



REGISTERED
SPEED POST

F.No. 195/1702/12-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..12/4/14

ORDER NO. 15/14-Cx DATED 15.04.2014 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.56-57/Kol-VII/2011 dated 31.11.10 passed by the
Commissioner (Appeals-I) Central Excise, Kolkata

Applicant : M/s BESCO Ltd., 24 Parganas (South), Kolkata

Respondent : Commissioner of Central Excise Kolkata
VII Commissionerate, 169, AJB Bose Road, Bamboo Villa (5th
Floor), Kolkata-700014

ORDER

This Revision application is filed by M/s BESCO Ltd., 24 Parganas (South), Kolkata against Order in Appeal No.56-57/Kol-VII/2011 dated 31.11.10 passed by the Commissioner (Appeals-I) Central Excise, Kolkata.

2. Brief facts of the case are that the Deputy Commissioner of Central Excise, Sonarpur Division, Kolkata-VII Commissionerate confirmed demand of duty under proviso to Section 11A (1) of the Central Excise Act 1944, along with interest at the appropriate rate under Section 11AB and also imposed penalty equal to amount of duty under Section 11AC ibid as detailed below:

Sl. No.	OIO No. & date	ARE-1 No. & date	SCN No. & date	Duty Demand confirmed with interest & penalty imposed (Rs.)
1.	48/DC/CE/SNP/Kol-VII/09-10 dated 10.3.10	29/BESCO/Exp./08-09 dt. 12.2.09	V(15)52/CE/ADJN/SNP/BESCO/KOL-VII/2009/229 dt. 2.2.10	Rs.283581/- as duty + interest at appropriate rate + penalty Rs.283581/-
2.	47/DC/CE/SNP/Kol-VII/09-10 dated 10.3.10	25/BESCO/Exp./08-09 dt. 6.2.09	V(15)49/CE/ADJN/SNP/BESCO/KOL-VII/2009/2331 dt. 2.2.10	Rs.260682/- as duty + interest at appropriate rate + penalty Rs.260682/-

The demand of duty arose for failure on the part of the applicant to submit the proof of export in stipulated time in respect of the excisable goods cleared from the factory premises without payment of duty against letter of undertaking under DEPB Scheme.

3. Being aggrieved by the said orders-in-appeal, applicant filed appeal before Commissioner (Appeals) who held as under:

"I have carefully gone through the records of the case and the submission made by the applicant. I find that the applicant submitted proof of export to the Range Superintendent on 09.02.2010 containing ARE-1, shipping Bill, Bill of lading etc.

In the order-in-original the original adjudicating authority confirmed the demand due to some irregularities like Seal & emblem of the custom officer is illegible and the custom officer did not mention his name designation and office under his signature. Also date as mentioned with the signature of the customs officer on the shipping bill do not coincide/correlates with the date of the shipping bill etc. However, after going through the photocopies of proof of export I find that in respect of ARE-1 No. 25/ Besco/ Expo/2008-09 dated 06.02.2009

- i. Total Euro in valuation column was written as 40886.80 Euro, whereas Export Invoice shows Total Euro as 37345.20.
- ii. Goods cleared from the factory under ARE-1 dated 06.02.2009, whereas Export Invoice date is 02.02.2009.
- iii. Goods cleared from the factory under ARE-1 dated 6.2.2009, whereas Shipping Bill date 05.02.2009.
- iv. Goods cleared from factory on 06.02.2009, whereas Proof of export submitted on 09.02.1020 after expiry of one year from the date of clearance from factory.
- v. Bank Remittance Certificate submitted does not bear any signature of Bank Officer.
- vi. Met. receipt copy also not submitted by the applicant.

In respect of ARE-1 No.29/ Besco/Expo/08-99 dated 12.02.2009

- i. Goods cleared from the factory under ARE-1 dated 12.02.2009; whereas Export invoice date is 05.02.2009.
- ii. Goods cleared from the factory under ARE-1 dated 12.02.2009, whereas Shipping Bill date 11.02.2009.
- iii. Bank Remittance Certificate submitted does not bear any signature of Bank Officer.
- iv. Met. receipt copy also not submitted by the applicant.

Also copies of all the documents are very hazy and illegible that relevant particulars are not readable. The same view has also been opined by the concerned Range officer and also the original adjudicating authority.

In view of the above, I find no reason to modify the order of the lower adjudicating authority. I therefore uphold the impugned two orders-in-original both dated 10.03.2010 as passed by the Deputy Commissioner of Central Excise, Sonarpur Division and reject both the appeals."

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 the instant case two consignment of goods were cleared for export on 6.2.09 and 12.2.09 under supervision, sealing and certification by the Central Excise officers on the ARE-1 forms. Exports were done under shipping bills with certificate of allowed for shipping for 111 Nos. and 166 Nos. of goods dated 7.2.09 and 13.2.09 respectively, by the customs officers. The certificates with dates are very much prominent on the shipping bills and the entire goods were exported in closed containers, so, short shipments were not possible. We submitted bill of lading as well as bank negotiation certificates also.

