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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/709/2014-RA / 4579

Date of Issue: 25/08/2021

ORDER NO. 262/2021-CX (WZ)/ASRA/MUMBAI DATED 18.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s P.J. Exports

Respondent : Commissioner (Appeals), Central Excise, Zone-I, Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR(163-164) Th-I/2013 dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, Zone-I, Mumbai.

ORDER

This Revision Application is filed by M/s P.J. Exports, 302, Kalbadevi Road, Mumbai - 400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BR(163-164) Th-I/2013 dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, Zone-I, Mumbai.

2. The issue in brief is that the Applicant, had executed B-1 Bond No. 4/11-12 dated 02.03.2011 valid upon 03.03.2012 for exporting the excisable goods manufactured from M/s Sukanto Textiles Exports Pvt Ltd, Thane, holder of Central Excise Registration No. AABCS4019HXM001 and without payment of Central Excise duty under Notification No. 42/2001-CE(NT). The Applicant failed to file proper documents as proof of export in respect of the following ARE-1s to the satisfaction of the Bond accepting Authority, Deputy Commissioner, Central Excise, Thane City Division:

S.No.	ARE-1 No & date	Amount (Rs)	Shipping No.
1	46 dt 01.08.11	47,702	4812557
2	37 dt 11.07.11	56,169	4481093
3	30 dt 21.06.11	16,351	4202526
4	33 dt 01.07.11	1,08,645	4310757
5	43 dt 27.07.11	63,057	4549007
6	25 dt 06.06.11	56,734	3988101
	Total	3,48,658	

The Applicant did not follow the proper procedure stipulated under the provisions of Rule 19 of Central Excise Rules, 2002. It was also noticed that as per Para 13.2 and 13.6 of CBEC's Excise Manual of Supplementary Instructions, 2005 monthly statement in proforma 'Annexure 19' was not filed and non export of goods within six months of removal of the goods through above ARE-1s by the Applicant. Hence the Applicant and their manufacturer M/s Sukanto Textiles Exports Pvt Ltd was issued Show Cause Notice dated 02.03.2012 demanding duty of Rs. 3,48,658/- and enforce of the B-1 Bond executed by the Applicant. The Deputy Commissioner, Central

Excise, Thane City Division, Thane-I Commisionerate vide his Order-in-Original No. 02/SC-02/12-13 dated 26.06.2012 confirmed the Central Excise duty amounting to Rs. 2,91,924/- under Section 11A of the Central Excise Act, 1944 and interest under Section 11AB of the Central Excise Act, 1944. Further imposed penalties of Rs. 50,000/- on the Applicant and Rs. 10,000/- on M/s Sukanto Textiles Exports Pvt Ltd under Rule 25 of the Central Excise Rules, 2002. The Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No. BR(163-164) Th-I/2013 dated 19.03.2013 upheld the Order-in-Original dated 26.06.2012 in respect of the Applicant and their appeal was rejected.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The impugned order was based on extraneous consideration as the same was not based on true factual and legal position in the matter. In fact, the export had taken place as proved from the documents furnished for each shipment which have to be considered in totality.
- (ii) There has been total non application of mind in passing the impugned order and grave injustice have been done in the matter as the various judgments relied upon have not been considered or even not categorically analyzed as to why these judgments are not applicable in the fact of the present case. In fact, these judgments are binding precedents and have legal force in their applicability in such matters.
- (iii) The impugned Order was not a speaking and judicious Order. The order does not suggest as to how export was not established. No cogent reasons given for rejecting the proof of export.
- (iv) The goods had been examined by the Central Excise Authorities before stuffed in containers, the details of which are mentioned in the ARE-1s signed by the Excise Authorities and subsequently even verified by the Customs Authorities at the Air Cargo Complex, Mumbai and JNPT, Nhava Sheva. The respective Shipping Bills issued clearly

indicate the Invoices, ARE1s and all other particulars and the respective Airway Bills/Bill of Ladings confirm all the particulars. Further, the Airway bills are issued only after the goods are allowed for the exports.

