

REGISTERED
SPEED POST



F.NO.195/492 & 493/11-RA
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: 1/8/13

ORDER NO. 1078-1079 /2013-Cx DATED 31. 07. 2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.313(06)/MV/11 dated 7.2.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I

Applicant : 1. M/s Avni Dresses, Mumbai
2. Sh. Anil Panchmatia, Partner, M/s Avni Dresses

Respondent : Commissioner of Central Excise, Mumbai Zone-I

ORDER

These two revision applications have been filed by M/s Avni Dresses, Mumbai and Sh. Anil Panchmatia, Partner of M/s Avni Dresses against the orders-in-appeal No. No.313(06)/MV/11 dated 7.2.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I

2. Brief facts of the cases are that the applicants are the manufacturer of readymade garments and had filed declaration under Notification No.36/2001-CE(NT) dated 26.06.01 read with Board's Circular No.705/21/2003-CX dated 08.04.2003 claiming simplified procedure for exempted units in respect of clearance of textile goods for export through merchant exporters. The applicants also claimed SSI exemption under Notification No.34/2003-CE dated 30.04.2003 as amended for clearance of goods without payment of duty for the year 2003-04. The applicants have filed belated the quarterly returns in Annexure 20 for the financial year 2003-04. They also filed the xerox copies of N-14-B forms with Airway Bills as proof of export supplied by the merchant exporters in terms of provisions of sub-section 5 of Central Sales Tax Act, 1956 to whom the applicant had cleared the readymade garments without payment of duty for export. On scrutiny of the documents, it was observed by the department that the transaction between the applicants and their merchant exporter were within the definition of home clearance and it cannot be treated as export clearance in terms of simplified procedure prescribed for exempted units. Applicant has supplied goods to M/s Ruchit Enterprises, M/s R.K.International, and M/s Tiptop Impex. Hence, Show Cause Notices dated 29.12.2004 was issued for recovery of duty with interest and also penal provisions were invoked. The original authority vide order-in-original No.205/45/DCC EX/BVL/05 dated 19.5.2005 confirmed the duty demand of Rs.4,79,038/- with interest and imposed penalty of Rs.1,20,000/- under Rule 25 and personal penalty of Rs.30,000/- under Rule 26 of Central Excise Rules. Being aggrieved with the said order, the applicants have filed the appeal with the Commissioner (Appeals). Commissioner (Appeals) vide order-in-appeal No.BR9561)/19/MV/2006 dated 21.2.2006 rejected the

appeal filed by the applicant. Being aggrieved by the said order-in-appeal dated 21.2.2006, the applicant filed Revision Application No.195/505&509/06-RA-Cx before Joint Secretary (RA), who decided the same vide GOI Revision Order No.279-280/09-Cx dated 4.9.2009 and remanded the cases back to original authority to decide the issue afresh by taking into account CESTAT order in the case of Merry Vs Commissioner of Central Excise, Mumbai-II reported in 2008(226) ELT422(T-Mum) and discussing the claim of export of goods in terms of linkage statement given by applicant. In remand proceedings, the original authority vide impugned order-in-original, dropped the proceedings for recovery of duty.

3. Being aggrieved by the impugned order-in-original, department filed appeal before Commissioner (Appeals) on following grounds that the Joint Secretary, at para 11 of his order dated 4.9.2009 observed that the "adjudicating authority has not given any finding whether the said goods were exported or not by the merchant exporter and the documents relating to exports submitted by applicant are not discussed at all; that the Joint Secretary, at para 13 of his order dated 4.9.2009 has observed that "the applicant is said to have submitted linkage statement from the place of clearance (manufacturer's factory) to the port of export through various documents. This part has not been considered either by the Commissioner (Appeals) or the adjudicating authority; that adjudicating authority was required to examine the case in the light of these observations and pass a speaking order.

3.1 Commissioner (Appeals) in impugned order-in-appeal held that the applicant failed to establish that the goods cleared under their invoices to the various merchant exporters had actually been exported. Further, the Commissioner (Appeals) also held that the show cause notice issued for demand of duty was not time barred. Accordingly, Commissioner (Appeals) rejected the appeals file by the applicant.

4. Being aggrieved by these orders-in-appeal, the applicants have filed these two revision applications on the following grounds:

4.1 During the course of personal hearing on 17.1.2011, the applicants furnished entire set of documents i.e. Invoices, Airway copy no., Form No.14 B etc., pertaining to all the transactions along with linkage statement. As regards to invoice No.2237 dated 7.5.2003 correlation was shown with Form No.14B and Airway copy bill. As regards to 179 pcs pertaining to Invoice No.2237, it was also submitted that description in Form No.14B is matching in entirety. As regards to Airway Bill, individual pieces were not mentioned but goods were exported in cartons. In other words, the merchant exporter procuring goods from various manufacturers and exported the same after putting the same in cartons. Hence, on Airway Bill individual pieces were not mentioned but cartons were mentioned. It is relevant to point out that once Form No.14 B is given, which is a prescribed document as per Sales Tax Department then it can be concluded that goods were exported.

