



REGISTERED
SPEED POST

F.No.195/1189/11-RA
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..18/12/13

ORDER NO. 1410 /13-Cx DATED 16.12.2013 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 : Order in Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.150-CE/GZB/2011-12 dated 29.7.11 passed by the Commissioner of Central Excise (Appeals), Ghaziabad.

Applicant : M/s Uttam Sucrotech International Pvt. Ltd., Noida

Respondent : The Commissioner of Central Excise, Ghaziabad,

Order

This revision application is filed by M/s Uttam Sucrotech International Pvt. Ltd., Noida against order-in-appeal No.150-CE/GZB/2011-12 dated 29.7.11 passed by the Commissioner of Central Excise (Appeals), Ghaziabad with respect to order-in-original passed by the Additional Commissioner of Central Excise, Ghaziabad.

2. Brief facts of the case are that the applicant is merchant exporter engaged in the export of various engineering goods under Rule 19 of the Central Excise Rules 2002. The applicant procured various engineering goods under cover of CT-1 issued from time to time from various domestic manufacturers after executing bond/LUT with the jurisdictional Divisional office. Thereafter, they submit the CT-1 to various manufacturers who supply the goods covered by CT-1 without payment of duty. The applicant did not submit the proof of export in respect of 14 CT-1s is as per details given below:

Sl.No.	CT-1 Number	Date of Issue	Duty involved
1.	119	16.12.2005	1,22,400
2.	120	16.12.2005	1,38,836
3.	122	19.12.2005	(B) 12,35,855
4.	124	27.12.2005	15,342
5.	126	10.01.2006	753
6.	130	28.01.2006	944
7.	132	14.07.2006	14,730
8.	138	21.07.2006	1,46,880
9.	139	21.07.2006	1,99,104
10.	143	10.03.2006	74,972
11.	144	10.03.2006	54,690
12.	01	05.04.2006	15,870
13.	03	05.04.2006	1,09,654

14.	05	25.04.2006	35,902
		Total	21,65,392

The show cause notice was issued for a duty demand of Rs.2165392/- along with interest in respect of the above CT-1 besides proposing to imposing penalty. The Additional Commissioner of Central Excise & Customs, Ghaziabad vide the impugned order-in-original dated 28.1.11 confirmed the demand amounting to Rs.1880216/- along with applicable interest on the ground that proof of exports filed by the applicants was not acceptable. A penalty equal to duty of Rs.1880216/- was also imposed under Rule 26 of the Central Excise Rules 2002.

3. Aggrieved by the impugned order-in-original dated 28.1.2011 applicant preferred an appeal before the Appellate Commissioner of Central Excise, NOIDA, who after considering the contentions and verifying the documents submitted before applicant, accepted the proof of export in many cases and reduced the demand to Rs.3,84,294/- in regard to certain CT-1s. The penalty was also reduced to Rs.40000/-.

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 In respect of CT-1 No.122, the applicant submits that on page 4 of the impugned order in para 4 the Commissioner (Appeals) deals with this CT-1 and observes that for a value of Rs.500000/- the applicant has not produced CT-1. Applicant submits that they have been able to cull out from their past records proof of export against the above CT-1 No. 122 (dispatch no.1120) given in the document as duly acknowledged by the Commissioner (Appeals) himself and in this regard submit the following proof:-

- a) Sale invoice to foreign buyer giving the CT-1 no. 1120 (dispatch no instead of CT 1 no. given by mistake)
- b) B)ARE 1 copy
- c) Shipping bill copy
- d) Copy of bill of lading

Thus the above documentary records establish clearly that exports were made of materials of the value of Rs.5 lakhs for which CT 1 was procured. Therefore the demand in this respect requires to be dropped.

4.2 In respect of CT 1 No.143 dated 10.3.2006 applicants submit that they have not at all got any supplies of the material against the CT 1 from Fouress Engg. (I) Ltd., Thane. In this respect, applicant had written to the party vide their letter dated 26th Aug. 2011 with copy to the Supt. Central Excise, Range III, Division Wagle I Mumbai stating that since they had not supplied the goods and CT 1 has also expired they should return the CT 1. Party has also requested their Range office to issue a certificate to this effect. Copy of letter dated 26th August and earlier letter dated 10.2.2007 referred therein, are enclosed as Annexure 2. In fact the party was issued with another CT 1 against which they had made the supply but the applicant did not collect the earlier CT 1 which was not utilized by them. Applicant is persuading the party to get an appropriate letter from their Range office to clarify and confirm this fact and efforts are on to procure a letter/certificate from the party also to support the applicant's case.

4.3 In respect of CT 1 No. 144 dated 10.3.2006 also the applicant has written a letter dated 26th Aug. referring to earlier letter dated 10.2.2007 asking the party (Blow tech Air Devices) to return the CT 1 as they had not made any supplies against that CT 1. Applicant is trying to get necessary documentary support in this regard.

4.4 In the case of CT 1 no. 132 also the applicant has written a letter dated 26th Aug. referring to earlier letter dated 10.2.2007 asking the party (Sealant and Gasket India Ltd. Mumbai) to return the CT 1 as they had not made any supplies against that CT 1. Applicant is trying to get necessary documentary support in this regard.

4.5 In the case of CT 1 No. 05 also the applicant has written a letter dated 13th Sept 2011 asking the party (Amar Raja Power Systems Pvt. Ltd. Tirupati A.P) to return the CT 1 as they had not made any supplies against that CT 1. Applicant is trying to get necessary documentary support in this regard. In fact the items were later procured from their sister concern against a fresh CT 1 obtained in that behalf.

