



**REGISTERED
SPEED POST**

F.No. 195/26-29/10-RA(Remand)
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.. 20/6/14

ORDER NO. 274-277/14-G-114-CX DATED 20-06-2014 OF THE
GOVERNMENT OF INDIA, PASSED BY SMT. ARCHANA PANDEY TIWARI,
JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE
OF THE CENTRAL EXCISE ACT, 1944.

- Subject : Order in revision application filed, under Section 35 EE of
the Central Excise Act, 1944 against the order-in-appeal
No.SB/44 to 47/Th.II/09 dated 01.09.2009 passed by the
Commissioner of Central Excise (Appeals), Mumbai Zone-
I
- Applicant : M/s Kaizen Plastomould Pvt. Ltd., 1, Punjab Foundry
Industrial Estate, Mira Bhayander Road, Bhayander(E),
Thane-401104.
- Respondent : The Commissioner of Central Excise, Thane-II

ORDER

These revision applications are filed by M/s Kaizen Plastomould Pvt. Ltd., Thane against the Order-in-Appeal No.SB/44 to 47/Th.II/09 dated 01.09.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I, with respect to order-in-original No.16-17/2006-07 dated 28.08.2006, 23/2006-07 dated 08.09.2006 and 40/2006-07 dated 04.01.2007 passed by the jurisdictional Assistant Commissioner, Central Excise, Bhayandar Division, Thane-II.

2. Brief facts of the case are that the applicants exported their goods under Bond without payment of duty. Applicants were issued Show Cause Notices demanding duty in respect of export consignments cleared for which proof of export was not submitted in time and also in one of the case excisable goods were removed without payment of duty under the cover of invalid Letter of Undertaking (LUT). The original authority subsequently confirmed the duty vide impugned Orders-in-Original and also imposed penalty on the applicants.

2.1 Aggrieved with these Orders-in-Original applicants filed appeal before Commissioner (Appeals), who rejected the appeal and upheld the impugned Orders-in-Original.

3. Being aggrieved with the impugned Orders-in-Appeal, the applicants had filed these Revision Applications under section 35EE of Central Excise Act, 1944 before Central Government on the following common grounds:-

3.1 The applicants submit that original and duplicate copies of ARE-1 No. 03/04-05 dated 17.05.2004; ARE-1 No. 04/04-05 dated 30.09.2004 and 05/04-05 dated 03.11.2004 and ARE-1 No. 03/05-06 dated 22.07.2005 were already filed with the department i.e. Jurisdictional Range authority and all the proof of exports were also filed with the Divisional authority and hence the allegations of non submission of proof of export are baseless and incorrect.

3.2 The Applicants submit that there is no allegation or any grounds raised in the Show Cause Notices or in the orders-in-appeal that the goods covered under above mentioned AREs-1 have been diverted to the local market and the same have not been exported. In fact the applicants have placed on records all the collateral evidences to establish that the goods have been exported by them.

3.3 The Applicants submit that the said documents were already produced during the course of proceedings before the Assistant Commissioner as seen from the aforesaid correspondences and all the evidences substantiating the export of goods were produced before the Adjudicating Authority and in spite of the same the demand was confirmed with the findings that no evidences are filed by the Applicants. The said proceedings deserved to be quashed and the aforesaid documents should be accepted as evidences of export.

3.4 The penalty of Rs.10,000/- was imposed vide Order-in-Original No.40/2006-07 dated 04.01.2007. In this regard, the applicants submit that there is no dispute on the fact of export and there is no dispute that the clearances were under cover of excise invoice and ARE-1 and after complying with all the procedures of self removal. The proof of export is also filed with delay of 27 days which stands condoned by accepting the proof of export. There are no ground for invoking penalty of Rs.10,000/- under Rule 25 of Central Excise Rules, 2002.

3.5 No specific contravention is visualized under clause (a) to clause(d) of rule 25 and accordingly, no penalty can be imposed under the said Rule. The Hon'ble Supreme Court in case of Amvit Foods Vs. CCE, 2005(190) ELT 433(SC) had held that the assessee should be made aware with the relevant sub-clause under which penalty is imposed.

3.6 The applicants has cited following case laws in their favour:

- (a) Shreeji Colour Chem Industries Vs. CCE, 2009(233) ELT 367 (Tri. Ahmd.)
- (b) CCE, Jamshedpur Vs. TISCO Tube Division, 2003(156) ELT 777 (Tri. Kol.)
- (c) Modern Process Printers, 2006(204) ELT 632(G.O.I.)

4. Government of India vide revision order No.1396-1399/11-CX dated 14.10.2011 rejected the revision applications filed by the applicants. Subsequently, the applicants challenged the said GOI order in W.P.No.152/2014 before Hon'ble Bombay High Court, who vide order dated 3.3.2014 ordered as under:

"14. As a result of the above discussions, the writ petition succeeds. The impugned order dated 14.10.11 is quashed and set aside. The Revision Application is restored to the file of respondent No.2 for a decision afresh on merits and in accordance with law.

15. The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court."

5. In compliance of said order of Hon'ble High Court, the personal hearing was fixed on 16.6.2014. Shri Padmanabh S.Pathak, Consultant and Shri Henry D'souza, authorized signatory of the applicants company appeared for hearing on 16.6.14 before JS (RA) and has given written submissions alongwith the photocopies of supporting documents and requested for grant of relief.