4.2 The applicants submit that in the matter of M/s Kittu Fashions, wherein similar issue was involved and Assistant Commissioner of Central Excise, Kandivali Division, Mumbai-V, 4th Floor, Takshashila Building Samant Estate, Goregaon (East), Mumbai-400063 passed an order-in-original No.248-249/15-16/AC'KDN/10 dated 28.10.2010, wherein while dropping the proceedings initiated against M/s Kittu Fashions.

4.3 The applicants submit that the goods, which are manufactured by them were supplied to the merchant exporters from their place of manufacture. The said purchased/procured goods, thereafter, were exported by the said merchant exporters. The applicants submit that the said fact of export of goods is accepted by the department.

4.4 The applicants submit that they are covered by the definition of merchant exporter, which is available in Explanation 1 to Notification No. 42/2001-CE(NT) dated 26.6.2001 as amended, which is reproduced below for ready reference:

"Merchant Exporter means any exporter who procures and exports excisable goods manufactured by any other person".

4.5 The applicants submit that they have exported the goods through the merchant exporter as per the procedure prescribed i.e. under their own serially numbered invoices. The merchant exporter in turn exported the goods and issued Certificate in Form N-14-B in which the various details i.e. Name of the purchaser of readymade goods along with address; BST No. and CST No. of the purchaser of goods, Name of the seller of readymade goods along with details of sales bills, description and quantitative details etc. were mentioned. In other words, Form N-14-B is a certificate issued by a dealer purchasing the goods from another and selling the same in the course of export out of the territory of India within the meaning of sub-section (3) of Section 5 of the Central Sales Tax Act, 1956.

4.6 The applicants submit that in the impugned proceedings, a show cause cum demand is issued on 20.12.2004, extending over a period of one year without invoking the proviso to Section 11A of the Central Excise Act, 1944. As the applicants have filed quarterly returns from time to time, the charge of suppression of facts is not invocable and therefore the demand is barred by limitation.

4.7 The applicants also submit that penalty under Rule 25 to the extent of Rs.1,20,000/- has been imposed on the firm and another penalty under Rule 26 to the extent of Rs.30,000/- has been imposed on the Partner. In this context the applicants submit that the Tribunal has held that the firm and Partner are not separately liable for penalty. In this regard the applicants refer to and rely on the various judgments

5. The cases were listed for personal hearing on 4.3.2013 & 27.6.2013. Nobody attended personal hearing. Hence Government proceeds to decide the cases on merits on the basis of available records.

6. Government has considered relevant case records available in case file and written submissions of the applicant. Government has also perused the orders passed by the lower authorities.

7. From the perusal of the records, Govt. observes, that the applicant, a manufacturer of readymade garments was working under Circular No.705/21/2003-CX dated 8.4.2003 and accordingly filed declaration under Notification No.36/2001-CE(NT) dated 26.6.2001 and sought exemption from payments of Central Excise duty under Notification No.34/2003-CE dated 30.4.2003 as amended by Notification No.47/2003-CX dated 17.5.2003. The applicant cleared the goods to merchant exporters who claims to have exported the same and submitted a certificate in Form N-14-B to the applicant duly signed by the said buyer of goods. The original authority held that the said goods have not been exported directly from manufacturing unit. Rather goods were sold and cleared to a merchant exporter within India. Therefore, the clearances are treated as domestic clearances which attracted duty. Adjudicating authority has relied upon the Board's Circular dated 25.7.02. The original authority confirmed the demand of duty vide orders-in-original dated 19.5.2005, which was upheld by Commissioner (Appeals) vide orders-in-appeal dated 21.2.2006. The revision application filed by the applicant against orders-in-appeal dated 21.2.2006 was decided by Government of India vide Revision Order No.279-280/09-Cx dated 4.9.2009 and cases were remanded back to original authority for denovo adjudication by taking into account CESTAT order in the case of Merry Vs Commissioner of Central Excise, Mumbai-II reported in 2008 (226)RLT 422(T-Mum) and the linkage statement. In remand proceedings, the original authority dropped the demand without giving a clear finding that goods are exported. Department filed appeal against said order-in-original. The Commissioner (Appeals) in his order-in-appeal dated 7.2.11 allowed the departmental appeal. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government notes that Commissioner (Appeals) has passed a detailed order by discussing each contention of the applicant. The main issue involved was whether the said goods are exported as claimed by the applicant. Commissioner (Appeals) has given invoice wise finding in his order and concluded that the description/quantity of

goods given in applicant's invoice did not tally with the detail given in Form N-14-B & Airway Bill; that goods are not cleared for export direct from factory and rather goods are cleared from home consumption and therefore the applicant failed to prove the export of said goods.

