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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. 195/132/16-RA/2025

Date of Issue: 30.11.2022

ORDER NO. 1155/2022-CX (WZ) /ASRA/Mumbai DATED 28.11.2022 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.

Applicant : M/s. Mahindra CIE Automotive Ltd. Composites Division
Respondent : Commissioner of CGST, Belapur Commissionerate.
Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/894/RGD/2015 dated 9.11.2015 passed by the Commissioner (Appeals)-Mumbai-II.

ORDER

This revision application is filed by M/s. Mahindra CIE Automotive Ltd. Composites Division (previously known as Mahindra Composites Limited) (hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/894/RGD/2015 dated 9.11.2015 passed by the Commissioner (Appeals)-Mumbai-II.

2. Brief facts of the case are that the applicant, a manufacturer having Central Excise registration no. AABCS5006NXM001 engaged in the manufacturing of Moulding Compounds and Components. The Applicant in the ordinary course of business exported goods to various countries without payment of duty under Rule 19 of Central Excise Rules 2002 (the Rules") read with Notification no. 42/2001-C.E. (NT) dated 26 June 2001. During the course of audit, on the scrutiny of the Balance Sheet for the Financial year 2008-09, the audit team observed that schedule XII to the Balance Sheet shows that the Applicant has written off as Bad Debts to the tune of Rs.45,04,590/- in its books of account which includes Rs. 30,42,609/- for Mangaon unit. The aforesaid write off was done on account of the goods rejected by the customers of the Applicant. The Applicant failed to recover the aforesaid amount from the customers and consequently had written off the same in the books of account as Bad Debts. SCN was issued alleging that though the Applicant had exported the goods without payment of duty under ARE-1 within the stipulated period of six months, it failed to receive the export proceeds as goods were rejected by their customers and also failed to re-import their goods for repairs, reconditioning for re-export or clear the same on payment of duty for home consumption. Adjudicating Authority vide Order-in-Original No. AC/MHD/663/14-15 dated 25.08.2014 confirmed a demand of duty amounting to Rs. 4,93,838/- under Section 11A of the Central Excise Act, 1944, along with interest under Section 11AA of the Central Excise, 1944 and equal penalty under Section 11AC of the Central Excise Act, 1944 on the grounds of non-export of goods by applicants inasmuch as they failed to produce the bank realization certificate in respect of the export sale proceeds. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals)-Mumbai-II who vide his Order-in-Appeal No. CD/894/RGD/2015 dated 9.11.2015 rejected their appeal and upheld the Order-in-Original.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that:

- i. the goods were exported in accordance with rule 19 of the rules read with notification 42/2001-C.E.(NT) dated 26.06.2001.
- ii. Admittedly, the only basis of holding that the goods were not exported by the Applicant in terms of Rule 19 of the Rules was that the proceeds with regard to the said export were not realized. In this regard, it is submitted that there is no provision under the Rule 19 of the Rules requiring realization of export proceeds for qualifying as export.
- iii. It is not disputed that the goods were exported within 6 months from the clearance of goods under ARE-1 and reached the destination.
- iv. It is submitted that Applicant had followed all the provisions and exported the goods physically within six months from the date of clearance from factory and submitted all the documents as specified under Para 13 of Chapter 7 of CBEC Instructions.
- v. Without prejudice to the other submissions made herein, it is submitted that the demand made pursuant to the show cause notice under Section 11A(4) of the Act is barred by limitation under Section 11A(4) of the Act. The Applicant submits that there is no suppression of the facts from the department. It is submitted that Applicant had been filing the ER. 1 returns regularly on a monthly basis disclosing all the required details.
- vi. Without prejudice to the above submissions and in any event, it is submitted that no penalty can be imposed on the Applicant under Section 11AC of the Act. In view of the submissions made in the above paragraphs, it is submitted that the Applicant has not contravened any of the provisions of the Act.
- vii. In the view of the aforesaid, it is submitted that no interest can be recovered from us under Section 11AA of the Act. It is submitted that Section 11AA of the Act can be invoked when there is delay in payment of duty. In the present case, since the Applicant is not liable to duty, the question of invocation of Section 11AA of the Act does not arise.
- viii. Applicant has placed reliance on various case laws.
- ix. In view of the above, the Applicant prayed to set aside the impugned OIA No. CD/894/RGD/2015 dated 9.11.2015.

4. Personal hearing in this case was fixed for 19.07.2022, Mr. Sujoy Bhave, Advocate appeared online on behalf of the applicant and submitted that realization of foreign exchange is not a mandatory requirement for export without export incentives. He contended that goods were exported, therefore, no duty could be demanded. On being asked that once goods were rejected by overseas client what happened to goods, he requested for one week' time to made additional written submission in this regard.

5. Applicant vide letter dated 22.07.2022 submitted in response to the query raised during personal hearing that said rejected goods were not re-imported by the applicant and were left with the customer in the country of export itself.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. The Government observes that the issue to be decided in the instant case is that whether duty amounting to Rs. 4,93,838/- under Section 11A of the Central Excise Act, 1944, along with interest under Section 11AA of the Central Excise, 1944 and equal penalty under Section 11AC of the Central Excise Act, 1944 on the grounds of non-export of goods by applicants inasmuch as they failed to produce the bank realization certificate in respect of the export sale proceeds, has been rightly demanded by the Department.

8. Government finds that CESTAT, in case of Shyam Telecom Ltd. vs. Commissioner of Central Excise, reported in 2015(317) E.L.T. 619(tri.-Del.) held that the condition regarding receipt of export proceeds cannot be imposed to demand duty foregone in respect of the goods cleared for export under bond/LUT. The relevant Paragraph of the order is extracted hereunder: -

"5. I have considered the submissions from both the sides and perused the records.

6. Rule 19 of the Central Excise Rules, 2002, permits export of the goods under bond/LUT without payment of duty, subject to following the procedure and conditions, as may be prescribed by the notification issued by the Government in this regard Notification No. 42/2001-C.E. (N.T.), dated 26-6-2001 issued under Rule 19(3) prescribes the conditions and the procedure for this purpose and in this notification, there is no condition that in respect of the goods exported, the export proceeds must be received within any stipulated period. There is no such condition even in the Rule. In view of this, the condition regarding receipt of export proceeds cannot be imposed

to demand duty foregone in respect of the goods cleared for export under bond/LUT. The duty on the goods can be demanded only if the goods have not been exported out of India within the stipulated period but there is no such allegation. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed."

Government finds that the issue being identical, the aforesaid case law is squarely applicable in the case in hand.

9. In view of above discussion, the Government holds that since the export of goods are not in dispute, Department cannot demand the duty foregone in respect of the goods cleared for export under bond/LUT merely on the ground of not receiving the export sale proceeds. Government therefore sets aside the impugned Order-in-Appeal No. CD/894/RGD/2015 dated 9.11.2015 passed by the Commissioner (Appeals)-Mumbai-II.

10. Revision application is disposed off in above terms.

Shrawan
28/11/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 155/2022-CX (WZ) /ASRA/Mumbai DATED 28.11.2022

To,

1. M/s. Mahindra CIE Automotive Ltd. Composites Division (previously known as Mahindra Composites Limited), 145, Nehru Nagar Road, Off Mumbai-Pune Road, Pimpri, Pune- 411018.
2. PDS Legal, 14, Mittal Chambers, 1st Floor, Nariman Point, Mumbai-400021.
3. The Commissioner of CGST%, Belapur Commissionerate, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai- 400614.

Copy to:

1. The Commissioner(Appeals) Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra (E), Mumbai - 400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.