

REGISTERED  
SPEED POST



F.NO. 195/96-97/11-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... 8/27/13

ORDER NO. 232 - 233 /2013-CX DATED 08.03.2013 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 Act, 1944 against the Order-In-  
Appeal No. 578 to 580/2010 dated 2.11.10 passed  
by the Commissioner of Central Excise (Appeals-  
II), Bangalore

Applicant : M/s Powertech Pollution Controls Pvt. Ltd.,  
Bangalore

Respondent : Commissioner of Central Excise, Bangalore-III  
Commissionerate, C.R. Building, Queen's Road,  
P.B.No.5400, Bangalore-560001

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ORDER

These revision applications are filed by the applicant M/s Powertech Pollution Controls Pvt. Ltd., Bangalore against the order-in-appeal No. 578 to 580/2010 dated 2.11.10 passed by the Commissioner of Central Excise (Appeals-II), Bangalore with respect to order-in-original No.8/2009 dated 27.2.09 passed by Assistant Commissioner of Central Excise, Yashwantpur Division, Bangalore-III Commissionerate.

2. Brief facts of the case are that that the applicants are engaged in the manufacture and clearance of excisable goods i.e. Electrostatic Filters (Dust Killer/ Fume Killer). On scrutiny of their ER-1 returns filed, a number of discrepancies were noticed viz. (i) Delay in filing ER-1 return (ii) Non-production of proof of export (iii) Non-production of re-warehousing certificate for clearance to SEZs (iv) Non-production of re-warehousing certificate for clearance to 100% EOUs (v) Non-payment of duty on imports used in the manufacture of exempted goods (vi) Overdrawal in Account current (vii) Incorrect filing of ER-I returns. Therefore a Show Cause Notice was issued to the applicants and after due process of law Cenvat duty was confirmed under Section 11A of Central Excise Act 1944 on goods cleared without payment of duty against which proof of export was not submitted; amount equal to 10% of the value of exempted goods in terms of Notification No.10/97-CE dated 1.3.97 was confirmed, demand of cenvat duty, for the amount overdrawn were confirmed and penalty under section 25, 26 and 27 of Central Excise Rules 2002 were imposed on the applicants and Managing Director of the assessee.
3. Being aggrieved by the said order-in-original, department along with the applicants filed appeal before Commissioner (Appeal), who rejected the appeal filed by the applicants and upheld the impugned orders-in-original.
4. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The Assistant Commissioner has recorded in Para 6 (ii) of Order-in-Original No. 8/2009 dated 18.3.2009 that there is no link between the goods exported under Shipping Bill No. 1848387 dated 16.4.2007 and Shipping Bill No. 2144888 dated 23.10.2007 and those removed from the factory for export. The Assistant Commissioner has accordingly confirmed the demand of duty of Rs.77,147/- along with Education Cess of Rs.1,453/- and SHE, Cess of Rs.771/-. The Commissioner (Appeals) has reiterated the same finding holding without the endorsed ARE-1 it is not possible to accept the proof of export in the form of endorsed shipping bills, bill of lading, foreign inward remittance issued by the bank, etc. The Applicants have shown clearance of goods for export in ER 1 Return for the month of April 2007 as recorded by the adjudicating authority. It is also recorded that the Applicants have submitted Shipping Bill No. 1848387 dated 16.4.2007 and Shipping Bill No. 2144888 dated 23.10.2007, Bills of Lading and Bank Statement. The Applicants submit that Shipping Bill No. 1848387 dated 16.4.2007 relates to Export Invoice No. E0001 dated 13.4.2007. The Shipping Bill shows that the goods described as Dust Killer Model DK500 & Dust Killer Model DK250 consisting of 12 packets and valued at Rs.3,03,501/- were exported to M/s Anthara Solutions, FZE, Dubai. The corresponding Export Invoice No E0001 dated 13.4.2007 referred to in the shipping bill shows that the goods described as Dust Killer Model DK500 and Dust Killer Model DK250 consisting of 12 wooden boxes valued at Rs.3,03,501/- were exported to M/s Anthara Solutions FZE, Dubai. There is thus complete co-relation between description, quantity and value of goods and the consignee.

