

**REGISTERED  
SPEED POST**



F.No. 195/417/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 14/2/13

ORDER NO. 123 /13-Cx DATED 14. 02.2013 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.  
M-I/RKS/52/2011 dated 08.02.2011 passed by Commissioner  
(Appeals) Central Excise , Mumbai-I.

APPLICANT : M/s Anandji Haridas and Co. P. Ltd., Mumbai

RESPONDENT : Commissioner of Central Excise, Mumbai-I

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**ORDER**

This revision application is filed by the applicant M/s Anandji Haridas and Co. P. Ltd., Mumbai against the order-in-appeal No. M-I/RKS/52/2011 dated 08.02.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I with respect to order-in-original passed by Assistant Commissioner of Central Excise, Mumbai-I, Division -F-II.

2. Brief facts of the case are that the applicants cleared excisable goods for export without payment of duty under Rule 19 of Central Excise Rules, (No.2) 2001, read with Notification No. 42/2001 (NT) by procuring permission in Form CT-1 issued to the exporter M/s Tata Autocomp Systems Ltd., Pune, by the Deputy Commissioner (Export), Pune-III Commissionerate, for procuring the goods from the applicants. During the period from April 2006 to May 2006, the applicants cleared the excisable goods involving duty of Rs. 3,89,698/- but failed to submit the proof of export, thus contravening the provision of Rule 19 of Central Excise Rules, 2001, read with Notification 42/2001(NT). Accordingly, a Show Cause Cum Demand Notice dated was issued to the applicant and subsequently, the adjudicating authority in his impugned order has observed that proof of export against each related CT-1 were filed by the exporter with Deputy Commissioner, Central Excise, Pune. Superintendent (Technical), Central Excise, Pune-III, Commissionerate vide his letter F.No. IV(5)-54/05/Pt-II dated 31.01.08, has informed that proof of export in respect of 14 ARE-1's issued by the applicants involving amount of Rs. 2,14,508/- has been accepted and for remaining 17 ARE-1's, the letter is silent. The adjudicating authority has therefore, confirmed the amount of duty involved in remaining 17 ARE-1's.

3. Beings aggrieved by the said Order-in-Original, applicant filed an appeal before Commissioner (Appeals) who allowed proof of export in respect of 10 AREs-1 but upheld the confirmation of demand of duty in respect of remaining 7 AREs-1.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 Duty liability rests with the Merchant Exporter and not with us as a supporting manufacturer. Hence order is void ab-initio. We submit that the demand of Rs. 1,15,045/- which stands confirmed against us by the impugned Order-in-Appeal is legally not sustainable going by the facts of the present case. The exports were made by Merchant Exporter where we have acted only as a supporting manufacturer. The goods were cleared by us without payment of duty for export on the strength of CT-1 obtained by the Merchant Exporters from the Bond Authority before whom the bond were executed by them. Accordingly, we submit that the said order is not sustainable on two grounds.:-

- (i) The action for recovery of duty, if any, needs to be initiated by the Bond Authority before whom the B-1 Bond was executed by merchant exporter. However, in the present case, it has been initiated by the Central Excise authorities exercising jurisdiction over our factory at Mumbai though we have acted only as a supporting manufacturer. &
- (ii) Based on series of Tribunal decisions on the issue and Board Circular No. 87/87/94-CX dated 26.12.1994, the duty recovery needs to be initiated against the Merchant Exporter and not against us.

4.2 We further submit that when goods are exported by us under Bond of Merchant Exporters, only then they are liable for failure to submit proof of Export, etc. and no excise duty can be recovered from us as a supporting manufacturer. In support of the above we refer to and rely upon the following decisions of Hon'ble Tribunal & CBEC Circular:-

- (i) Tejal Paper Mills Pvt. Ltd. Vs. CCE, Ahmedabad [reported in 2003 (156) ELT Page 364 (Tri. Del.)]
- (ii) Kishore Pumps Ltd. Vs. CCE, Pune [reported in 2004 (173) ELT Page 45 (Tri.-Mumbai)].
- (iii) CBEC, New Delhi Circular No. 87/87/94-CX dated 26.12.1994.