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 applicants exported goods vide various AREs-1. The original authority vide three(3) impugned Orders-in-Original covering four (4) AREs-1 confirmed the demand mainly on the ground that the applicants failed to produce proof of export in the form of original and duplicate copies of AREs-1, duly endorsed by the Customs authorities. In one Order-in-Original, the original authority accepted the proof of export, however, imposed penalty on applicants on the ground that the proof of export was submitted late and also that the applicants has been habitual offender as much as they frequently failed to submit original and duplicate copies of AREs-1, duly endorsed by the Custom officers. In one order-in-original, penalty was imposed for the reason of exporting the goods without valid LUT. Commissioner (Appeals), upheld the impugned Orders-in-Original vide order-in-appeal. Government of India vide Revision Order No.1396-1399/11-Cx dated 14.10.2011 rejected the revision applications filed by the applicants. The applicants filed W.P.No.152/2014 against said Revision Order dated 14.10.11 before Hon'ble Bombay High Court. Hon'ble High Court set aside the said revision order and remanded the cases back to original authority to decide the same afresh in light of judgement of Hon'ble High Court in case of U.M.Cables Limited Vs UOI by taking into account collateral evidences other than original and duplicate copies of AREs-1.
8. Government observes that in one of the impugned orders-in-original viz. order-in-original No.40/2006-07 dated 4.1.2007, the proof of export was accepted, however, penalty was imposed on the applicants on the ground that the applicants failed to export the goods under valid LUT. Government finds that the Hon'ble High Court in its order has clearly stated that the Court's writ jurisdiction has not been invoked with reference to cases where allegations of export under invalid LUT is involved and the interference of Hon'ble Court was sought only to the extent that the show cause notice demand in respect of exported consignments on the allegation that there is no proof of export submitted by the exporter. Under such circumstances, Government finds that revision order with reference to upholding one of the orders-in-original for imposition of penalty for export under invalid LUT,

legally holds good. Hence, the said impugned order-in-original is upheld to this extent, of imposition of penalty for exporting the goods under invalid LUT.

9. In these cases, the duty demand was confirmed for the reasons of non-submission of original/duplicate copies of ARE-1. In this regard, Government observes that Hon'ble High court of Bombay in its judgement dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, applying the ratio of above said judgement of Hon'ble High Court of Bombay in the said case, is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 form is not submitted. In the light of above, Government proceeds to examine the aspect of proof of export on the basis of collateral evidences available on records or submitted by the applicants.

9.1 In respect of ARE-1 No.03/04-05 dated 17.5.2004 and ARE-1 No.04/04-05 dated 30.9.2004 the Government observes that the applicants in the paper book of revision application has submitted copy of excise invoice, export invoice, bill of lading and BRC. The excise invoices contain mention of relevant ARE-1 No.03 dated 17.5.2004, export invoice No.KPM/EX/03 and ARE-1 No.04 dated 30.9.2004, export invoice No.KPM/EX/05 respectively. The shipping marks Nos. mentioned in excise invoice and export invoice tallies with the shipping marks mentioned in the relevant bill of lading. Further, the quantity/weight, description of excise invoice tallies with quantity/weight and description mentioned in the export invoice. Also, value mentioned in export invoice tallies with amount mentioned in BRC in dollar term. On the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as

completed. As such, demand of duty is not sustainable for aforesaid reasons. However, such verification has been done on the basis of copies of documents submitted by the applicants. Hence, the original authority is required to carry out necessary verification on the basis of original documents either available with applicants or submitted to the department by the applicants as claimed by them by virtue of acknowledgement of receipt of such documents.

9.2 As regards ARE-1 No.05/04-05 dated 3.11.2004, Government observes that the applicants in the paper book of revision application has submitted copy of excise invoice, export invoice, bill of lading and export remittance documents. The excise invoices contain relevant ARE-1 No.05 dated 3.11.2004 and export invoice No.KPM/EX/06. As regards ARE-1 No.03/05-06 dated 22.1.2005, Government finds that the applicants has submitted copies of ARE-1, excise invoice, export invoice, shipping bill, bill of lading and export remittance documents. In ARE-1, there is mention of excise invoice No. The shipping bill Nos. mentioned in excise invoice and export invoice tallies with the shipping marks mentioned in the relevant bill of lading. Further, the quantity/weight, description of excise invoice tallies with quantity/weight and description mentioned in the export invoices. However the amount mentioned in export invoices does not tally exactly with amount mentioned in the relevant remittance documents. The applicants is required to submit such proof of remittance before original authority and if the value mentioned in export documents found tallies with the amounts mentioned in export remittance documents in dollar term then the correlation may be treated as established between export documents and excise documents and hence, export may be treated as completed. Above verification has been done on the basis of copies of documents submitted by the applicants. Hence, the original authority is required to carry out necessary verification on the basis of original documents either available with applicants or submitted to the department of applicants as claimed by them by virtue of acknowledgement

Order No. 274-277/14-Cx dated 20-06-2014

Copy to:-

1. The Commissioner of Central Excise, Thane-II
2. ^(Appeal) The Commissioner of Central Excise, Mumbai Zone-I, Meher Building,
D.S. Lane, Chaowpathy, Mumbai - 400 007.
3. The Asstt. Commissioner of Central Excise Bhayandar Division, Thane-
II, Commissionerate, Divine Sherton Plaza, Jasal Park, Bhaynder(E),
Thane- 401105.
- ✓ 4. PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED



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

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