4.2 We state that all the required particulars of export are clearly written by the Customs Officer in his certificate dt 06/03/2009 on the ARE-1's and we are not responsible for illegibility of Rubber Stamps of the customs Officer. Department could have verified the particulars from customs department by virtue of Para 13.4 and 13.7 of the procedure prescribed by the department in this regard, mentioned supra. Invoice no. is indeed Expo/R-010/0165 dt 02/02/09, but due to typographical mistake 0165 has been written as 01/65 on some documents. This is an ignorable mistake. Export Price, in Rupees, in the ARE-1 and Bill of Export are different due to variation of rate of exchange of Euro

on the dates of preparation of the ARE-1 and Bill of Export. Shipping Bill does not bear the Signature of master of vessel. It is not a lacuna on our part and for such lacuna the proof of export cannot be dis-admitted. Preparation of two different invoices for custom purpose & Export purpose are not any mistake nor irregular. Rather, it is a part of procedural requirement. Law provides that excisable goods shall not be cleared from a factory except under an Invoice issued under rule 11 of the Central Excise Rules 2002. Customs law provides that all goods, whether excisable or not, are to be exported under cover of an invoice. Format for the two invoices are different. So, preparations of two invoices are in order. For ARE-1 No. 25, export invoice was prepared on 02/02/2009 Shipping Bill was prepared on 05/02/09 and ARE-1 & Central Excise Invoice was prepared on 06/02/09. These dates for ARE-1 No. 29 are 05/02/09, 11/02/09 and 12/02/09 respectively. It is not mandatory that customs invoice, ARE-1 and Shipping Bill are to be prepared on the same date.

4.3 Regarding Commissioner (Appeal)'s observation that some of the documents are very, hazy & illegible we would like to state that due to shifting of our office from Ballygunge to the present place at Poonam Building in the year 2009, huge documents were required to be shifted and in that process some of the files containing original documents got mixed with other old files and documents. So, the documents submitted by us as the proof of exports were xeroxed from other Photocopies and this led to haziness of the documents. However, we have sorted out the original files and documents, and Photocopies made therefrom from the self same documents have been submitted for your Honours kind perusal and consideration. These documents are very much readable.

4.4 Regarding unsigned Bank Remittance Certificate, we would like to state that the certificates are computer generated. So, exempted from signature.

However, we have got the said certificates signed by Bank officials and submitted as part of Proof of export.

4.5 As to the different amount of export value, in Euro, shown in ARE-1 No.25/BESCO/EXPO/08-09 and related Export invoice, we clarify that the export consignment consists of 76 Pcs Automatic Coupler 'E' Type @ 401.80 Euro & 90 Pcs of Yoke @ 115 Euro, by which Total Price comes to 40886.80 Euro. The price of Automatic Coupler 'E' Type, just before exportation, got amended to Euro 355.20 per pcs., by negotiation between us and our buyer and due to that amendment total price came down to 37345.20 Euro. It may kindly be seen that total 37345.20 Euro had been negotiated by the Bank as sale proceeds, and we received Indian Rupees equivalent to Euro 37345.20.

4.6 In our case we have submitted Proof of Exports consisting of original and Duplicate copies of ARE-1's duly certified by customs authorities, self-attested copies of export invoices, Bill of lading and shipping bills as also realization certificate from the Bank. The export certificate has been signed by the customs officer on 06.03.09, which leaves no doubt that the goods were exported much within six months. When all the prescribed requirements were fulfilled by us, there was no reason not to accept the Proof of Export by the jurisdictional Dy. Commissioner of Central Excise even if it was submitted beyond 3 days after one year. Because as per notification, date of export is of importance. It is, however stated that the export documents got misplaced among other documents which is the cause of delay of submission of Proof of Export by only 3 days. We respectfully submit that the delay is however, condonable.

5. Applicant also filed an application for condonation of delay in filing revision application on the following ground:

As department declined to accept the proof of export, we, filed an appeal to the Hon'ble CESTAT, Kolkata on 28.2.11 under Section 35B(1) of the Central Excise

Act 1944 in consultation and advice of the Registry. The appeal was duly received, accepted and placed for hearing on 27.11.12, but he Learned Departmental Representation stated that it is a case of export of goods, in contrast to its earlier stand, so, argued that instead of appeal to Tribunal, proper forum for this case is to file an application before the Govt. of India, under Section 35EE. Hon'ble Tribunal therefore dismissed the subject Appeal vide its order No.S-1536/A-847/Kol/2012 dated 29.11.12, received by post in our office on 6.12.12. Filing of the revision application is in pursuance of the said CESTAT's order. As filing of the application got delayed due to pendency of the appeal before CESTAT, an application for condonation of delay is being filed, requesting for admittance of the instant revision application and to dispose of the subject revision application on merit.

