

REGISTERED SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 195/782/13/-RA

6848

Date of Issue:

25/11/2022

ORDER NO. 1150 /2022-CX (WZ)/ASRA/MUMBAI DATED 24.11.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY, TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE  
ACT, 1944.

Subject : - Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against Order-in-Appeal No. 26/RPR-II/2013  
dated 15.05.2013 passed by the Commissioner of Central  
Excise (Appeals) - Raipur-I.

Applicant : - M/s Satya Iron & Steel Pvt. Ltd.

Respondent: - Pr. Commissioner of CGST & CX, Raipur.

**ORDER**

This Revision application is filed by M/s. Satya Iron & Steel Pvt. Ltd., 5-L, Heavy Industrial Area, Hathkhoj, Bhilai, Dist.-Durg (C.G.) (hereinafter referred to as 'Applicant) against the Order-in-Appeal No. 26/RPR-II/2013 dated 15.05.2013 passed by the Commissioner of Central Excise (Appeals) – Raipur-I.

2. Briefly stated, the Applicant are engaged in the manufacture of M.S.Lancing Pipes, Waste & Scrap, Costing Powder falling under sub-headings 73063090, 72044900, 38249090 respectively of the Central Excise Tariff Act, 1985 (5 of 1986). On examination of the Triplicate and Quadruplicate copies of the ARE-I's (details listed below) submitted by the applicant, it was observed that the applicant had cleared goods from their factory for export, through the merchant exporters viz. M/s. Global Engineering Consultants, Aurangabad, M/s. Pratigya Exports, Hisor & M/s. Balwant Singh & Sons, Jalandhar, without payment of Central Excise duty under self-sealing procedure on the basis of Letter of Undertaking (LUT). The examination of the aforesaid ARE-Is indicated that these are consigned to the merchant-exporters and not to any foreign consignee/buyer, the place of destination of such consignments and vehicle numbers were not mentioned on the aforesaid ARE-1. It was further observed that the applicant has neither furnished any CT1 Certificates nor any bond with Surety/Security, on behalf of the merchant exporter for affecting exports of goods without payment of central excise duty. It therefore appeared that since the applicant failed to follow the procedure stipulated in Notification No. 42/2001-CENT) dated 26.06,2001 as amended, issued under Rule 19 of Central Excise Rules, 2002, the clearances made under the aforesaid ARE-Is under the LUTs was without any authority of law and they were liable to pay duty at appropriate rate. The applicant was, therefore, issued Show Cause Notices for recovery of the central excise duty, which were adjudicated by the Adjudicating Authority vide OIO No. 111-114/Ch. 73/ ADC/BHI-II/2012 dated 28.09.2012. Adjudicating Authority dropped demand amounting to Rs. 1,89,626/- holding that the applicant had submitted original copies of ARE-1s evidencing materialisation of exports and confirm the demand to the tune of Rs. 4,86,476/- along with interest and penalty holding that the applicant failed to establish the materialisation of exports by not producing the original copy of proof of exports. Being aggrieved by the aforesaid Order in Original, the Applicant filed appeal before the Commissioner of Central Excise (Appeals) – Raipur-I, who vide Order-in-Appeal No. 26/RPR-II/2013 dated 15.05.2013 rejected the appeal and upheld the OIO.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision application mainly on the following common grounds:

- i. The impugned Order has been passed without considering various submissions made by the appellant, therefore, the same is liable to be set aside having been passed without observing the principles of natural justice and fair play.
- ii. The learned Commissioner (Appeals) has not appreciated the fact that learned Additional Commissioner had held the rebate claim to be admissible to the applicant on the basis of original documents in respect of rebate claim amounting to Rs.1,89,626/- and dropped the demand to that extent condoning the procedural lapse of not furnishing LUT instead of B1 Bond. When the applicant had produced the original documents for balance Rs.4,64,640/- of rebate claim, the same should have been considered by learned Commissioner. (Appeals) and the demand to that extent should have been dropped.
- iii. That the applicant is in possession of original documents evidencing export of goods such as ARE-Is, Shipping Bills/Bills of Lading which shall be produced before your honour at the time of personal hearing.
- iv. The learned Commissioner (Appeals) has inadvertently held in the impugned Order that the applicant had not produced original documents evidencing export of goods during the personal hearing, whereas the said documents were/are in the possession of the applicant and the same were produced before the learned Appellate Authority. The applicant undertakes to produce the said documents before your honour before the personal hearing.
- v. The learned Commissioner has failed to appreciate that the order passed by learned Commissioner (Appeals) was beyond the scope of Show Cause Notice as the same was passed on certain enquiries/investigation conducted by the Department without involvement of the applicant. The findings of the learned Addl. Commissioner were beyond the scope of Show Cause Notice. In this respect reliance is placed on following cases:
  - (i) CCE vs. BALLARPUR INDUSTRIES LTD. 2007 (215) ELT 489 (SC).
  - (ii) CCE. VS TOYA ENGINEERS INDIA LTD. 2006 (201) ELT 513 (SC).
  - (iii) SAURABH ORGANICS P. LTD. Vs. CCE - 2012 (275) ELT 582 (Tri).
- vi. Learned Commissioner (Appeals) has failed to appreciate that a distinction has to be made between substantial and procedural conditions while

deciding upon the eligibility of benefit to an assessee, especially in case of exports. That while procedural conditions are condonable, the substantial conditions have to be fulfilled by the assessee. In the present case there is no dispute about the fact that the applicant had duly fulfilled substantial conditions of export of goods from their factory, the procedural conditions of alleged non-furnishing of B-I Bond should have been condoned by the learned Addl. Commissioner when they had admittedly furnished LUT. In this connection reliance is placed on the decision of Hon'ble Supreme Court in case of MANGALORE CHEMICALS & FERTILIZERS LTD. vs. DY. COMMISSIONER 1991 (51) ELT 437 (SC).

