn by weight. It therefore, appeared to the Revenue that the said fabrics merit classification under Chapter Sub-heading No.5007 1000 of Customs Tariff instead of Chapter Sub-heading No.5007 2090 as declared. Consequently, the said silk fabrics which were obtained from M/s Lucky Goldstar Co. Ltd. under the cover of Bills of Export No.3869 DTA (Claim) FSEZ and 3870 DTA (Claim) FSEZ both dated 05-02-2011 in Falta SEZ appeared to merit classification under Chapter Sub-heading No.5007 1000.

3.2. On the basis of the investigation, the Additional Director, DRI, Kolkata Zonal Unit, 8, Ho Chi Minh Sarani, Kolkata – 700 071 issued a Show Cause Notice, asking the appellants to show cause as to why:-

“i) The consignments attempted to be exported under the cover of five (5) Shipping Bills) through N. S. Dock, Kolkata by M/s Eastern Silk Industries Ltd, as mentioned in Annexure A which were supplied in FSEZ by M/s Lucky Goldstar Co. Ltd. under the cover of two (2) Bills of Export as mentioned in Annexure-B under duty drawback declared value being collectively Rs.2,14,11,423.00 and Rs.1,64,65,608.80 respectively detained and presently in the custody of M/s Eastern Silk Industries Ltd. at Falta SEZ should not be held liable to confiscation under section 113 (d) & 113 (i)(ii) of the Customs Act, 1962 and consequently duty drawback claim of Rs. 15,60,966.00 in respect of the supply of silk fabrics in FSEZ vide Bills of Export No.3869 DTA (Claim) FSEZO and 3870 DTA (Claim) FSEZ both dated 05-02-2011 by M/s Lucky Goldstar Co. Ltd. should not be disallowed on the grounds us discussed hereinbefore;

ii) The goods attempted to be exported under the cover of five (5) Shipping Bills through N. S. Dock, Kolkata by M/s Eastern Silk Industries Ltd. as mentioned in Annexure- A which were supplied in FSEZ by M/s Lucky Goldstar Co. Ltd. under the cover of two (2) Bills of Export as mentioned in Annexure-B should not be classified under Chapter Sub-heading No.5007

1000. of Customs Tariff instead of Chapter Sub-heading No.5007 2090 as declared, on the grounds as discussed hereinbefore;

iii) The declared value being collectively Rs 2,14,11,423.00 in respect of the consignments attempted to be exported under the cover of five (5) Shipping Bills through N. S. Dock, Kolkata by M/s Eastern Silk Industries Ltd. as mentioned in Annexure- A which were supplied in FSEZ by M/s Lucky Goldstar Co. Ltd. under the cover of two (2) Bills of Export as mentioned in Annexure-B declared value being collectively Rs. 1,64,65,608,80 should not be rejected under Rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determined at Rs.39,36,114.00 and Rs.35,42,502.60 respectively on the grounds as discussed hereinbefore;

iv) Penalty under Section 114 shall not be imposed on M/s Eastern Silk Industries Ltd., M/s Lucky Goldstar Co. Ltd., M/s Continental Carriers Pvt. Ltd. (Custom House Agent), Shri Shyam Sundar Shah and Shri Monoranjan Mondal for their omission and commission which rendered the goods liable to confiscation under Section 113 (d) & 113 (i)(if) of the Customs Act, 1962."

4. The said notice was adjudicated vide Order-in-Original No. 19/2019 ADC dated 20.02.2019, wherein the Id. adjudicating authority has ordered confiscation of the goods attempted to be exported under the cover of five (5) Shipping Bills Nos. 6004961 (SEA)

FSEZ to 6004965 (SEA) FSEZ through N.S. Dock, Kolkata by ESIL which were supplied in FSEZ by M/s. Lucky Goldstar Co. Ltd. under two (2) Bills of Export Nos. 3869 DTA (Claim) FSEZ and 3870 DTA (Claim) FSEZ and disallowed the drawback claim of Rs.15,60,966.00/- in respect of supply of silk fabrics in FSEZ vide the said Bills of Export by M/s. Lucky Goldstar Co. Ltd. The Id. adjudicating authority also classified the goods exported under the five (5) Shipping Bills under Chapter Sub-Heading No. 5007 1000 of the Customs Tariff as against the Chapter Sub-Heading No. 5007 2090 as declared. The declared value in respect of the consignments attempted to be exported under the cover of five (5) Shipping Bills through N.S. Dock, Kolkata was rejected under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determined under Rule 6 of the said Rules. Separate penalties under Section 114 of the Customs Act, 1962 were also imposed on M/s. Lucky Goldstar Co. Ltd. as well as their Director, Shri Manoranjan Mondal, amongst others.

