

**REGISTERED
SPEED POST**



F.No. 198/539/10-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... 7/11/11

ORDER NO. 1715/12-Cx DATED 06-12-2012 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.
204/CE/LDH/2010 dated 30-08-2010
passed by Commissioner of Central Excise,
(Appeals), Chandigarh-II.**

**APPLICANT : Commissioner of Central Excise,
Ludhiana.**

**RESPONDENT : M/s. Shirdi Overseas Import & Export,
Ludhiana.**

ORDER

This revision application is filed by the Commissioner of Central Excise, Ludhiana against the Order-in-Appeal No. 204/CE/LDH/2010 dated 30-08-2010 passed by Commissioner of Central Excise, (Appeals), Chandigarh-II, in respect of Order-in-Original passed by the Additional Commissioner, Central Excise Commissionerate, Ludhiana. M/s. Shirdi Overseas Import & Export, Ludhiana is the respondent in this case.

2. Brief facts of the case are that the respondent cleared goods alleged to have been manufactured in their factory for export through merchant exporter under Bond in terms of Rule 19 of Central Excise Rules 2002 read with Notification No. 42/2001-CE (NT) dated 26-06-2001 as amended. In terms of para 13.6 of the chapter 7 of CBEC's excise manual of supplementary instructions, the exporter is required to export the goods within the six months, from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy/Assistant Commissioner of Central Excise or the bond-accepting authority). Since, the respondent failed to file the said documents for acceptance of proof of export in r/o impugned consignments within the prescribed time showing export of goods within stipulated period of 6 months, show cause notice was issued to the applicant proposing recovery of Central Excise Duty of Rs. 25,70,400/-. The adjudicating authority vide impugned Order-in-Original confirmed the demand of Rs. 25,70,400/- as Central Excise Duty and also imposed penalty of Rs. 25,70,400/- on the respondent under Rule 25 of the Central Excise Rules, 2002.

3. Being aggrieved by the said Order-in-Original, respondent filed appeal before Commissioner (Appeals), who decided the same in favour of respondent.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department 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 (Appeals) while allowing the appeal of the party has totally ignored the fact that the party in contravention of the provisions of CBEC's Excise Manual of Supplementary Instructions of Chapter 7, Part V in para 1.2, had not incorporated the relevant changes such as change in the name of merchant exporter, destination, in the triplicate copy of AREs-1. As per the said AREs-1 the goods were stated to be exported to Middle East as mentioned against the country of destination on the face of these ARE-1s, where as per relevant Shipping Bills/bill of lading filed by the party, the said goods were exported to Afganistan.

4.2 The Commissioner (Appeals) did not take cognizance of the fact that the description of the goods given by the party in the AREs-1 did not tally with the description of the goods mentioned in the export invoices. The Commissioner (Appeals) in this regard observed that the difference occurred as the description written as per the DEPB product group code in the shipping bill. But the Commissioner (Appeals) has failed to appreciate that 'polyester Fabrics' mentioned on the ARE-1s and Central Excise invoice is a vague description and can pertain to goods classifiable under different chapters and chapter headings of CETA 1985. The party did not mention the classification of goods in the ARE-1 or Central Excise Invoices, which appears to be intentional and the same is bolstered by the fact that the party in their Central Excise Invoices has mentioned on the right hand top "Name of the excisable commodity yarn of all kinds knitted cloth, Hosiery Goods, Woven & knitted garments 55,56,60.01,61.01, 62.02, 65.01" whereas in the shipping bills classification was shown under chapter 54. Further, the Commissioner (Appeals) also ignored the fact that, no reason for export of goods after ten months had been put forward by the party in their replies.

4.3 The Commissioner (Appeals) while allowing the appeal simply ignored the findings of the adjudicating authority regarding the mismatch of the signature of the Customs Official in various documents. The signatures of Customs officials at the port of export i.e. ICD Tughlakabad on the original and duplicate copies of ARE-1s were different from those on the relevant shipping bills pertaining to the said export.

There is no dispute regarding mi-match of the signatures of Customs Officer. Its a glaring fact verifiable from the documents itself, which needs no further verification.

4.4 The Commissioner (Appeals) did not appreciate the fact that the party has provided Bank Realization Certificates in respect of the said AREs-1 to substantiate their claim of genuine export which were not in the name of manufacturer/merchant exporter. It is observed that though the goods stated to be exported through the merchant exporter (M/s. Compact Logistic Pvt. Ltd., Ludhiana) yet the payments were received by M/s. Navrang Theatre Pvt. Ltd., New Delhi and the party failed to put forth any plausible explanation for the same. The observation of the Commissioner (Appeals) that name M/s. Navrang Theatre Pvt. Ltd., New Delhi finds mention in the shipping bills as third party details cannot be accepted as the Commissioner (Appeals) has at no stage in the Order-in-Appeal mentioned that original shipping bills and other documents were examined by him. In this regard, reliance on the averments of the party or conclusions based on the photocopies of the documents cannot be accepted.

