

REGISTERED  
SPEED POST



F.No. 195/444/11-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...27/9/13

Order No. 1282 /13-cx dated 26-9-2013 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,  
1944 against the Order-in-Appeal No.  
M-I/RKS/55/2011 dated 10.02.2011  
passed by Commissioner of Central Excise,  
(Appeals), Mumbai-I.

Applicant : M/s. Badridas Gauridatt Ltd.,  
C/o. Shri Aditya Guta,  
Mitra Kunj Co-op. Hsg. Socy. Ltd.,  
3<sup>rd</sup> Floor, Flat No. 4,  
Opp. Jaslok Hospital, Peddar Road, Mumbai.

Respondent : Commissioner of Central Excise,  
Mumbai.

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ORDER

This revision application is filed by the applicant M/s. Badridas Gauridatt Ltd., Mumbai, against the Order-in-Appeal No. M-I/RKS/55/2011 dated 10.02.2011 passed by Commissioner of Central Excise (Appeal), Mumbai-I, with respect to Order-in-Original No.2/02-03 dated 29.8.02 passed by the Assistant Commissioner (Bond), Central Excise, Mumbai-I, Commissionerate.

2. Brief facts of the case are that the applicant a merchant exporters had executed bonds for export of excisable goods without payment of Central Excise duty in terms of Rule 13 of Central Excise Rules, 1944 before the Maritime Commissioner, Central Excise, Mumbai. On scrutiny of their Running Bond Account, it was noticed that the applicants had obtained following Block Transfers:-

- i) BT No. 1/99 dt. 16-03-99 for Rs. 3,84,000/-.
- ii) BT No. 1/99 dt. 31-03-99 for Rs. 1,75,000/-.

Against the above mentioned Block Transfers the applicants had procured the goods under following AR4s:

| S. No. | AR4 No./Date   | Amount (inRs.) |
|--------|----------------|----------------|
| 1      | 43/99/17-03-99 | 1,28,000/-     |
| 2      | 44/99/20-03-99 | 1,07,000/-     |
| 3      | 87/99/22-03-99 | 1,28,000/-     |
| 4      | 88/99/20-03-99 | 20,800/-       |

It was observed, that the proof of export in respect of the impugned AR4s and some remaining amount of Block Transfer was not submitted by the applicants, although 3<sup>rd</sup> extension of time limit was granted to the applicants. Accordingly, a Show Cause Notice No. C.EX/Bond/B/BGL/02 dated 24.3.01 was issued to the applicants for submission of proof of export/payment of Central Excise duty involved in Block Transfers. The adjudicating authority confirmed the duty demand of Rs. 5,59,000/-, involved in said Block Transfers, along with

interest @ 24% per annum, as the applicants failed to submit the proof of export. The adjudicating authority in his order has observed that the applicants were given enough time and opportunity to submit the proof of export, which they failed to do; that they have also failed to comply with the conditions of the Bonds executed by them and hence, thereby they have contravened the provisions of Rule 13 read with Rule 12 of Central Excise Rules, 1944.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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


4.1 The Commissioner failed to appreciate that when the hearing before the lower authority was fixed on 28-01-2002, the Bombay High Court Order dated 22-03-2001 was produced by the representative of the official Liquidator. It is well settled that when a company is under liquidation, all proceedings come to halt. Therefore the applicant was not in a position to access and collect records of exports and produce the same before the department. Vide its letter dated 04-03-2002 the applicant informed the department that the official Liquidator had taken over all the affairs of the company. This was ignored by the lower authority and the Commissioner (Appeals). The authorities failed to appreciate that company petition no. 159 of 2000 had been filed against the applicant in the Hon'ble Bombay High Court by SBI Commercial and International Bank Ltd. in which the official Liquidator was appointed.

4.2 Without prejudice to the above, the lower authorities failed to appreciate that the applicant was a victim of the floods on 26 July 2005, which inundated the city. The applicant's records were destroyed in the floods making it difficult to furnish proof of exports required by the department.

5. Personal hearing was scheduled in this case on 04-03-2013, 27-06-2013 & 07-08-2013. The hearing fixed on 7.8.13 at Mumbai was attended by Shri Prakash Shingrani, advocate & Shri R.Y.Deshmukh on behalf of the applicant who reiterated the grounds of Revision Application. Shri R.Y.Deshmukh, Assistant Commissioner attended hearing on behalf of department and requested to uphold the impugned order-in-appeal.
6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes that applicant a merchant exporter exported the goods without payment of duty under bond by executing of running bond. The applicant obtained block transfers of amount totalling to Rs. 5,59,000/-. Since, the applicant failed to submit proof of export the duty demand of amount 5,59,000/- along interest was confirmed . The applicant has stated that the company had gone into liquidation and the official liquidator has taken over all the affairs of the company and lower authorities have not taken into account this fact while confirming the demand. Government notes that applicant has not submitted any documentary evidence or any High Court order in support of his contentions. On the other hand applicant has also contended that their records were destroyed in heavy flood in Mumbai during 2005 and therefore he was not able to furnish proof of export before department. In this, case goods were exported in 1999 and show cause notice issued on 24.3.01. The demand was confirmed vide order-in-original dated 29.8.2002. The applicant has given contradictory versions with regard to non availability of proof of export. He has stated in grounds of this application that affair of company is taken over by official liquidator and they have no access to records and can not produce the export proof. At the same time in record ground they have stated that records were destroyed in floods on 26.7.2005. Applicant had sufficient time after 1999 to submit the proof of export but they failed to do so.
8. Government notes that applicant has not produced any court order which ~~re~~ restrains the department from adjudicating the case. Applicant has not submitted any

proof of export in respect of said export and therefore violated the conditions of Bond. As such, confirmation of duty demand can not be faulted with. Government do not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same.

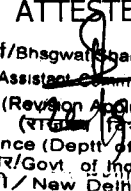
9. The revision application is rejected being devoid of merits.  
10.. So, ordered.

  
(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Badridas Gauridatt Ltd.,  
C/o. Shri Aditya Guta,  
Mitra Kunj Co-op. Hsg. Socy. Ltd.,  
3<sup>rd</sup> Floor, Flat No. 4,  
Opp. Jaslok Hospital, Peddar Road, Mumbai.

ATTESTED

  
(भागवत शर्मा/Bhagwati Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

Order No. 1282 /13-CX dated 26-09-2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, Commissionerate, 115, Central Excise Building, Maharshi Karve Road, Mumbai-400020.
1. The Commissioner of Central Excise (Appeals) Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
2. The Assistant Commissioner (Bond) Central Excise, Mumbai-I, Commissionerate.
3. Shri Prakash Shingrani, advocate, C/o. M/s. Badridas Gauridatt Ltd., C/o. Shri Aditya Guta, Mitra Kunj Co-op. Hsg. Socy. Ltd., 3<sup>rd</sup> Floor, Flat No. 4, Opp. Jaslok Hospital, Peddar Road, Mumbai.

✓ 3. PS to JS(RA)

5. Guard File.

6. Spare Copy



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)