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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.195/03-09/17/5292 Date of Issue:- 17.09.2021

ORDER NO:280-286 /2021-CEX (WZ) /ASRA/MUMBAI DATED27.08.2021 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.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. VAD-EXCUS-003-APP-23 to 29/2017-18 dated 01.06.2017 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara (Appeals-III).

Applicant :- M/s Kanchan International Ltd., Thane.

Respondent :- Commissioner, Customs, Central Excise & Service Tax, Daman.

ORDER

These Revision Applications have been filed by M/s Kanchan International Ltd., Thane (hereinafter referred to as "the applicant") against Orders-in-Appeal No. VAD-EXCUS-003-APP-23 to 29/2017-18 dated 01.06.2017 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara (Appeals-III).

2. Brief facts of the case are that the applicant had exported goods under LUT as visualized under Rule 19 of Central Excise Rules, 2002 read with Notification No. 42/2001 – C.E(NT) dtd. 26/06/2001 as amended. The goods were cleared for exports under cover of Excise Invoice and ARE-1 and the same were exported within six months of clearance. However, the original [white] and duplicate [Buff] copies of ARE-1 were misplaced/ lost by the CHA of the applicant at Mumbai and accordingly they were unable to file / submit the proof of exports within the prescribed period of six months.

3. Thus the applicant was issued show cause notices for failing to produce proof of exports as per the guidelines under Para 13 of Ch. 7 of CBEC Excise Manual for Supplementary Instructions for the above referred exports made under LUT, proposing to recover the duty on the said goods cleared for exports from them, by invoking the provisions of Sec. 11A of Central Excise Act, 1944 along with interest under Section 11AA and penalty under Rule 25 of Central Excise Rules,2002. These show cause notices culminated into confirmation of duty demand, interest and penalty as detailed below:-

TABLE

Sl. No.	Show Cause Notice No. & date	Order In Original (OIO) No. & Date	Amount of Duty Confirmed	Amount of Penalty imposed
1	2	3	4	5
1.	SDMN/V/Ch.85/3-11/ DEM / AC/2013-14 dated 11/10/2013	DMN-II/AC/DMA/ 04/ 15-16 dtd. 30/10/ 2015	Rs. 2,96,080/-	Rs. 75,000/-
2.	V/Ch.76/3-8/DEM/ AC/ 2013-14 dated 27/06/2013	DMN-II/AC/DMA/ 05/ 15-16 dtd. 30/10/2015	Rs. 31,398/-	Rs.10,000/-
3.	V/Ch.84& 85/3-19/ DEM/ AC/ SDMN/ 2014-15 dated 09/07/2014,	DMN-II/AC/DMA/ 06/ 15-16 dtd. 30/10/2015	Rs.3,25,726/-	Rs. 80,000/-
4.	SDMN/V/Ch.85/3-10/ DEM/AC/2013-14 dated 26/09/2013	DMN-II/AC/DMA/ 05/ 15-16 dtd. 30/10/2015	Rs.3,20,230/-	Rs.80,000/-
5.	V/Ch.85/3-25/DEM/ AC/SDMN/2014-15 dated 23/07/2014	DMN-II/AC/DMA / 15/ 15-16 dtd. 30/10/2015	Rs.2,95,246/-	Rs.75,000/-

6.	SDMN/V/Ch.85/3-9/ DEM/AC/2013-14 dated 08/08/2013	DMN-II/AC/DMA/07/15-16 dtd. 30/10/2015	Rs.3,14,067/-	Rs. 80,000/-
7.	V/Ch.85/3-20/DEM/D.II/AC/2015-16/842 dated 24/04/2015,	. DMN-II/AC/DMA/13/15-16 dtd. 30/10/2015	1,07,705/-	Rs.25,000/-

4. Being aggrieved, the applicant preferred appeal against all the above OIO dated 30/10/2015 (Column 3 of Table supra) before Commissioner (Appeals). The Commissioner (Appeals) rejected all these appeals vide common Order in Appeal No. VAD-EXCUS-003-APP-23 to 29/2017-18 DTD. 01/06/2017.

5. Being aggrieved with the impugned order the applicant has preferred seven (7) Revision Application mainly on the following common grounds.

5.1 The impugned order has been passed against the principles of natural justice and has erred in appreciating the facts and the case before the Commissioner (Appeals).