- (v) The compliance of Rule 19 of Central Excise Rules, 2002 was only of technical nature and cannot take away the substantive right of exporter on completion of exports. The exports can be established by various other documents viz., ARE1 s, Invoices, Airway Bill/Bill of Lading, Shipping Bill and Bank Realization Certificate and once the Realization Certificate has been furnished, it covers whole aspect of the matter of fact of the export which has to be considered as proof of export in discharge of Bond. It is admitted and undisputed facts export had taken place and therefore, entitled to discharge the Bond which was not accepted by the Adjudicating Authority. They rely upon the case law IN RE: Shrenik Pharma Ltd [2012 (281) ELT 477 (GOI)].
- (vi) The procedure is only a channel to administer substantive law and ought not to obstruct/ detect the cause of justice as it is well settled that procedure is the had made of substantive law and that role of procedure ought to sub serve not govern substantive law
- (vii) The Applicant had submitted each set for all 5 ARE-1 exports. They had received the Foreign Exchange against all the exports which are established as per the Bank Realization Certificate received and furnished in the matter. The receipt of Foreign Exchange against each export clearly prove that goods have been received by the Foreign Buyers to their entire satisfaction. It is only against the receipt of goods against export documents, the amount has been remitted by the foreign buyer.
- (viii) The documents furnished clearly establish proof of exports. It has been held by the Supreme Court /High Court
 - (a) in the case of State of Punjab Vs. Baktawar Singh [AIR 1972 SC 2083 : (1972) 4 SSC 730] that a non speaking order generally raises the suspicious that it is arbitrary and illegal.

(b) in the case of Om Prakash Sharma Vs. State of U.P. [AIR 1991 SC 425 : 1991 Supp (2) SCC 436] it has been held by the Apex Court that absence of adequate reasons to justify the order is arbitrary or is liable to be struck down.

(c) the division bench of Bombay High Court in the recent case of Shapoorii Pallonji & Co. Ltd. Vs. Commissioner of Central Excise, Pune-I [2011 163 ELT 206 (Bom)]

All the above case laws are applicable in the facts of the present case which were not considered by the Appellate Authority.

(ix) In all 5 cases of exports made by the Applicant was clearly established from copies of ARE-I, Shipping Bills, being issued by the competent Excise Authority, export invoice, Bill of Lading and Bank Realization Certificates for each shipment. These ARE-1s (original/Duplicate) had been signed by the Customs and clearly indicates the name of the manufacturer, No & description of packages, descriptions of goods, value, excise duty involved in the matter. These ARE-1s were signed by Merchant exporter i.e. Applicants and also by Manufacturer. The respective invoices indicate all the particulars. The respective Shipping Bills issued clearly state the invoices, ARE-1, and all other particulars as per the documents. The respective B/Ls/Airway Bills confirms all the particulars. It is admitted fact that Bill of Lading are issued only after the goods are allowed for the exports. Further the BRC issued by the Bank in the prescribed performa clearly states the Invoice No., Shipping Bill No, value, foreign exchange realized and all other material particulars. All these documents clearly proved the export, but the same were not considered by the adjudicating authority before passing the impugned order.

(x) Non-grant of export benefit under the Scheme is against the Import Export Policy and is whimsical and arbitrary against Article 14 of the Constitution and against the Principle of Promissory estoppels.