4.1. The appellants challenged the above adjudication order before the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001, who vide the impugned order dated 11.04.2025 has rejected the appeals filed before him.

4.2. Aggrieved, the appellants have filed the instant appeals before this Tribunal.

5. The Ld. Counsel appearing on behalf of the appellant(s) has inter alia made the following submissions: -

- (i) It is established from the case records that M/s Lucky Goldstar Co. Ltd (LGCL) supplied the imported natural silk, i.e., Mulberry Silk yarn to different weavers, at Bangalore who after processing the said yarn into fabrics against processing charges returned the same to M/s LGCL. After receiving the said Silk Fabrics M/s. LGCL supplied 79356.9 metre of Natural Silk Fabrics to M/s. Eastern Silk Industries Ltd. (SEZ Unit) against the Bills of Exports. The whole operation of procurement of Silk Fabric and exportation of the same to SEZ Unit has been done by the Officers of M/s LGCL at Bangaluru office where two Directors, namely Shri Gourav Surekha and Shri Dilip Rajkumar Shah were there to supervise the export process. The goods were duly examined by the Customs Officer (Authorized Officer during supply to SEZ unit and after being satisfied with the declaration the goods were allowed entry into the unit. The appellant, Shri Manoranjan Mondal is sitting in the registered office at 19, R. N. Mukherjee Road, Kolkata - 700001, and he had no knowledge about the day-to-day function of the factory of M/s. LGCL at Bangaluru. Therefore, the appellant cannot be charged for mis-declaration of description of the goods against impugned 5 shipping bills at later stage and that too, without ascribing any role of him and without citing any evidence showing that he had knowledge about the mis-declaration of the goods.

- (ii) Under the above circumstances, penalty of Rs. 1 Crore each as imposed under Sec. 114 of Customs Act, 1962 on the appellants is not warranted. The same has been imposed mechanically without considering the facts of the case. In support of this contention, the appellant relied on the decision in the case of *Surya Food & Agro Ltd. vs. Commissioner Of Central Excise, Lucknow [2010 (251) E.L.T. 292 (Tri. Del.)]*.
- (iii) There is no evidence establishing that the goods intended for export under impugned 5 shipping bills are the same which were supplied by M/s. LGCL under Bill of Exports No.3889 DTA(Claim)FSEZ and 3870 DTA(Claim)FSEZ both dated 05.02.2011. Since the identity has not been established, the appellant cannot be held responsible for such mis- declaration, if any. Further, for getting full proof clarification for this matter, Investigating Officers could call the directors, namely, Shri Gourav Surekha and Shri Dilip Rajkumar Shah as they were sitting at Bangaluru office and supervised the export of the goods to M/s Eastern Silk Industries Ltd. (SEZ Unit).
- (iv) It has not been clarified whether samples were drawn from all the consignments covering the 5 records available in the Show Cause Notice, it is seen that sample was drawn only from consignment covered under Shipping Bill No 6004965 (SEA) FSEZ dated 11.02.2011. for test. It clearly shows that out of 5 Shipping Bills which were stuffed in the container no SIKU 2973668 only goods of 1 Shipping Bill were

examined and samples were drawn for test. Therefore, it is a matter of doubt whether all the goods stuffed in the container SIKU 2973668 were Noil Silk as stated in the Show Cause Notice as well as the Order-in-Original.

- (v) In any case, it is clear that the appellant, Shri Manoranjan Mondal had no knowledge and no role to play in this matter and Department also could not make out any case against the said appellant with some corroborative evidence. Hence, the adjudicating authority cannot penalize the appellant, Shri Manoranjan Mondal under Sec. 114 of Customs Act, 1962 as it is ordered in the impugned Order-in-Original.
- (vi) There is no dispute to the fact that M/s. Lucky Goldstar Co. Ltd. accepted the entire goods returned by the weavers after processing on good faith and the said goods were supplied to M/s. Eastern Silk Industries Ltd. as DTA Supply. Thus, even assuming but not admitting that such goods were actually the same which were supplied vide referred 2 Bills of Export, the appellant had no role in mis-declaring the said goods. The investigating authority has unnecessarily dragged the appellant without any evidence or reason.
- (vii) Though DRI interrogated several persons, nobody deposed that the appellant was having the knowledge of fraudulent exports rather, everybody has stated that only MD Shyam Sundar Shah had the knowledge of everything. However, Shri. Shah has already expired and at this stage, it is difficult to verify the matter. However, from the above factual position, it

clearly established that the appellant had no role in the present matter for which he has been unnecessarily penalized.