4.5 From scrutiny of one of the export invoice issued by merchant exporter i.e, M/s. Compact Logistic Pvt. Ltd., Ludhiana against ARE-1 No. SOIE/135/05-06 dated 13-01-2006 issued by the party, it is observed that the said export pertains to the ARE-1 No. SOIE/164-65 pertaining to M/s. M.K. International and not to the export goods of the party cleared through ARE-1 No. SOIE/135/05-06 dated 13-01-2006. The observation of the Commissioner (Appeals) that "it is needless to emphasize that ARE-1 No. SOIE/164-165 has also been issued by the applicant" manifests that Commissioner (Appeals) has been oblivious of the fact that filing of proof of export in r/o ARE-1 No. SOIE/135/05-06 to SOIE/141/05-06, was in dispute in the instant case.

4.6 The orders of tribunal and Government of India relied upon by Commissioner (Appeals) is not applicable to this impugned case.

5. A Show Cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. However, no reply has been received from the respondent.

6. Personal hearing was scheduled in this case on 27-06-2012 & 07-08-2012 & 09-10-2012. Nobody attended personal hearing. Hence, Government proceeds to decide this case on merits, on the basis of available records.

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

8. Government observes that the respondent exported the goods through their merchant exporter under Bond, without payment of duty. Department confirmed the demand of duty on the ground that the goods were exported beyond stipulated six months period in violation to provisions contained in para 13.6 of the chapter 7 of CBEC's Excise manual of supplementary Instructions; that there were many discrepancies in impugned AREs-1 and export documents; that signature of customs officer on AREs-1 and supplying bills do not tally; that BRCs have not been realised by the exporter or the applicant but has been received by some other person i.e M/s. Navrang Theatre Pvt. Ltd. and also that export invoice issued against ARE-1 No.135 dated 13-01-2006, pertains to M/s. M.K. International. Commissioner (Appeals) decided the case in favour of respondent. Now, applicant department has filed this revision application on grounds mentioned in para (4) above.

9. Government observes that in the instant case the original authority has held that the goods were exported after six months from the date of clearance from factory in violation to provisions of the chapter 7 of the CBEC's manual of supplementary instruction. Government observes that relevant provisions of chapter 7 reads as follows:

Para 2.1(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 manufacture or warehouse or other approved premises within such extended period as the Deputy/Assistant Commissioner of Centre Excise or Maritime Commissioner may in any particular case allow;

Para 13.6:-

" In case of non-export within six months from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy/Assistant Commissioner of Central Excise or the bond-accepting authority) or any discrepancy, the exporter shall himself deposit the excise duties along with interest on his own immediately on completion of the statutory time period or within ten days of the Memorandum given to him by the Range/Division office or the Office of the bond-accepting authority. Otherwise necessary action can be initiated to recover the excise duties along with interest and fine/penalty. Failing this, the amount shall be recovered from the manufacturer exporter along with interest in terms of the Letter of Undertaking furnished by the manufacturer. In case where the exporter has furnished bond, the said bond shall be enforced and proceedings to recover duty and interest shall be initiated against the exporter. "

As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Deputy/Assistant Commissioner is empowered to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought, before expiry of stipulated six month. It is obvious that the respondents have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority. The said condition is a statutory condition which has to be complied with. It cannot be treated as a procedural requirement which can be condoned. The case laws cited by applicant relates to procedural lapses and therefore their ratio cannot be made applicable to this case.

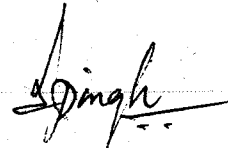
10. As regard to mis-match of details in impugned AREs-1 and export documents, Government observes that mis-match in details can be allowed provided there are sufficient documentary evidences to establish co-relation of details between AREs-1 and export documents. Government finds that in the instant case, there are mis-matches like difference in description, change in destination of export goods and name of merchant exporter without informing Central Excise authority, receipt of realization by the third party and issuance of one of the invoice by M/s.

M.K. International. Such mis-matches are substantial in nature and required to be substantiated by valid proof of documentarily evidences. Government observes that findings of appellate authority are not based on any substantial documentary evidences, produced by the respondent before him. Further, there is finding of original authority regarding non-matching of signatures of Customs Officer on AREs-1 and relevant Shipping Bills. Though, it is not on records as to whether that the signatures of Customs Official have been verified by the department or not, but under the circumstances of factual scenario of this case, it cannot be conclusively held that goods covered vide impugned AREs-1 had actually been exported vide relevant shipping bills. As such, ratio of case laws cited by the appellate authority cannot be made squarely applicable to this case, in favour of respondent.

11. In view of above discussions, Government sets aside impugned Order-in-Appeal and allows revision application.

12. Revision application thus succeeds in above terms.

13. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Commissioner of Central Excise,
Central Excise House,
F-Block, Rishi Nagar,
Ludhiana-141001.

ATTESTED



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 1715/12-Cx dated 06-12-2012

Copy to:

1. The Commissioner of Central Excise (Appeals), Customs and Central Excise, Commissionerate, Chandigarh-I.

2. M/s. Shirdi Overseas Import & Export, 851, Industrial Area, Ludhiana (PB).

✓ 3. PS to JS (RA)

4. Guard File.

5. Spare Copy

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)