5.2 They refer to the averment made by the Commissioner (Appeals) at Para-4 of the impugned order which reads as under;

> *"4. Personal hearing was fixed on 03.10.2012 when Shri.Shivchandra Singh, Dy.General Manager (Corporate Taxation) appeared on behalf of the appellant and reiterated the grounds of appeal. He also gave a written submission dated 03.10.2012 citing 3 case laws viz., (i) 2012(262) ELT 1177 of Commr.(A) (ii) 2011(271) ELT 449(GOI) and (iii)2011(276)ELT 116(GOI) in support of their claim".*

They submit that the appeal itself was filed on 02/03/2016 and the hearing & written submissions could not be of 03/10/2012 nor do they have any General Manager nor any other staff in the name and style of Shri. Shivchandra Singh.

5.3 In fact they had received intimation of personal hearing in March, 2017 with directives to provide copies of all seven(7) appeal sets. They had provided five (5) appeal sets and had communicated that their factory was in possession of their bankers i.e. State Bank of India w.e.f 14/10/2016 and they would require time to seek permission for removing papers from the factory and they had requested extension of one month to provide other documents. [*Refer Exhibit- B*].

5.4 No personal hearing was attended and it appears that the Learned Commissioner (Appeals) has confused their appeals with hearing of some other company. Their seven (7) appeals have been rejected without granting them any opportunity of personal hearing and against the principles of natural justice. The impugned OIA deserves to be set aside solely on the said grounds with consequential relief.

5.5. In all the seven (7) appeals, the dispute was non filing of all the documents as proof of exports and the Show Cause Notices were issued to recover duties on the said goods so exported under LUT as per Rule 19 of Central Excise Rules,2002 read with Notfn. No. 42/2001-C.E(NT). In other words all the seven (7) appeals involved recovery proceedings under Section 11A along with interest under Section 11AA and penalty under Rule 25 for non producing of proof of exports for goods exported under LUT.

5.6 They refer to Para-5 of the impugned OIA, wherein the Learned Commissioner (Appeals) has observed that the issue to be decided in this case was whether the rebate claim can be granted to the appellants as the documents were lost. The applicants submit that there is no rebate claim involved in any of their appeal and the whole proceedings in the impugned OIA is incorrect and with reference to facts of some other assessee / appellants.

5.7 They further refer to Para-6 of the impugned OIA, wherein he has referred to the facts of the case regarding goods cleared for exports under ARE-1 No. R-240/09-10 dated 16/03/2010 and covered under Shipping Bill No.8253495 dated 17/03/2010 with B/L dated 22/03/2010. They submit that in none of their seven (7) appeals / applications, there is any dispute regarding March, 2010. In fact there is no dispute in the whole proceedings covered under seven (7) Show Cause Notices and seven OIOs with reference to any clearance of March, 2010 and the above referred documents are in no way concerned with their facts or case before the Learned Commissioner (Appeals) or before your Honour.

5.8 In other words the Learned Commissioner (Appeals) has completely mixed the facts of different appellants before him and has decided applicants seven (7) appeals based on the facts, documents and the proceedings conducted in case of some other party/ assessee. The Learned Commissioner (Appeals) has decided the case based on hearing of 03/10/2012 for exports of March, 2010 with reference to rebate claim so contested by some other party under Rule 18, for which their DGM Shri Shivchandra Singh had appeared. The seven appeals are dealing with recovery of duties under Section 11A for the goods exported under LUT as per Rule 19 during the period of Financial Year, 2012-13 and 2013-14, for which the appeals were filed in March, 2016.

5.9 The impugned order does not deal with their facts nor does it consider their appeals nor their documentary evidences nor does it deal with any of their submissions. In fact the appeals have been decided ex-parte referring to some other parties hearing and documents and rendering the present proceedings as contrary to the facts, contrary to the case under consideration and contrary to the principles of natural justice and the impugned OIO deserves to be quashed and matter to be remanded back to the Commissioner (Appeals) or to the Adjudicating Authority for fresh decision.

5.10 Without prejudice to the above facts, they submit that the impugned OIA does not deal with any of the facts of the appeal so filed for the month of

October,2012. It is a matter of record that the Show Cause Notice dated 11/10/2013 was issued proposing recovery of duty for the goods cleared for exports under ARE-1 No. SDMN/R-II/1415/12-13 dated 12/10/2012 with duty involvement of Rs. 2,96,080/- and under ARE-1 No. SDMN/R-II/1510/12-13 dated 25/10/2012 with duty involvement of Rs. 15,783/- respectively.