4.2 Similarly, Shipping Bill No. 2144888 dated 23.10.2007 shows that the goods relate to Export Invoice No E-0004 dated 18.10.2007. The shipping bill shows that the goods described as Fume Killer Model: FK500 Single Pass, Fume Killer Model: FK1000 Single pass, Electrostatic Fume Filter Model:FK500 Double Pass & Spare Electrostatic - Module FF500 comprising of 5 wooden boxes valued at Rs.1,78,669.68 were exported to M/s Quest International Supplies Co. Ltd., Thailand. The Export Invoice No E0004 dated 18.10.2007

contains the same description, quantity and value of goods and consignee. The Applicants submit that the customs endorsed shipping bills corresponds to the Export Invoices and the identity of the goods exported are fully established.

4.3 Para 4, Part III, Chapter 7 of the CBEC Manual of supplementary Instructions stipulate that the following documents shall be accepted as proof of export in the case of direct export by the manufacturer-exporter:

- (i) duly attested photocopy of the shipping bill bearing the particulars and date of clearance of documents under which the goods are cleared from the factory of production, having endorsement on its reverse by the Customs of the particulars of mate's receipt No. (wherever applicable), name of the ship/flight No. of the aircraft by which the goods were exported, date of export, etc.
- (ii) Customs attested copy of Bill of Lading, and
- (iii) Foreign exchange remittance certificate.

The CBEC Circular No.527/23/2000-Cx. dated 1.5.2000 confirms that one of the requisite documents for acceptance of proof of export is attested copy/photo copy of the Shipping Bill. When the Applicants have submitted the documents as prescribed by the CBEC as proof of export of goods, the insistence of the lower authorities that only endorsed ARE-1 is acceptable as proof of export is totally perverse and contrary to the instructions of the CBEC, The impugned order passed contrary to CBEC Instructions and without verification of facts is wholly unsustainable. The demand of CENVAT credit of Rs.77,147/- Education Cess of Rs.1,453/- and SHE Cess of Rs.771/- totally amounting to Rs.79,461/- is required to be set aside.

4.4 The allegation was that the Applicants in the month of July 2007 had cleared 2 Nos Pollution Control Devices valued at Rs.1,53,689/- to SEZ without payment of duty. The Assistant Commissioner has recorded in Para

6(iii) of the Adjudication Order that the assessee has produced original and duplicate copy of ARE-I No 002 dated 13.7.2007 duly countersigned by the authorized officer of SEZ, Chennai valued at Rs.77,680/- involving duty of Rs.12,802/- and that the same has been accepted. The Assistant Commissioner in Para 6(iv) has held that ARE-3 No.5 & 6 both dated 13.7.2007 were in fact in respect of goods cleared to SEZ and not EOU as alleged in the SCN and that the assessee has used Form ARE-3 instead of ARE-1. The ACCE has further recorded that in respect of ARE 3 No 5 & 6 the goods covered are actually supplied to SEZ as discussed in Para 6 (iii) and the assessee has produced the proof of export for one consignment and paid duty in respect of the other consignment. When the re-warehousing certificates for goods cleared to SEZ in respect of both consignments have in fact been submitted in Form ARE 3 No.5 & 6 both dated 13.7.2007, instead of ARE-1, there is no justification for demanding duty. The demand and appropriation of duty of Rs.12,802/- along with interest of Rs.2,357/- was contrary to the finding of the fact recorded by the Assistant Commissioner. The Commissioner (Appeals-II) has not considered necessary to examine the facts and record his independent findings.

4.5 The applicants have produced proof of export of goods as prescribed in Para 4, Part-III, Chapter 7 of CBEC Manual of Supplementary Instructions. There is no contravention of Rule 19 of the Central Excise Rules 2002. The applicants respectfully submit that there is no justification for penalty of Rs.50,000/- imposed under Rule 25 and a further penalty of Rs.5,000/- under residuary provisions of Rule 27 of the Central Excise Rules 2002.

5. Personal hearing was scheduled in this case on 08.10.2012 and 14.12.12. Shri M.S.Nagaraja, Advocate appeared for hearing on 14.12.12 on behalf of the applicant, who reiterated the grounds of revision application. They have contended in their written dated 14.12.12 that the description quantity and value of goods contained in export invoices, the consignee for whom the goods were exported, are available in Shipping Bills and airway bill. The Bank Realization Certificate is in respect of the goods covered by the

Shipping Bills and exported goods. There is complete correlation between the description, quantity, value, consignees etc. shown in the export invoices and the Shipping Bills, duty endorsed by the proper officer of customs confirming export of goods. Regarding clearance to SEZ the goods were in fact removed to SEZ and not to EOU but ARE-3 form was used by mistake instead of ARE-1. The demand of duty as confirmed in para 4(iii) of order-in-original is only on the ground that they had not produced proof of export order.