4.3 We further submit that we have received proof of export from the Merchant Exporter in respect of 6 AREs-1 out of 7 AREs-1 which were the subject matter of confirmation of demand by the Commissioner of Central Excise (Appeals) vide the above-referred Order-in-Appeal. The proof of export so admitted in respect of 6 disputed AREs-1 out of 7 AREs-1 and communicated by the Bond Authority to the Merchant Exporter vide File No. IV(5)54/05 dated 08.02.2011. Accordingly, we submit that now the demand narrows down to one solitary ARE-1 No. 34 dated 04.05.2006 involving duty amounting to Rs. 7,686/- & therefore demand confirmed in respect of 6 AREs-1 needs to be set aside. Please note that this submissions is made without prejudice to our main submissions and contentions set out hereinabove to the effect that the confirmation of demand by the Order-in-Appeal is erroneous going by the facts of the present case & legal position in the matter.

5. The personal hearing scheduled in the case on 21.12.2012 was attended by Shri M.V.N. Nancharaiah (Head, F &A) and Shri Paresh Shah, consultant on behalf of applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observes that the applicant cleared excisable goods without payment of duty under Rule 19 read with the notification No. 42/2001 C.E. (NT) by procuring permission in form CT-1 issued to the merchant exporter M/s Tata Autocamp

System Ltd., Pune. The original authority confirmed the demand of duty against applicant for his failure to submit proof of export within stipulated time period. Commissioner (Appeals) further accepted the submitted proof of exports in respect of 10 AREs-1, but, upheld demand of duty in respect of remaining 7 AREs-1. Now, the applicant has filed this revision application on grounds mention in para (4) above.

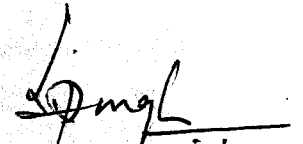
8. Government observes that the original authority issued Show Cause Notice to the applicant proposing demand of duty for failure to submit proof of export made under Bond/CT-I within stipulated time limit. The applicant replied to the said Show Cause Notice vide their written submission dated 29.03.2007. In their reply, the applicant stated that demand of duty should be made to merchant exporter and not to them, as the merchant exporter has executed the Bond. In support of their contention the applicant has placed reliance upon same case laws, which has not been discussed by the original authority in his Order-in-Original.

9. Now, applicant has stated that proof of export in respect of 6 ARE-1 out of total 7 ARE-1 is accepted by Bond accepting authority at Pune on intimated vide letter IV(5) 54/05 dated 08.02.2011 and the demand in respect of 7<sup>th</sup> ARE-1 is only 7,686/-. Government notes that goods were exported against 31 ARE-1. Bond accepting authority has accepted proof of export in respect of 14 ARE-1 and further proof in respect of 10 ARE-1 were submitted by applicant before Commissioner (Appeals) who accepted the same and dropped the relevant amount of demand. Now applicant has claimed that proof of export of in respect of another 6 ARE-1 is already accepted by bond accepting authority and only proof in respect of one ARE-1 involving duty of Rs. 7,686/- is not submitted. Government notes that applicant has already accounted for the proof of export in respect of exports made vide 30 ARE-1 out of 31 ARE-1. So, there is no point that demand in respect of remaining one ARE-1 is now made from the merchant exporter. Applicant himself should produce the same after collecting it from merchant exporter as is done in another 30 cases. Since the genuineness of acceptance of proof in respect of 6 ARE-1 is required to be verified before dropping the demand, so case needs to be remanded back.

10. In view of above position, Government remands the case back to original authority for fresh consideration of demand in respect of remaining 7 ARE-1 in the light of above observations. The demand will be dropped if valid proof of export is already submitted and accepted by competent authority. A reasonable opportunity of hearing will be afforded to the applicants.

11. The revision application is disposed of in terms of above.

12. So, ordered.




(D.P. Singh)

(Joint Secretary to the Government of India)

M/s Anandji Haridas and Co. P. Ltd.,  
1, Fosberry Road,  
Sewree (East) Mumbai 400015

(Attested)



(भागीवत. शर्मा/Bhegwat Sharma)  
सहायक आसिस्ट/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Revy)  
नयाँ दिल्ली/Nw Delhi

G.O.I. Order No. 123 /13-Cx dated 14-02-2013

Copy to:-

1. The Commissioner of Central Excise & Customs, Mumbai-I, 115 Kendriya Utpad Shulk Bhavan, Maharishi Karve Road, Mumbai – 400020.
2. Commissioner of Central Excise (Appeals), Mumbai-I, Meher Building, Bombay Garage, Chowpatty, Mumbai- 400 007.
3. The Assistant Commissioner of Central Excise, Mumbai-I, Division F-II, Madhu Industrial Estate, P.B. Marg, Parel, Mumbai 400 013.
4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.



(Bhagwat P. Sharma)  
OSD (Revision Application)