5.11 In the impugned OIO dated 30/10/2015, the duty has been confirmed on the ground that they have failed to produce the certified copies of original and duplicate ARE-1s to substantiate the exports. The said documents are required as per the Para-13.2 of Chapter-7 of CBEC Manual and failure to do so has rendered the recovery of duty from them.

5.12 There is no dispute on the fact that the goods so cleared by them were covered under appropriate excise invoice and ARE-1. There is no dispute on the fact that the goods have been exported within 6 months from the date of clearance. There is no dispute that they have provided copies of appropriate Shipping Bills, Bill of Ladings and Bank Realization Certificate to substantiate the factum of the goods being exported and cleared outside country and to substantiate the realization of the export remittance through the bank.

5.13 The issue of original and duplicate copy of ARE-1s being misplaced by the CHA was duly explained in reply to the Show Cause Notice and they had provided appropriate Indemnity Bond as directed by the Adjudicating Authority to safeguard the revenue in case of any future observation of revenue leakage on account of said export. They do not agree with the rejection of their claim of exports under LUT and initiation of the recovery provisions only on the ground that they have misplaced the copies of ARE-1 for the transactions under reference. The benefit of exports cannot be denied when the factum of exports have not been disputed and there is no grounds nor any allegations that the goods have been diverted to domestic market. In view of the goods being exported and in view of the fact that the applicant has placed on record various other documentary evidences such as Shipping Bills, Bill of Ladings and Bank Realization Certificate to substantiate the export and realization of foreign remittance, no duty demand can be made on the said goods exported under LUT.

5.14 It is a settled position of law that the benefit of exports cannot be denied on the ground that the ARE-1 are misplaced, especially when the exports have been duly substantiated with other documentary evidences such as Shipping Bills, Bill of Ladings and Bank Realization Certificate and they wish to refer and rely on the following decisions;

A. **Raj Petro Specialties Vs. Union of India – 2017 (345)ELT 496(Guj.),** wherein Hon'ble Gujarat High Court held that the Revisional Authority materially erred in rejecting rebate claim of the exporter and submission of original and duplicate copy of ARE-1 along with rebate claim is not the only requirement and the rebate claim should be considered since exporter produced other documents supporting and establishing export of excisable

goods on payment of duty from factory and all other conditions duly satisfied. It observed that submission of documents along with the rebate claim falls under the Head "Procedure" , therefore production of original and duplicate copies of ARE-1 along with the rebate claim is merely a procedural requirement and the production of such documents were held to be directory and not mandatory.

B. **U.M.Cables Ltd. Vs. Union of India – 2013(293)ELT 641(Bom.)**, wherein Hon'ble Bombay High Court held that non production of original and duplicate copies of ARE-1 itself cannot invalidate rebate claim. In such a case exporter can demonstrate by cogent evidence that goods were exported and duty paid so as to satisfy the requirement of rebate claim. Accordingly in facts of the case the assessee's claim was directed to be considered on the basis of Bill of Lading, Bankers Certificate of Inward Remittance of Export proceeds and certification by Customs Authority on Triplicate copy of ARE-1.

C. **Aarti Industries Ltd. Vs. Union of India – 2014(305)ELT 196(Bom.)**, wherein Hon'ble Bombay High Court held that there was no dispute that goods on which duty has been paid and rebate claimed were exported. Along with the rebate claim, the exporter filed self attested copies of Shipping Bills, Bill of Lading and Mate receipt for establishing proof of export. It observed that rebate cannot be rejected for non furnishing of original and duplicate copies of ARE-1 and the exporter could claim rebate by furnishing collateral documents evidencing export of duty paid goods.

D. **Kaizen PlastoMould Pvt.Ltd. Vs. Union Of India - 2015(330)ELT 40(Bom.)**, wherein Hon'ble Bombay High Court held that exemption for the goods exported could not be rejected only on the ground of non submission of Custom endorsed ARE-1. ARE-1 could not be said to be primary proof as it was not supported by law. If there is adequate proof of export then non production of ARE-1 would not result in allegation being proved and demand being confirmed. The other documents should be accepted as proof of export.