6. The personal hearing scheduled in this case on 3.4.14 was attended by Shri R.K.Sharma, Advocate on behalf of the applicant who reiterated the grounds of revision application.

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

8. Government notes that before proceeding further, the application for condonation of delay is to be considered. Applicant had initially filed appeal before CESTAT on 28.2.11 against the impugned order-in-appeal dated 31.11.10 received on 8.12.10. CESTAT vide order No.S-1536/A-847/KOL/2012 dated 29.11.12 claimed to be received on 6.12.12, dismissed the appeal for lack of jurisdiction. Applicant filed this revision application on 14.12.12. Therefore, applicant has requested to condone the delay occurred in filing revision application due to pursuing appeal before wrong forum. Applicant has consumed time period from 8.12.10 to 28.2.11=2M 20 Days, and 6.12.12 to 14.12.12=8 days, which is less than 3 months after excluding time taken for pursuing appeal before CESTAT.

8.1 Government notes that Hon'ble High Court of Gujarat in W.P. No.9585/11 in the case of M/s Choice Laboratory vide order dated 15.9.11, Hon'ble High Court of Delhi vide order dated 4.8.11 in W.P. No.5529/11 in the case of M/s High Polymers Ltd. and Hon'ble High Court of Bombay in the case of M/s EPCOS India Pvt. Ltd. in W.P. No.10102/11 vide order dated 25.4.2012, have held that period consumed for perusing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act 1963 for the purpose of reckoning time limit of filing revision application under Section 35 EE of Central Excise Act, 1944. The ratio of above said judgment is squarely applicable to this case. Government finds that keeping in view the above judgments, the revision application is filed within stipulated period of 3 months after excluding time taken for pursuing appeal before CESTAT. As such, Government takes up the revision application for decision on merit.

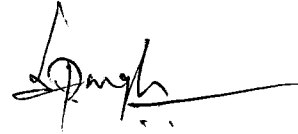
9. Government notes that the duty demand was confirmed on the ground of non-submission of valid proof of export. Commissioner (Appeals) upheld the said orders-in-original mainly on the ground that the dates of shipping bills are prior to the dates of ARE-1, BRC do not bear the signature of the bank officer, copies of document were not legible and in case of ARE-1 No.25/6.2.09, the value shown in ARE-1 is Euro 40886.80 whereas in export invoice, value is shown as Euro 37345.20. Applicant has contended that the goods mentioned in the ARE-1 were exported vide said shipping bill Nos. as certified by the Customs and ARE-1 is also mentioned on said shipping bill. Government notes that customs have certified in the relevant shipping bills the export of said goods and also mentioned the relevant ARE-1 Nos. in the shipping bill. So it cannot be said that these shipping bills do not relate to the ARE-1 in question. As regards difference in ARE-1 & export invoice value in respect of ARE-1 No.25, applicant has that it was due to difference in foreign exchange rate. The reason is acceptable subject to verification of its correctness. Customs has certified the export of goods in ARE-1 & shipping bill. So this objection does not sustain. Applicant has now

submitted a BRC bearing signature and stamp of Bank. The legible copies of all documents are claimed to be available with them. As such proof of export can be considered for acceptance after verifying the authenticity of BRC, and the fact that difference in value was due to difference in exchange rates.

10. In view of above position, Government sets aside the impugned order-in-appeal and remands the case back to original authority to decide the case afresh taking into account the above observations. Applicant is directed to submit all the documents before original authority within one month of the receipt of this order for verification. A reasonable opportunity of hearing will be afforded to the concerned parties.

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

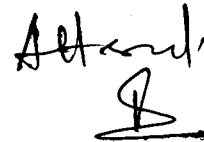
12. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Besco Limited (Foundary Division)
Baruipur, 24-Parganas (South)
Kolkata-700 144



(Bhisgwa Sharma/Bhisgwa Sharma)
रिजिस्ट्रार जनरल/Registrar General
C.B.E.C. & S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
एर ईएन/आर ईएन

Copy to:-

1. The Commissioner of Central Excise Kolkata-VII Commissionerate, 169, AJC Bose Road, Bamboo Villa (5th Floor), Kolkata-700 014
2. The Commissioner of Central Excise (Appeals-I), Kolkata, 169 AJC Bose Road, Bamboo Villa, 4th Floor, Kolkata-700 014
3. The Deputy Commissioner of Central Excise, Sonarpur Division, Kolkata-VII Commissionerate, 54, NSC Bose Road, 3rd Floor, Kolkata-700040
4. M/s R.K. Sharma & Associates Pvt. Ltd., 157, 1st Floor, DDA Office Complex, C.M. Jhandewalan Extn., New Delhi-55
- ✓ 5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



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