4.6 The applicants submit that they were not alert and careful to procure the unutilized CT1s from the parties as there were lot of export orders for execution and there were many parties from whom supplies were ordered. Wherever there were some delays we had procured further CTs and obtained the supplies to keep up the delivery schedule of the export orders. In the process the follow up with old CT 1s was not made and the parties also did not care to return the CT 1s for supplies not made by them. It is submitted that no central excise assessee can make any clearances without payment of duty except on exports or upon local supplies against CT1s. The consignor's Range office would not have allowed any clearances without payment of duty of any goods except upon proper documentation. It is not the case of the department that the consignors had supplied the goods against the CT1s and the applicant has not effected the export. When the applicant has not even procured the goods duty free, the question of demanding duty is not correct in law. The proper course is for the department to cross verify from the consignor (to whom CT 1 was issued) range office the factual situation and that would vindicate the stand of the applicant.

This applies to all the CT1 s against which supplies were not made and the demand has been confirmed.

4.7 Even the manual of Supplementary Instructions 2005 issued by the CBEC states in Chapter 7 Part-II provides that the obligation to export arises only when the goods are cleared against CT 1 and not otherwise. In the instant case, the department has not alleged that goods were cleared from the consignors to whom CT 1 were issued and in that eventuality the question of payment of duty thereon does not arise at all. The demand of duty implies that duty was payable but not paid - in the case of exports, goods were cleared without payment of duty but were not exported. In the instant case, when the case of the department is not that the goods were cleared against CT 1 but were not exported, there is no question of demand of duty

5. Personal hearing scheduled in this case on 17.10.2013 was attended by Shri R.Krishnan, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused impugned order-in-original and order-in-appeal.

7. Government observes that the applicant, a merchant exporter procured various engineering products under cover of CT-1 issued from time to time from various domestic manufacturers after executing bond. The original authority confirmed the demand of duty amounting to Rs.18,80,216/- on the ground that valid proof of export was not submitted by the applicant. A penalty of Rs.18,80,216/- was also imposed on applicants. Commissioner (Appeals) accepted the proof of exports in many cases and in remaining cases where no valid proof of export was available, demand was upheld. Commissioner

(Appeals) reduced the duty demand to Rs.3,84,294/- and penalty to Rs.40,000/-. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that in respect of CT-1 No.122 the applicant stated that they had produced CT-1 of a value of Rs.500lacs along with relevant shipping bill and are-1 invoice before Commissioner (Appeals) as proof of export, which was not considered by the appellate authority. Government finds that in the CE Invoice No.277 dated 14.2.06, the CT-1 NO.1120 dated 19.12.06 is mentioned. Similarly in ARE-1 No.29 dated 14.2.06 again the CT-1 No.1120 is mentioned. So, the contention of the party that CT-1 No.1120 is mentioned wrongly instead of correct No.122/19.12.05 cannot be accepted.

8.1 As regard to other CT-1 No.143 dated 10.3.2006, 144 dated 10.3.2006 and 132 dated 14.2.2006 the applicant stated that they have not got any supplies of the material against the CTs-1 and hence, question of export and submission of proof of export does not arise. However, the applicant did not make any specific reference to CT-1 issuing authority to the effect that the goods covered under above said three CTs-1 have not been procured and exported. The condition (2) of Chapter-7, Part-II of CBEC's Manual of Supplementary Instructions reads as under:

"2. Conditions

2.1 *An exporter shall furnish bond in Form B-1 and obtain certificate in Form CT-1. A manufacturer-exporter may furnish annual Letter of Undertaking. No CT-1 is required in this case). The export shall be subject to the following conditions"*

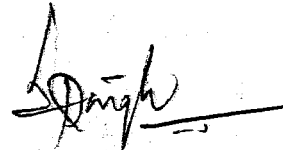
- (i) *The goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner may in any particular case allow;*
- (ii) *When the export is from a place other than registered factory or warehouse, the excisable goods are in original packed condition and identifiable as to their origin;"*

It is admitted fact that the applicant did not export the goods in stipulated period. Further, they have also not informed to CT-1 issuing authority regarding non-procurement and non-export of the same and as such rendered themselves liable for payment of duty which was otherwise exempt by virtue of said CTs-1. The CTs-1 were issued in year 2006 and the impugned order-in-original was issued in 2011, however, the applicant did not submit any substantial documentary evidences to show that goods covered vide said three CTs-1 were not actually received by them from supplier. Applicant remained silent for more than 5 years and has come up with this explanation now. As such it cannot be accepted. Under such circumstances, Government finds that the applicant has failed to submit valid proof of export in respect of said consignment.

9. In view of above discussion, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

10. Revision application is thus rejected in terms of above.

11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Uttam Sucrotech International Pvt. Ltd.,
H-194, Sector-63
Noida



(भगवत शर्मा) Bhagwat Sharma
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-D.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
एनएच रोड/Secy of India
नई दिल्ली / New Delhi

Order No. 1410 /2013-CX dated 16.12.2013

Copy to:-

1. The Commissioner of Central Excise, CGO Complex-II, Kamala Nehru Nagar, Ghaziabad.
2. The Commissioner (Appeals), Central Excise, Room No. 232, CGO Complex, Kamla Nehru Nagar, Ghaziabad.
3. The Assistant Commissioner, Central Excise Commissionerate Ghaziabad.
4. Shri R.Krishnan, Advocate, 297-E, Pocket-I, Delhi-91
- ✓ 5. PS to JS (Revision Application)
6. Guard File.
7. Spare Copy.

ATTESTED



(B.P.Sharma)
OSD (Revision Application)