- vii. Reliance is also placed on the decision of Hon'ble Tribunal in case of EVES FASHIONS vs. CCE, DELHI-1-2006 (205) ELT 619 (TRI-DEL), wherein it is specifically held that non-furnishing of Bond or LUT cannot be the basis of demanding duty under Rule 19 of CER, 2002 read with Notification No.42/2001-CE(NT) when the assessee had furnished documents evidencing export of goods: It was held as under:- "Demand and penalty-Export of goods without payment of duty Duty and penalty confirmed on ground of non-furnishing of bond or letter of undertaking (LUT) not sustainable-Duly attested photocopies of shipping bill, bill of lading and Foreign Exchange Remittance Certificate submitted in terms of CBE&C Circular dated 8-4-2003 as per simplified procedure of export No violation of Notification No. 42/2001-CE(NT) and no duty liability in terms of Rule 19 of Central Excise Rules, 2002-Demand and penalty not sustainable-Section 11A of Central Excise Act, 1944-Rule 25 of Central Excise Rules, 2002."
- viii. Learned Commissioner (Appeals) has failed to appreciate decision of Hon'ble Supreme Court in case of UNION OF INDIA vs. SUKSHA INTERNATIONAL and NUTAN GEMS & ANR., - 1989 (39) ELT 503 (S.C.), wherein it is held that when policy of Government provides for benefits to exporters in order to augment exports and to earn valuable foreign exchange, such substantial benefits may not be disallowed on non-observance of some technical/procedural conditions.
- ix. The learned Commissioner (Appeals) has erred in imposing penalty on the appellant under Rule 25 of the Central Excise Rules in the circumstance when the export of goods is not in dispute and there is no intent to evade payment of duty. In this connection reliance is placed on the following judgments:-

(a) CCE vs. SAURASHTRA CEMENT LTD.-2010 (260) ELT 71 (GUJ.)

(b) AMBAJI METAL INDUSTRIES vs. CCE, PUNE-II-2010 (262) ELT 1091 (TRI-MUMBAI)

x. In view of the above, the applicant requested to

(i) hold that the applicant is entitled to rebate claim of Rs.4,64,640/-;

(ii) set aside the demand of duty amounting to Rs.4,64,640/-;

(iii) set aside the penalty; and/or

(iv) pass such order(s) as deemed proper in the facts and circumstances of the case.

(v) stay the recovery proceedings during pendency of the present application.

4. Personal hearing in this case was scheduled on 02.02.2022,09.02.2021,23.03.2022 and 30.03.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. Government observes that the issue to be decided in the present case is

i. Whether, Applicant has complied with the statutory provisions for export of goods said to have affected through the merchant exporters under Rule 19 of the Central Excise Rules, 2002 and

ii. Whether exemption from payment of Central Excise Duty on the goods cleared for export is admissible to the Applicant or the same is recoverable along with interest and penalty.

7. Applicant contended that a distinction has to be made between substantial and procedural conditions while deciding upon the eligibility of benefit to an assessee, especially in case of exports. In the present case there is no dispute about the fact that the applicant had duly fulfilled substantial conditions of export of goods from their factory, the procedural conditions of alleged non-furnishing of B-I

Bond should have been condoned by the Adjudicating Authority when they had admittedly furnished LUT. In this regard, Government notes that the condition of non-furnishing of B-I Bond has been condoned by the Adjudicating Authority holding it as a procedural violation while dropping the demand of Rs. 1,89,626/-. But, issue here in the present case is non production of original proof of exports by the applicant that can establish the materialisation of export.

8. Government notes that the Appellate Authority rejected the appeal on the ground that applicant did not submit the original documents despite ensuring to submit before appellate authority in their appeal memo. Appellate Authority at para 5.4 of the impugned OIA observed:

“5.4 In view of the above facts I am inclined to conclude that the Appellant could not submitted original copy of proof of exports & other export related documents as result they failed to materialized the exports done by the appellant. Thus, the demand of duty under the impugned order is found sustainable and legally correct. Held accordingly.”

In this regard, Applicant in their appeal memo before Revisionary Authority claimed that they are in possession of original documents evidencing export of goods such as ARE-Is, Shipping Bills/Bills of Lading. Furthermore, they ensured to submit the same before Revisionary Authority at the time of personal hearing. Government notes that applicant could not produce the original documents at this stage as well. Thus, Government observes that Applicant despite having been afforded sufficient opportunities, is unable to produce the original documents that could substantiate the materialisation of exports.

9. In view of above, Government holds that since the applicant could not establish the materialisation of export, Department has rightly demanded the duty foregone in respect of the goods cleared for export under bond/LUT. Government does not find any infirmity in the Order-in-Appeal No. 26/RPR-II/2013 dated 15.05.2013 passed by the Commissioner of Central Excise (Appeals) – Raipur-I and upholds the same.

10. Revision application is disposed off on the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 1150 /2022-CX (WZ) /ASRA/Mumbai Dated 24.11.2022

To,

1. M/s. Satya Iron & Steel Pvt. Ltd., 5-L, Heavy Industrial Area, Hathkhoj, Bhilai, Dist.-Durg (C.G.)-490026.
2. The Pr. Commissioner of CGST, Customs, Central Excise Building, Tikrapara, Raipur(CG)- 492001.

Copy to:

1. The Commissioner(Appeal-II), Customs & Central Excise, Central Excise Building, Dhamatri road, Tikrapara, Raipur(CG)- 492001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.