E. In case of **Garg Tex-O-Fab Pvt. Ltd. – 2011(271)ELT 449 (GOI)**, the Joint Secretary, Revisionary Authority held that claim of export cannot be rejected by the lower authority on the ground that ARE-1 copies were lost by the applicant. It observed that instead of rejecting the rebate claim for non submissions of ARE-1 , the authority should have considered collateral evidence to verify whether the duty paid goods were actually been exported or not. The matter was remanded to consider based on other collateral documents.

5.15 In the present case they have produced all the collateral documents to substantiate the exports and the same is also referred in the OIO. Accordingly the

benefit of export cannot be denied and no duty demand can be raised on the goods so exported under LUT. The submit that they are covered under the jurisdiction of Bombay High Court and any decision contrary to the above decisions of Bombay High Court would lead to violation of the principles of judicial discipline and the applicant request to set aside the impugned order and to grant them all the consequential relief.

6. Personal hearing in these cases was scheduled on 09.12.2020/16.12.2020/23.12.2020/03.02.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

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

8. Government observes that the applicants exported goods vide various ARE-1s. The original authority vide seven (7) impugned Orders-in-Original confirmed the demand of duty 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 and also imposed penalty on the applicant on the ground that the proof of export was submitted late (Table at par 3 supra). On appeal being filed by the applicant, Commissioner (Appeals) vide impugned Order rejected all the 7 appeals holding that the appellants have failed to fulfil the mandatory requirement of submission of Original copy of the original and duplicate ARE-1 which is endorsed by the Customs Authority regarding proof of export nor did they submit reconstructed and duly endorsed copies of ARE-1s.

9. Government observes that in an identical case, M/s Kaizen Plastomould Pvt. Ltd., Bhayander (E), the applicant in that case, had exported their goods under Bond without payment of duty. Show cause notices were issued to said M/s Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time. The Original Authority subsequently confirmed the duty and imposed penalty on M/s Kaizen Plastomould Pvt. Ltd. The appeal filed by M/s Kaizen Plastomould Pvt. Ltd. against the Orders in Original confirming the duty and imposing penalty were rejected by the Appellate Authority. Revision Applications filed against such Orders in Appeal

were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide judgment dated 03.03.2014 [2015(330) E.L.T.40 (Bom)] observed as under :-

> **11.** While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.
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> **12.** We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited* v. *Union of India.* In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :
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> 16.....
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> 17.....
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> **13.** In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited* v. *Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom:)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.
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> **14.** As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 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.

10. GOI while deciding the said Revision Applications in remand vide Order No. 274-277/14-CX dated 20.06.2014 (para 9.2 of the Order) observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of original documents either available with M/s Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s Kaizen Plastomould Pvt. Ltd.

11. On perusal of Orders in original and as also claimed by the applicant, they have provided copies of appropriate Shipping Bills, Bill of Ladings and Bank Realization Certificates etc. to substantiate the factum of the goods being exported and cleared outside country and to substantiate the realization of the export remittance through the bank.

12. Respectfully following the aforesaid Orders/Judgements (discussed at para 9 & 10 supra) Government directs the original authority to examine the aspect of proof of export in all these 7 cases on the basis of collateral evidences available on records or submitted by the applicant.

13. In view of above position, Government sets aside Orders-in-Appeal No. VAD-EXCUS-003-APP-23to 29/2017-18 dated 01.06.2017 passed by the Commissioner, Central Excise, Customs & Service Tax, Vadodara (Appeals-III) which has upheld confirmation of demand of Central Excise duty on the excisable goods exported by the applicant without payment of Central Excise Duty in these 7 cases, under Section 11 (A) of Central Excise Act, 1944 along with interest under Section 11AA of Central Excise Act, 1944 and penalty under Rule 25 of CER,2002.

14. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents

relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the applicant to present their case.

15, The Revision applications are disposed off on the above terms.

27/8/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 280-286 /2021-CEX (WZ) /ASRA/Mumbai Dated 27.08.2021

To,

M/s Kanchan International Ltd.,
28A/B, Raju Indl. Estate, Penkar Pada Road,
Near Dahisar Check Naka,
P.O. Mira- 401104.

Copy to:

1. The Commissioner of GST & CX, Daman, 2nd Floor, Hani's landmark, Vapi Daman Road, Chala, Vapi 396 191.
2. The Commissioner of GST & CX, (Appeals), 3rd Floor, Mgnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat.
3. The Assistant Commissioner, Central Excise and CGST Division –II, Daman, 2nd Floor, RCP Building, Near Vapi Bridge, Vapi Daman Road, Vapi, 396 191.
4. Sl.P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.