

SPEED POST



F.No. 195/46/2019-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.. 28/5/21.

Order No. 114/2021-CX dated 27-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional 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. JNK-EXCUS-APP-2319-19-20 dated 30.04.2019 passed by the Commissioner (Appeals), CGST & Central Excise, Jammu.

Applicants : M/s. JMP Manufacturing Co., Jalandhar.

Respondent : The Commissioner of CGST, Jalandhar.

ORDER

A revision application bearing no. 195/46/2019-R.A. dated 25.07.2019 has been filed by M/s. JMP Manufacturing Co., Jalandhar (hereinafter referred to as the Applicant) against Order-in-Appeal No. JNK-EXCUS-APP-2319-19-20 dated 30.04.2019 wherein the appeal filed by the Applicant against Order-in-Original No. 01/CE/JC/JAL/2016 dated 29.01.2016 has been rejected, except that the penalty imposed vide the Order-in-Appeal under Section 11AC of the Central Excise Act, 1944 has been set aside.

2. Briefly stated, the Applicant was engaged in the manufacture of M.V. Parts under CETH 8708 which, along with domestic clearance, were also being exported either directly or through merchant exporter. A Show Cause Notice was issued to the Applicant on the ground that during scrutiny of their records by AG (Audit) Punjab, it was observed that they had not submitted proof of export in respect of goods cleared for export against 91 ARE-1s during the period April 2008 to September, 2009 involving a duty amount of Rs. 12,45,348/-. The said duty was deposited by the Applicant along with the interest of Rs. 2,09,100/-. Vide the Order-in-Original dated 29.01.2016 passed by Joint Commissioner, Central Excise, Jalandhar, the demand of Rs. 11,36,782/- out of the total demand of Rs. 12,45,348/- (duty of Rs. 1,08,566/- having been already referred by way of re-credit by the jurisdictional AC) was confirmed and the already deposited amount of duty and interest was appropriated. A penalty of Rs. 11,36,782/- was also imposed under Section 11 AC. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal, rejected the appeal, except that the penalty imposed, under Section 11AC, was set aside.

3. The revision application has been filed, mainly, on the ground that except for the goods involving a duty of Rs. 3,28,250/-, all the goods involving a duty of Rs. 7,28,266/- were duly exported which can

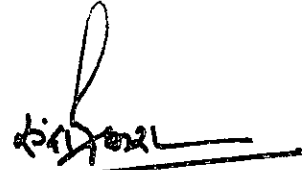
be substantiated with the help of Form-H submitted by the merchant exporter. The Commissioner (Appeals) had not considered the Form-H submitted by them as proof of export and hence the impugned Order-in-Appeal be set aside.

4. Personal hearing in the case was held, in virtual mode, on 21.05.2021 and Ms. Kanika Malhotra, Advocate appeared for the Applicant. Ms. Malhotra stated that they were not pressing their claim in respect of export goods involving a duty amount of Rs. 3,28,250/-. However, in respect of export goods involving duty amount of Rs. 7,68,266/-, the Commissioner (Appeals) has accepted that Form-H was submitted but did not accept it as proof of export, which is incorrect since in respect of SSI units, Form-H is sufficient proof of export as per Board's Circular No. 648/39/2002-CX dated 25.07.2002. She also submitted a copy of SSI certificate of the Applicants, with date of commencement as 29.03.1993. No one appeared for the respondent department. No request for adjournment has also been received. Therefore, the matter is being taken up for decision based on records.

5. On a careful examination of the matter, the Government finds that the Applicants are an SSI unit and the CBIC Circular No. 648/39/2002-CX dated 27.05.2002 clearly spells out that Form-H will be accepted as a proof of export in case of SSI units. The submission of Form-H by the applicants has been recorded by the Commissioner (Appeals) but they have been held to be inconclusive in the absence of other correlating documents and as these were not submitted to the Assistant Commissioner, i.e., the authority competent to accept the proof of export. The Government observes that in view of the Board's Circular dated 27.05.2002, Form-H is sufficient as a proof of export in the instant case. As such, the impugned Order-in-Appeal cannot be sustained to the extent of export of goods involving the duty amount of Rs. 7,68,266/-. However, as the proof of export i.e. the Form H were not submitted before the competent authority, it is directed that the Applicants shall submit the relevant Form-H before the Assistant/Deputy Commissioner concerned for verification and subject to such

verification the corresponding amount shall be refunded to the Applicants.

6. In view of the above, the revision application is partially allowed, with directions for consequential relief, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. JMP Manufacturing Co.,
383, Preet Nagar, Sodal Road,
Jalandhar

G.O.I. Order No. 114 /21-CX dated 27-5-2021

Copy to: -

1. The Commissioner, CGST & CE, Jalandhar.
2. The Commissioner (Appeals), Jammu.
3. Sh. Sudhir Malhotra, Advocate, Ch No. 103, C.K. Daphtary Lawyer's Chambers, Supreme Court of India, Bhagwan Das Road, N.D.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



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