- (viii) There is no dispute to the fact that M/s. Lucky Goldstar Co Ltd. imported Silk Yarn and supplied the same to different weavers of Bangaluru for manufacturing silk fabric. It is also un-disputed fact that the said weavers manufactured silk fabric and return the same to the company after completion of job work. The appellant's company supplied the said fabric as DTA supply to M/s. Eastern Silk Industries Pvt. Ltd. against 6 Bills of Export, goods of which was examined by the Custom Authority before allowing entry to the SEZ Unit. The above-mentioned facts are established on the basis of the documents submitted to the Investigating Officer.
- (ix) Reliance has also been placed on the decision in the case of *Mahajan Fabrics Private Limited vs. Principal Commissioner of Customs (Export) as reported in 2025(5) TMI 1376 – CESTAT, New Delhi* wherein it was alleged that readymade garments were overvalued in order to claim excess drawback.

5.1. In view of these submissions, the Ld. Counsel appearing for the appellants prayed for setting aside the penalties imposed on all the appellants and allowing the present appeals.

6. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us has reiterated the findings in the impugned order.

7. Heard both sides and perused the records.

8. From the facts of the case, we observe that the first issue to be decided in the appeal is whether the goods exported under the impugned Shipping Bills in question were correctly classified or not. We find that the appellant, M/s. Lucky Goldstar Co. Ltd., has classified the impugned goods under the CTH 5007 2090 (Silk Fabrics with 85% or more silk, excluding Noil Silk), However, the lower authorities have classified the sad goods under the CTH 5007 1000 (Noil Silk Fabrics) . For the sake of ready reference, the relevant Tariff headings as mentioned in the Customs Tariff are reproduced below:

5007	Woven fabrics of silk or of silk waste
5007 10 00	- Fabrics of noil silk
5007 20	- <i>Other fabrics, containing 85% or more by weight of silk or of silk waste other than noil silk:</i>
5007 20 10	--- Sarees
5007 20 90	--- Other

8.1. From the above, we observe that the impugned goods are classifiable under the CTH 5007 1000 only if they are made of fabrics of 'Noil Silk' only. In this regard, we have verified the Test Reports received by the Department from the Central Silk Board, Kolkata and the Central Silk Technological Research Institute, Bangalore. For ready reference, the said reports have been extracted below:

Test Report by Central Silk Board, Kolkata:

Shipping Bill No. & Date	Constituent Yarns & % by weight		Percentage of Constituents	Weight per Sq. metre (GSM)
	Warp	Weft		
6004965 (SEA)/FSEZ date 11.02.11	Noil (51.8 %)	Noil (48.2%)	Noil Silk: 100% Natural Silk: 100 %	157.03 gms.
6004917 (SEA)/FSEZ date 10.02.11	MRS (34.9%)	MRS (65.1%)	MRS: 100% Natural Silk: 100%	113.65 gms.
6004910 (SEA)/FSEZ date 10.02.11	MRS (37.1%)	MRS (62.9%)	MRS: 100% Natural Silk: 100%	113.73 gms

Test Report by Central Silk Technological Research Institute, Bangalore:

Shipping Bill No. & Date	Constituent Yarns		Percentage of constituents (by weight)	Nature of fabrics
	Warp	Weft		
6004965 (SEA)/FSEZ date 11.02.11	Noil Silk Yarn	Noil Silk Yarn	Noil Silk Yarn: 100%	Silk fabric
6004917 (SEA)/FSEZ date 10.02.11	Mulberry Reeled Silk	Mulberry Reeled Silk	Mulberry Reeled Silk: 100%	Silk fabric
6004910 (SEA)/FSEZ date 10.02.11	Mulberry Reeled Silk	Mulberry Reeled Silk	Mulberry Reeled Silk: 100%	Silk fabric

8.2. A perusal of the Test Report received from Central Silk Board reveals the following:

- (i) In respect of the goods pertaining to the Shipping Bill No. 6004965 (SEA) FSEZ the weight of Warp and Weft yarn used are 51.8% and 48.2% of Noil Yarn respectively.
- (ii) In respect of the goods pertaining to the Shipping Bill No. 6004917 (SEA) FSEZ the weight of Warp and Weft yarn used are 34.9% and 65.1% of Mulberry Reeled Silk (MRS) Yarn respectively.
- (iii) In respect of the goods pertaining to the Shipping Bill No. 6004910 (SEA) FSEZ the weight of Warp and Weft yarn used are 37.1% and 62.9% of Mulberry Reed Silk (MRS) Yarn respectively.