9. Government observes that instructions contained in CBEC Circular No.648/39/2002-Cx (F.No.209/11A/2002-Cx.6) dated 25.7.2002 regarding export by SSI Unit - simplified export procedure are as under:

"

Circular No. 648/39/2002-CX

F.No.209/11A/2002-CX.6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

25th July, 2002

Subject: Export by SSI Units – Simplified Export Procedure – Clarification - regarding.

I am directed to refer to Part III of Chapter 7 of Central Excise Manual issued in September 2001 relating to Simplified Export Procedure for exempted units and to say that representations from small scale manufacturers have been received by Board with a request to accept Sales Tax documents as proof of export for the supplies made to other domestic manufacturers who use the said goods in manufacture/packing of goods for export. Further, it has also been requested that the value of such clearances may be excluded from the total value of domestic clearances for the purpose of availing SSI exemption.

2. The matter has been examined by the Board. The Central Excise Manual provides that in the case of export by exempted units through merchant exporter, the documents prescribed by Sales Tax Department, viz H-Form or ST-XXII Form or any other equivalent Sales Tax form, will be accepted as proof of export. It is clarified that this facility is available only in respect of the exempted units which undertake exports themselves or through merchant exporters directly

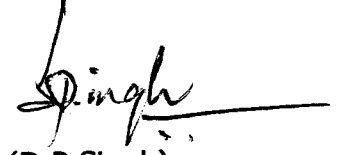
from the unit itself. The facility is not available for the supplies made to any other domestic manufacturer who may or may not export its finished products."

It has been clearly stipulated in the said instruction that this simplified procedure is available only in respect of the exempted units which have undertaken exports themselves or through merchant exporter directly from the unit itself and this facility is not available to the supplies made to any other domestic manufacturer who may or may not export its finished products. In this case the applicant has supplied the goods to three different firms/parties locally. The goods are not exported direct from the factory of manufacture and therefore said benefit of said simplified procedure is not available to the applicant.

10. Government further observes that the linkage statement submitted by applicant is of no use since the description/quantity of the goods does not cross tally in the relevant documents and there are lot of discrepancies as pointed out by Commissioner (Appeals) in his detailed findings. Government agree with these findings and hold that factum of export of said goods is not proved in this case. In this case the export of said goods is not proved and the goods are cleared for home consumption by the applicant as per invoices. Therefore the ratio of CESTAT judgement in the case of Merry Vs CCE M-II reported as 2008 (226) ELT 422 (T.Mum) cannot be made applicable to this case. In view of this position the demand of duty along with interest has been rightly confirmed by the appellate authority.

11. Government observes that department had challenged the entire order-in-original dated 10.5.10 before Commissioner (Appeals) who has restored the penalty. In this regard, it is observed that the penal action taken against the applicants appear harsh. Therefore, penalty on M/s Avni Dresses under Rule 25 of Central Excise Rules 2002 is reduced to Rs.50000/-. The penalty imposed on Shir Anil Haridas Panchamatia, Partner of firm under rule 26 is also reduced to Rs.15000/-. The impugned order-in-appeal is modified to this extent.

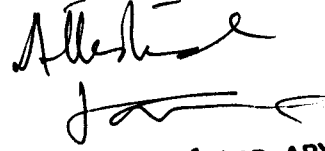
12. The revision applications are disposed off as above.
13. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

1. M/s Avni Dresses, C/o Suresh H.Panchmatia, Hudson Society, Miami E/C12/A/103, Everswhine City, Vasai Road (East), Mumbai-401202
2. Shri Anil H.Panchmatia, Partner, M/s Avni Dresses, C/o Suresh H.Panchmatia, Hudson Society, Miami E/C12/A/103, Everswhine City, Vasai Road (East), Mumbai-401202



(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 1078 - 1079 /2013-Cx. dated 31.07.2013

Copy to:-

1. Commissioner of Central Excise, Mumbai-V, Mumbai
2. Commissioner of Central Excise (Appeals), Mehar Building Bombay Garage, Dadi Seth Lane, Chowpatty, Mumbai-4000 007.
3. Assistant Commissioner of Central Excise, Boriveli Divn., Mumbai-V, 3rd Floor, Takshashila Samant Estate, Goregaon(East), Mumbai-400 063.
4. PS to JS(RA)
5. Guard File.

ATTESTED



(T.R.ARYA)
SUPERINTENDENT (REVISION APPLICATION)