(xi) The Applicant, Merchant Exporter had processed the goods from M/s. Sukanto Textiles Exports Pvt. Ltd. The respective ARE-1 bear the

- joint declaration of the manufacturer and the Applicant. These ARE-1 duly endorsed by Central Excise Authorities which clearly shows that goods have been cleared for exports. Further Shipping Bill, Airway Bill and Bank Realization Certificate for the respective shipment clearly establish the export having been taken place beyond doubt. The appeal filed by the manufacturer M/s. Sukanto Textiles Exports Pvt. Ltd was allowed and penalty was set aside by the Appellate Authority.
- (xii) The procedure of execution of Bond and cancellation of export entries after due export has been formulated to enable the Merchant Exporter as simplification of procedure who export the goods to avoid the payment of Central Excise duty and subsequently claiming as rebate/refund thereafter. Even otherwise goods being exported are entitled for duty amount by way of drawback. Above all to make the goods competitive in the international market no duty can be levied and/or demanded for the inputs and finished goods exported by the manufacturer or Merchant Exporter.
- (xiii) After export being made, Merchant Exporter is not liable to pay duty by way of demand since what is demanded the duty as per ARE-1 which has been duly certified by concerned Central Excise Authorities and the goods thereafter are exported as per the documents processed by the Custom Authorities under Shipping Bill. No Custom Shipping Bill can be generated exclusively by any Authorities having the running Serial No. given by the Computer. The process of the Shipping Bill and Bank Realization Certificate is sufficient for proof of exports.
- (xiv) Even DGFT has been accepting proof of export on the basis of documents stated in para 3 hereinabove. The proceedings against ARE No. 25 dated 06.06.2011 was dropped on similar documents. On the basis of the same findings, proceedings against 5 ARE-I s can be dropped with no penalty. The Applicant was made to defend unnecessarily when the goods had already been exported.

(xv) The Applicant prayed that the Order-in-Appeal dated 19.03.2013 be quashed and set aside.

4. Personal hearing in the case was fixed for 25.05.2015. The Applicant's Advocate Shri Rajinder Kumar vide letter dated 11.05.2015 informed that he will not be attending the hearing due to personal reasons and requested to fix any other dates. The personal hearing was fixed on 14.02.2018, 09.10.2019 but no one appeared for the hearing. There was a change in the Revision Authority, hence a final personal hearing was fixed for 10.02.2021, 24.02.2021, 18.03.2021 and 25.03.2021, however none appeared for the hearing. Hence the case is taken up on merits.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of the records, Government observes that the Applicant had cleared the goods from the premises of the manufacturer vide following ARE-1s and Shipping Bills:

S.No.	ARE-1 No & date	Amount (Rs)	Shipping No.
1	46 dt 01.08.11	47,702	4812557
2	37 dt 11.07.11	56,169	4481093
3	30 dt 21.06.11	16,351	4202526
4	33 dt 01.07.11	1,08,645	4310757
5	43 dt 27.07.11	63,057	4549007
	Total	2,91,924	

The Applicant had submitted export documents i.e. ARE-1s, Shipping Bills, Packing lists, Excise Invoices, Airway Bills etc. as proof of Export. It was observed that the Applicant had not submitted Annexure-19 along with the supporting documents to the Divisional office or Bond Accepting Authority. Further, on going through the copies of Shipping Bills of the above ARE-1s, it was observed that there was no reference of ARE-1 on the Shipping Bill and similarly there was no endorsement /Certificate of the Custom Officer

as specified in Para 13.1 of Chapter 7 of the CBEC's Excise Manual of Supplementary Instructions, 2005 showing the details of Shipping Bill/Airway Bill and date on which the ship/flight left on the reverse side of ARE-1 in question. Hence the Deputy Commissioner, Central Excise, Thane City Division, Thane-I Commissionerate vide his Order-in-Original No. 02/SC-02/12-13 dated 26.06.2012 confirmed the Central Excise duty amounting to Rs. 2,91,924/- with interest and also imposed a penalty of Rs. 50,000/- on the Applicant. The Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No. BR(163-164) ThI/2013 dated 19.03.2013 upheld the Order-in-Original dated 26.06.2012 in respect of the Applicant and their appeal was rejected.