8.3. A perusal of the Test Report received from Central Silk Technological Research Institute, Bangalore, reveals the following:

- (i) In respect of the goods pertaining to the Shipping Bill No. 6004965 (SEA) FSEZ the weight of Warp and Weft yarn used are 100% of Noil Yarn.
- (ii) In respect of the goods pertaining to the Shipping Bill No. 6004917 (SEA) FSEZ the weight of Warp and Weft yarn used are 100% of Mulberry Reed Silk Yarn.
- (iii) In respect of the goods pertaining to the the Shipping Bill No. 6004910 (SEA) FSEZ the weight of Warp and Weft yarn used are 100% of Mulberry Reed Silk Yarn.

9. From the two Test reports reproduced above, we find that the findings totally differ in these two reports. In the Test Report received from Central Silk Board, the goods in question (for which sample has been drawn from Shipping Bill No. 6004965 (SEA) FSEZ dated 11.02.2011) were found to be having "Constituent Yarn & % by weight" of 51.8% and 48.2% of Noil for the Warp and Weft yarns respectively. A perusal of the Test Report received from Central Silk Technological Research Institute, Bangalore however indicates that only said goods, as per the samples drawn from Shipping Bill No. 6004965, is made up of 100% Noil fabrics "by weight". As this report differs totally from the test report received from Central Silk Board, we cannot conclude that the goods attempted to be exported in the said container is made up of 100% of Noil Yarn based on the said reports. We note the impugned

goods would be classifiable under the CTH 5007 1000 only if they are made of fabrics of Noil Silk only i.e., 100% Noil Silk Yarn, as also admitted by the adjudicating authority under paragraph 21(i) of the Order-in-Original. It is evident from the Test report received from Central Silk Board, Kolkata that none of the fabrics attempted to be exported under the impugned consignment are made of 100% Noil fabrics 'by weight'. In view of contradictory Test Reports as to percentage of yarn 'by weight', it cannot be presumed that the presence of Noil Silk by weight is '100%' for the goods in question so as to warrant classification under CTH 5007 1000. Thus, we find that Test Reports available before us fail to conclusively establish the presence of 100% 'Noil Silk Yarn' in the impugned goods. Consequently, we hold that the re-classification of the impugned goods under the CTH 5007 1000, by the lower authorities, is not sustainable. We observe that the report of CSTRI, Bangalore has not indicated the weight of yarn in the fabric. As weight of the yarn is the primary criteria required for classification of the fabric, we find that the Test Report of CSTRI, Bangalore is not of much help. Consequently, on the basis of the Test Report received from Silk Board, we hold that the re-classification of the impugned goods under the CTH 5007 1000, by the lower authorities, is not sustainable.

9.1. Regarding the classification of the goods under the CTH 5007 2090, as claimed by the appellant, we observe that the goods are classifiable under the CTH 5007 2090, if they contain 85% or more by weight of silk or silk waste other than Noil Silk. We find that both the Test Reports are not conclusively revealing this information, as already observed hereinabove.

Accordingly, we do not find any material evidence available on record to reject the classification of the impugned goods under the CTH 5007 2090, as adopted by the appellants. As re-classification of the impugned goods under the CTH 5007 1000, by the lower authorities, is not sustainable, we hold that no mis-declaration can be alleged against the appellants.

10. Since the allegation of mis-declaration against the appellants in the impugned order is not sustainable, we hold that no penalty is imposable on the appellants on account of mis-declaration.

11. The next issue to be decided is whether the declared value of the goods is acceptable or was it correctly rejected and redetermined by the lower authorities under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. We observe that a collective value of Rs 2,14,11,423.00/- was declared in respect of the consignments attempted to be exported under the cover of five (5) Shipping Bills by ESIL which were supplied in FSEZ by the appellant under two Bills of Export having a total declared value of Rs. 1,64,65,608.80/-. We find that the lower authorities have re-determined the values at Rs. 39,36,114.00/- and Rs.35,42,502.60/- respectively. In this regard, we observe that the mis-declaration of value is related to classification of the goods. If it is established that the goods are actually made of 100% Noil Fabrics, only then can there be a valid ground for rejection of the declared value. As it is not established that the fabrics in question were made of 100% of Noil fabrics, we agree with the submission made by the appellant that there is no valid ground for rejection of the declared value. Further, we observe that the value declared is

material only for the purpose of sanction drawback, if any, to the appellant. Thus, it is required to examine, under the facts and circumstances of this case, whether the appellant is eligible for the drawback claimed by them or not.