5.1 The respondent department vide their letter dated 5.10.12 submitted that the applicants produced only the copies of Shipping Bills No.184837 dated 16.4.07 and S.B.No.214488 dated 23.10.07 as proof of export which solely cannot be accepted as proof of export. Similarly they were required to produce the re-warehousing certificates as proof of export in respect of goods cleared to SEZ without payment of duty but they could not produced the same before adjudicating authority, and they paid the duty which was confirmed and appropriated. The applicants have violated the provisions of Rule 12 and 19 of Central Excise Rules and there was laxity on the part of Managing Director, the penalty were rightly imposed under Rule 25,26 and 27 of Central Excise Rules, *ibid*.

6. Government has carefully gone through the relevant case records, written/oral submission and the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government notes that there are two basic issues involved in the instant revision applications; first pertaining to non-production of proof of export and the second non-production of re-warehousing certificate for clearance to SEZs.

7.1 Regarding first issue, Government observes that the department has confirmed the demand only on the basis of doubt but did not provide any evidence that goods were actually not exported or it was diverted to DTA etc. or somewhere else. On contrary the applicants have at the same time


submitted that the description, quantity and value shown for the goods exported in the export invoices, shipping bills, airway bills and bank realization certificate, tally and hence there is complete correlation between the goods cleared and actually exported. Government further observes that in the case of export of goods without payment of duty under bond in terms of Rule 19 of Central Excise Rules 2002, there is provision under Chapter 7 of CBEC Excise Manual of Supplementary Instruction for acceptance of proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-1 are not available. Hon'ble Tribunal in the case of Shreejee Color Chem Ind. Vs CCE Vadodara - 2009(233) ELT 367 (T.Ahd) has held that even when copy of relevant AR4/AR4A were not produced, the proof of export by way of invoice, Bill of lading, shipping bill is sufficient proof of export. Government notes that lower authorities have not considered the said instructions and case law.

7.2 As far as non-production of re-warehousing certificate for clearance to SEZ is concerned the applicants have contended that the said re-warehousing certificates for goods cleared to SEZ in respect of said consignments had been submitted in Form ARE-3 No.5&6 both dated 13.7.07 which was duly countersigned by authorized officer of SEZ and accepted by the department, hence there is no justification for demanding duty; whereas the department has contended that the applicants did not produce the same before adjudicating authority. This aspect is required to be verified by the lower authority.

8. In view of above position, Government sets aside the impugned orders and remands the case back to original authority for considering the matter afresh in the light of above observations.

9. Revision applications are disposed of in terms of above.

10. So ordered.



(D P SINGH)

JOINT SECRETARY (REVISION APPLICATION)

M/s Powertech Pollution Controls Pvt. Ltd.  
No.22/3, R.M.Rajanna Building,  
G.B.Munikrishnappa Road,  
Ramachandrapura, Jalahalli Post  
Bangalore-560013

*Attend*

*4/2/1998*  
**K. RAMESHWARAM**  
Joint Secy. (RA)  
Ministry of Finance (Dept. of Indus.)  
New Delhi



ORDER NO. 2-32-2-33/2013-CX DATED 08.03.2013

Copy to:

1. Commissioner Central Excise-III, Commissionerate, C.R.Building, Queens Road, P.B.No.5400, Bangalore-01
2. Commissioner of Central Excise (Appeals), 16/1, 5<sup>th</sup> Floor, S P Complex, Lalbagh Road, Bangalore.
3. Assistant Commissioner of Central Excise, Yashwantpur Division, 335/1, II Floor, Gokul Complex, 13<sup>th</sup> Cross, Sampige Road, Malleshwaram, Bangalore-560 027.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy

  
(P.K.Rameshwaram)  
OSD (Revision Application)

Dear Mr. [Name]

I have received your letter of the [Date] regarding [Subject]

and am sorry to hear that [Detail]

As a result of [Action]

I have [Action]

I am sure you will be satisfied with the result.

Yours faithfully,

[Signature]

[Name]

[Address]

[City]

[Country]

[Phone Number]

[Additional Information]