8. Government observes that for proof of export, the Applicant have furnished the following documents:

Sr.No.	Documents	C.Ex. officer signature	Custom Officer signature	Remarks
1	ARE-1 No. 46 dt 01.08.2011	Yes	No	Respective documents are co-related with each other but not with ARE-1
	S/B No. 4812557 dt 1.8.11	-	Yes	
	Airway Bill No. 724-31585481 dt 2.8.11	-		
	Invoice No. PJ-360/11-12 dt 29.7.11	-	Yes	
	BRC No. 11744 dt 7.1.12	-		
2	ARE-1 No. 37 dt 11.7.11	Yes		
	S/B No. 4481093 dt 9.7.11	-	Yes	
	Airway Bill No. 724-31585201 dt 12.7.11	-		
	Invoice No. PJ-348/11-12 dt 8.7.11	-	Yes	
	BRC No. 11735 dt 7.1.12	-		
3	ARE-1 No. 30 dt 21.6.11	Yes	No	
	S/B No. 4202526 dt 21.6.11	-	Yes	
	B/L No. BOM486259 dt 27.6.11	-		
	Invoice No. PJ-345/11-12 dt 17.6.11	-	Yes	
	BRC No. 11363 dt 19.11.11	-		
4	ARE-1 No. 33 dt 01.7.11	Yes	Remarks are made, but no signature	
	S/B No. 4310757 dt 28.6.11	-	Yes	
	B/L No. 25431dt 4.7.11	-	-	
	Invoice No. PJ-356/11-12 dt 23.6.11	-	Yes	
	BRC No. 10918 dt 19.9.11	-		

5	ARE-1 No. 43 dt 21.6.11	Yes	No
	S/B No. 4649007 dt 21.7.11	-	Yes
	Airway Bill No. 100729 dt 22.7.11	-	-
	Invoice No. PJ-359/11-12 dt 20.7.11	-	Yes
	BRC No. 11736 dt 7.1.12	-	-

9. Government finds non correlation with ARE-1s itself shows that whatever goods had been cleared for export under ARE-1s are not correlated with the other documents and there are no endorsement of the Custom Officers in Part C of the ARE-1s and further, the Applicant had not submitted Annexure '19' as specified under Chapter 7 of the CBEC's Excise Manual of Supplementary Instructions, 2005.

10. Government is in agreement with the findings of the Commissioner(Appeals)

"(07).....In this case, it is observed that the actual procedural failure in this regard has taken place at the time of submission of the documents before the Bond accepting authority, who after satisfying himself about the due compliance of the entire procedure was required to discharge the Bond. However, it could not become possible for him to do so because the Merchant Exporter was not able to submit the complete and proper set of documents to the satisfaction of the Bond accepting authority and hence there was a clear violation of the conditions of the Bond."

Government finds that there was no correlation between the ARE-1s and Shipping Bills/other documents to prove that the goods mentioned in ARE-1s have been exported out of India. The present provision of the law requires the Applicant to ensure that the specified documentary proof of export of goods are produced when the goods are cleared without payment of duty and in case of default, the liability of duty and penalty would be attracted. Hence, it cannot be held that the penalty under Rule 25 of the Central Excise Rules, 2002 have been incorrectly imposed on the Applicant.

11. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. BR(163-164) Th-I/2013 dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, Zone-I, Mumbai and, therefore, upholds the same.

12. The Revision Application filed by the Applicant is rejected on above terms.

Shrawan
18/08/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 262/2021-CX (WZ)/ASRA/Mumbai Dated 18.08.2021

To,
M/s P.J. Exports,
302, Kalbadevi Road,
Mumbai - 400 002.

Copy to:

1. The Commissioner of CGST, Mumbai South, 13th floor, Air India Building, Nariman Point, Mumbai 400 021.
2. Shri Rajinder Kumar, Advocate, 705, Shradha CHS, Near Sion Talav, N.S. Manikar Marg, Sion (E), Mumbai 400 022.
3. Sr. P.S. to AS (RA), Mumbai
- ~~4. Guard file~~
5. Spare Copy.