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SPEED POST



F.No. 195/258/11 -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...11/12/12

ORDER NO. 1747/12-Cx DATED 10-12-2012 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.
06/CE/APPL/DLH-IV/11 Dated 04-02-2011
passed by Commissioner of Central
Excise (Appeals), Delhi-IV, New CGO Complex NH-IV,
Faridabad.

APPLICANT : M/s Precitech Turning Pvt. Ltd.,
Faridabad.

RESPONDENT : Commissioner of Central Excise, Delhi-IV,
Faridabad.

ORDER

This revision application is filed by M/s Precitech Turning Pvt. Ltd., Faridabad against the Order-in-Appeal No. 06/CE/APPL/DLH-IV/11 Dated 04-02-2011 passed by Commissioner of Central Excise (Appeals), Faridabad with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division-II, Faridabad.

2. Brief facts of the case are that the applicant engaged in manufacture of M.V. Parts and parts of Ticket issuing machine shafts for MV. The applicant reported on 10-04-2009 the theft of excisable goods valued to Rs. 5,96,434/- from his manufacturing premises on 06-03-2009, for which FIR was also filed. The applicant vide his letter dated 21-05-2009 furnished details of goods lost in theft to the department stating therein the amount of central Excise duty involved on such stolen goods. The stolen goods, being manufactured goods were liable to duty in terms of provisions of Rule 4 of the Central Excise Rules, 2002 and the applicant was liable to pay such amount of duty on removal of the same from his premises in the manners as provided in the rule 8 of the Central Excise Rules, 2002. The manufactured goods stolen on 06-03-2009 from the premises of the applicant had been removed without payment of duty and such duty was liable to be recovered under the provisions of section 11A of the Central Excise Act, 1944 with interest in terms of section 11AB. The applicant was also liable to penalty under Rule 25 of the Central Excise Rules, 2002. Therefore, a Show Cause Notice was issued to the applicant proposing recovery of duty on goods clandestinely removed with interest and for imposition of penalty. The adjudicating authority issued impugned order and confirmed the duty Rs. 49,147/- with interest and imposed penalty of equal amount of confirmed duty demand on the applicant.

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 goods in respect of which the duty demand had been confirmed and upheld by the appellate authority, had been stolen. It is not the case of the department that there was no theft. The Chowkidar was found murdered. The police has confirmed the incident, Absence of provision of remission of duty in such cases and the CBEC guidelines in para 2.7 of Chapter 18 of the CBEC Manual of instructions which have been referred to by the Commissioner (Appeals) did not justify the confirmation of demand. The applicant has suffered the loss of goods. The applicant has still deposited the duty involved amounting to Rs. 49,147/-.

4.2 The Commissioner has overlooked the facts that to attract penalty under Rule-25, the basic step is to establish removal of goods in contravention of the provisions of the Rules. Theft has occurred inspite of the preventive steps taken by the applicant. Demand of duty for want of remission permission does not imply that it can be treated as removal in contravention of the Rules. Removal in contravention by the applicant has to be established by the department by bringing out evidence on record. This is not the case that the applicant had removed the stolen goods. Rule-25 is thus not attracted.

4.3 The Commissioner has linked the penalty provision with clandestine removal. Clandestine removal means secretive removal without payment of duty. There was neither any such charge in the show Cause Notice nor findings in the Order-in-Original. The Commissioner (Appeals) has travelled beyond Show Cause Notice and Order-in-Original. Had this been the intent, the applicant should have been put to notice which was not done.

4.4 The Commissioner has also failed to appreciate that equivalent penalty is mandatorily provided only in cases covered by section-11AC of the Act, such allegation was not made in the Show Cause Notice which only alleged that the

applicant was liable to pay the duty for contravention of Rule-4 of Central Excise Rules, 2002, which provides that every person who manufactures any excisable goods shall pay the duty in the manner provided. There was no allegation to attract invoking of section-11AC and it was also not invoked.

4.5 The applicants has relied upon laws some case laws in favour of their contentions.

5. Personal hearing scheduled in this case on 10-10-2012 was attended by Shri N.K.Sharma, advocate on behalf of the respondent who reiterated the grounds of Revision Application. The respondent department vide written submission dated 20-10-2011 & 09-10-2012 mainly re-iterated contents of impugned order.

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 the incident of theft of goods in the applicant factory premises, was intimated to jurisdictional Central Excise authorities along with copy of FIR lodged with police. The original authority confirmed the demand of duty involved in such stolen goods observing violation of rule (4) of the Central Excise Rules, 2002 and also in terms of provisions contained in para 2.7 of chapter 18 of CBEC's Central Excise Manual. Commissioner (Appeals) upheld impugned Order-in-Original. Now applicant has filed this revision application on grounds mentioned in para (4) above.

9. Government finds that the original authority had confirmed the demand of duty involved in stolen goods on the ground that the goods have been removed in violation of provisions of rule 4 of the Central Excise Rules, 2002. The said rule (4) reads as follows:

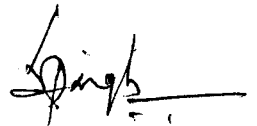
" Every person who produces or manufacture any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is

payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided. "

From reading of above provision, the Government is of opinion the said provision is applicable in case where the goods are removed from factory without payment of duty in unauthorized manner by the manufacturer or producer of the goods. In this case, fact of looting/robbery, which also led to murder of security guard of applicant's factory premise, has not been disputed. As such, the applicant was a victim of theft incident. Under such circumstances, provisions of rule (4) of the said rules cannot be applied as the applicant a manufacturer has not removed the goods unauthorised. Further, there is no specific allegation in Show Cause Notice or impugned orders that the goods were removed by the applicant in unauthorised manner from their factory premises. Theft has occurred inspite of taking all possible preventing measures by the applicant. The Government further notes that original authority while confirming demand of duty also observed that remission of duty in case of theft cannot be allowed in terms of para 2.7 of chapter 18 of CBEC's Central Excise Manual. Government finds that this is not a case where the applicant has applied for remission of duty under rule 21 of the Central Excise Rules, 2002. Applicant has already deposited the demand amount of Rs. 49,147/-. In view of this position there is no case for imposition of penalty since there is no clandestine removal of goods by the applicant. As such, Government sets aside the penalty imposed on the applicant and modifies the impugned Order-in-Appeal to this extent.

10. Revision application is disposed off in above terms.

11. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Precitech Turning Pvt. Ltd.,
Plot No. 229-230,
Sector-24, Faridabad-121005.

ATTESTED

(मागतत शर्मा / Magawat Sharma)
सहायक आयुक्त / Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)

Order No. 1747/12-Cx dated 10/2 - 2012

Copy to:

1. The Commissioner of Central Excise, Delhi-IV, New C.G.O Complex, N.H.IV, Faridabad-121001.
2. The Commissioner of Central Excise (Appeals), Delhi-IV, New C.G.O Complex, N.H.IV, Faridabad-121001.
3. The Assistant Commissioner, Central Excise, Division-III, New C.G.O Complex, N.H.IV, Faridabad.
- ✓ 4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED


10/12

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)