12. Regarding the claim of drawback, it is observed that the appellant has claimed duty drawback @ Rs.330.00 per Kg. as 'Silk fabrics containing 85% or more by weight of silk or of silk waste other than Noil silk', under Tariff item 500701 of the drawback schedule and had also claimed classification of the said goods under Chapter Sub-heading No. 5007 2090 of Export Tariff i.e., Schedule - II to the Customs Tariff Act, 1975. We find that the consignments attempted to be exported under the five (5) Shipping Bills in question through N. S. Dock, Kolkata by M/s Eastern Silk Industries Ltd., were supplied in FSEZ by M/s Lucky Goldstar Co. Ltd., the appellant before us. The domestic supplier i.e., M/s. Lucky Goldstar Co. Ltd. has considered these supply to SEZ as deemed exports and claimed drawback. However, from the records, we find that M/s Ben St Industries Ltd. vide letter dated 16.03.2011 informed that the overseas buyers have cancelled the export orders and therefore, they wanted to take back the impugned three containers to Special Economic Zone at Falta for destuffing and storage of the goods under export in their premises at Falta. Their request was considered and the goods attempted to be exported was allowed for storage in any Bonded Warehouse at Kolkata instead of premises at Falta SEZ and was communicated vide letter dated 17.03.2011. Subsequent response to another letter dated 06.04.11, M/s Eastern Silk Industries Ltd. were allowed for de stuffing of the cargo from impugned

three containers in their godown at Falta SEZ for storage. The containers No. CRXU 3339803, RFCU 2009614 and SIKU 2973668 were accordingly sent back to Falta SEZ by M/s Eastern Silk Industries Ltd. and were de-stuffed on 20.05.2011. From the facts and circumstances narrated supra, it is established on record that no physical export has ultimately taken place. Thus, there was no realisation of foreign exchange from these attempted exports. Thus, we hold that no drawback will be payable for the deemed export supplies made by the appellant to the SEZ. Accordingly, we hold that the appellant is not eligible for the drawback as claimed by them as there is no foreign exchange realized from the deemed exports.

13. Regarding confiscation of the goods ordered by way of the impugned orders, we observe that the lower authorities have ordered for confiscation of the grounds on the allegation that there has been mis-declaration and over-valuation of the goods to claim excess drawback. In this regard, we find that the investigation conducted revealed that the appellant got the goods manufactured by the job workers / weavers from Bangalore. It is also on record that mulberry raw silk was imported and were supplied to the different weavers at Bangalore and the fabrics produced out of the said mulberry raw silk were supplied to M/s Eastern Silk Industries Ltd. for export. We do not find any evidence on record that the appellant has connived with the job workers to manufacture low grade silk fabrics by using Noil silks. The appellant has supplied the silk fabrics they got manufactured through the job workers to M/s. ESIL. In the absence of any evidence to substantiate the allegation that the appellant has manufactured silk fabrics using Noil silk, we are of the opinion that the

allegation of mis-declaration or over valuation against the appellants cannot be sustained. As the allegations of mis-declaration and over valuation cannot be sustained, we hold that the impugned goods are not liable for confiscation. Accordingly, we set aside the order of confiscation of the goods in the impugned order.

14. We also find that penalties have been imposed under Section 114 of the Customs Act, 1962 on M/s Lucky Goldstar Co. Ltd. and Shri Manoranjan Mondal for their alleged omission and commission which rendered the goods liable to confiscation under Section 113 (d) & 113 (I)(ii) of the Customs Act, 1962. In this regard, we note that the allegations of mis-declaration and over-valuation against the appellants have not sustained. Also, the confiscation of the impugned goods as ordered in the impugned order has been set aside. As the allegations against these appellants are not sustained, we hold that the penalties imposed on them are also not sustainable and accordingly, we set aside the same.

15. In the result, we pass the following order:

- (i) We uphold the classification of the impugned goods under the CTH 5007 2090 as claimed by the appellant and reject the re-classification of the impugned goods by the lower authorities under the CTH 5007 1000.
- (ii) We hold that the allegation of mis-declaration and over-valuation by the appellants are not sustained and hence the penalties imposed on the appellants namely, M/s. Lucky Goldstar Co. Ltd. and Shri Manoranjan Mondal, under Section 114 of the Customs Act, 1962, are set aside.

- (iii) We hold that the impugned goods are not liable for confiscation. Accordingly, we set aside the order of confiscation of the goods in the impugned order.
- (iv) We hold that the appellant, M/s. Lucky Goldstar Co. Ltd., is not eligible for the drawback as claimed by them as there is no foreign exchange realized from the deemed exports.

16. The appeals filed by the appellants are disposed on the above terms.

(Order pronounced in the open court on **14.10.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd