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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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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. 195/425/11-RA / 1945

Date of Issue:- 12/12/19

ORDER NO. 349/2019-CX(WZ)/ASRA/MUMBAI DATED 11.12.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/425/11-RA	M/s Priyanka Overseas Pvt. Ltd., New Delhi.	Commissioner, CGST & CEX, Mumbai South.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. M-I/RKS/43/2011 dated 02.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

ORDER

This Revision application is filed by M/s Priyanka Overseas Pvt. Ltd., New Delhi (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. M-I/RKS/43/2011 dated 02.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. The Brief facts of the case are that the applicants have contracted for 25000 MT of Molasses and executed a bond for Rs. 1,25,00,000/- on 25.04.2000 with Maritime Commissioner, Mumbai for the purpose of export of goods without payment of duty in terms of Rule 13 of the Central Excise Rules, 1944. However, it was observed that the applicant had not furnished the proof of exports in respect of goods cleared under block transfer issued to them from the Bond amount. As per the provisions of Rule 12 & 13 of Central Excise Rules, 1944 and relevant notifications issued thereof, the applicant is required to file proof of exports within a period of six months / one year from the date of shipment of excisable goods. The rebate sanctioning officer, therefore, issued a show cause notice to the applicant raising demand of Rs. 33,41,885/- alongwith penalty under Rule 14A of Central Excise Rules 1944.

3. The adjudicating authority observed that out of total demand of Rs. 33,41,885/- , a Block Transfer of Rs. 26,14,215/- was not utilised by the applicant and therefore dropped the demand of Rs. 26,14,215/-. As regards the remaining amount of Rs. 7,27,670/- (Rs. 33,41,885- Rs. 26,215/-), it is observed that the quantity of 1455.340 MT of molasses was lifted for export but the applicant could not export the said quantity due to a conflict between their agent / nominee M/s Global Corpn. and M/s Shahi Shipping Ltd. and so the entire quantity of molasses for export became useless and unfit for use and as per the orders of the Hon'ble Metropolitan Magistrate, Mumbai the said molasses was destroyed in the present of State Excise authorities. However, the applicant did not inform about the same to the Central Excise Department under whose jurisdiction the goods were removed for export under bond. Further, the goods were not destroyed in the presence of Central Excise authorities. Also no certificate certifying the destruction of goods either from Pollution Control Board or from any other statutory authority was forwarded by the applicant to the department. Further, application for remission of duty amounting to Rs. 7,27,670/- involved in 1455.340 MT of molasses is made to the department. So, in the

absence of any documentary evidence certifying the destruction of above quantity of molasses and in the absence of any order for remission of duty from the competent authority for the above amount, the adjudicating authority confirmed the demand of Rs. 7,27,650/- under Rule 14A of Central Excise Rules, 1944 and imposed a penalty of Rs. 1,00,000/- on the applicant vide order No. 08/2003 dated 22.10.2003.

4. Aggrieved by the said order, the applicant filed an appeal before Commissioner (Appeals), Mumbai. The Commissioner (Appeals) vide Order in Appeal No. PD(2546)228/M-I/2004 dated 30.06.2004 rejected the appeal.

5. The applicant filed Revision Application before Joint Secretary, Govt. of India. The Revisions Authority vide order No. 114/2005 dated 14.03.2005 upheld the orders of Lower Authorities.

6. The applicant challenged the said Revision Order and filed appeal before Hon'ble Delhi High Court. The Hon'ble Delhi High Court vide its order dated 11.09.2006 partially allowed the petition and remanded the matter back to the Commissioner (Appeals) for fresh decision whether show cause notice was time barred or not.

7. The Commissioner (Appeals) vide impugned appellate order again upheld the original order and rejected the appeal filed by the applicant. The Commissioner (Appeals) observed that the instant case is not a case of no-levy nor a case of duty not paid. What was sought to be recovered was the duty assessed and charged and adjusted in the bond upon non-receipt of proof of exports, enforcing one of the conditions thereof and nothing else.

8. The applicant being aggrieved by the said order filed instant revision application on the following grounds:

8.1 In the present case Rule 14A of CER, 1944 is not tenable.

8.2 Rule 14A is not a self contained Rule providing procedure for recovery. Section 11A covers any type of short levy or non levy for the purpose of recovery. The rules are subordinate to law and hence the SCN ought to have been issued under Section 11A r/w Rule 14A within six months. The applicant have relied upon the

judgement in the case of Nandesari Rasayanee Ltd. vs. CCE, Vadodara reported in 2009 (244)ELT 289(T).

8.3 The applicant has also placed reliance on the following cases in their submissions.

Bombay Dyeing & Mfg. Co. Ltd. 2001 (134)ELT 591 (GOI)

Lakshmi Machines Works 2004 (170) ELT 196 (T)

8.4 The Commissioner (Appeals) failed to appreciate that Rule 14A was applicable to a situation where the exporter exported the goods and failed to submit proof of export, within the time limit prescribed to do so. The applicant submits that the goods were removed for export but because of reasons beyond their control, the same could not be exported.

8.6 When the molasses was destroyed as per the direction of the Court in presence of Pollution Control Officers, hence the remission of duty thereon should have been permitted.

8.5 Mens-rea is a mandatory requirement for imposition of penalty.

9. A Personal Hearing was held in matter on 19.12.2017, 10/11.12.2018 and 19.08.2019. Neither the applicant nor the respondent attended any of the personal hearings so granted to them. The revision application is taken up for decision on the basis of documents, submissions-and-evidences available on record.

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

11. The Government finds that in the instant case the applicant had executed bond and based on the block transfers issued by the Central Excise Authority they have procured goods without payment of duty for export. However, the applicant failed to export said goods and hence the rebate sanctioning officer demanded the duty amount of Rs. 7,27,670/- under Rule 14A of Central Excise Rules, 1944 alongwith penalty. The applicant has primarily challenged the applicability of Rule 14A in the instant case.

12. The Government holds that the exporter has legal obligation to comply the conditions stated in the bond i.e. in the instant case to export the goods procured under bond without payment of duty within stipulated period of time as prescribed under the Central Excise Act and Rules made there under. Further, the tax on impugned goods is assessed at the time of their clearance for export and duty payable is adjusted against the Bond / Block Transfer issued by the Bond Issuing Officer in the running bond account. It is, therefore, postponement of payment of duty on goods removed for export to a future date in case of exigency of the exporter's failure to export said goods and does not mean the tax has not been paid on said goods. The Government opines that execution of bond does not provide immunity to the exporter from payment of duty on failure to comply with the conditions of the bond. Since, the prime condition of Bond is to export goods procured without payment of duty under bond within stipulated period and submit proof of export to the bond issuing department, failure to do so would prompt the department to recover the duty payable on such goods as per the provisions of the law. The Government finds that the procedure for submission of proof of exports in respect of export without payment of duty laid down under Supplementary Instructions, 2005 is self explanatory which is reproduced below :

"in case of non-export within six months from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy / Assistant Commissioner of Central Excise or the bond accepting authority) or any discrepancy, the exporter shall himself deposit the excise duties alongwith interest on his own immediately on completion of statutory time period or within ten days of the Memorandum given to him by the Range / Division office or the office of the bond accepting authority. Otherwise necessary action can be initiated to recover the excise duties alongwith interest and fine / penalty Failing this, the amount shall be recovered from the manufacturer-exporter alongwith interest in terms of the letter of undertaking furnished by the manufacturer. In case where the exporter has furnished bond, the said bond shall be enforced and proceedings to recover duty and interest shall be initiated against the exporter."

13. It is an obligation on part of exporter to deposit the excise duties along with interest on his own immediately on completion of statutory time period or within ten

days of the memorandum given to him by the department. The applicant in the instant case has failed to adhere to the procedure for export of goods under the bond as laid down under supplementary instructions. Moreover, the applicant did not inform the Central Excise department regarding the action initiated for destruction of goods so cleared under bond executed with them. The non fulfilment of the obligation on part of applicant compelled the Central Excise Officers to initiate action to recover duty involved on the impugned goods.

14. The Government holds that in the instant case the goods were assessed for payment of duty at the time of their removal and the duty was deducted from the running bond account. Thus the duty payable, on its deduction from running bond account, becomes arrears on part of exporter till the contractual obligations under bond are not fulfilled by him. As such, it is not the case of removal of goods without payment of duty or short payment of duty. The Government, therefore, finds that the Appellate Authority was just and proper in concluding that Section 11A deals with cases where any excise duty has not been levied or not paid or short levied or short paid or erroneously refunded and not with the cases where merchant exporter has executed bond for removal / clearance of excisable goods without payment of duty and hence not applicable in the instant case.

15. The Government finds that the goods cleared from factory for export are required to be exported within statutory limit of six months which, in exceptional cases, may be extended by the competent authority and the exporter is obliged to produce the proof of exports to the proper office within six months / one year period from the date of shipment. The Government, therefore, holds that due to limitation clause of six months for recovery of duty under Section 11A, it would be practically not possible to recover the duty where exporter fails to export goods cleared under bond within such stipulated period of six months or as extended by the competent authority. Whereas Rule 14A does not prescribe any time limit for issuing a written demand, when person clearing the goods for export under bond fails to export or furnish proof of such export to the satisfaction of the proper officer. The said Rule 14A of Central Excise Rules, 1944 reads as under:-

"Rule 14A- Penalty for failure to furnish proof of export within the prescribed period – Where any person who has removed excisable goods for export under bond in accordance with the provisions of Rule 13 or 14, fails to export or furnish proof of such export to the satisfaction of the Commissioner in the manner laid down in any notification issued under Rule 12, he shall, upon a written demand being made by proper officer forthwith pay the duty leviable on such goods and shall also be liable to a penalty which may, subject to a maximum of two thousand rupees, extended to twice the amount of duty, and until such duty and penalty are paid, the Commissioner may in his discretion refuse to permit such person to make further export of excisable goods in bond "

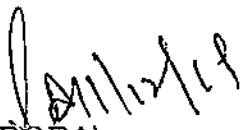
The Government, therefore, holds that Rule 14A has been specially designed for recovery of dues and to impose penalty on failure to furnish proof of export within prescribed period by the exporter. Further, the Government also holds that the Appellate Authority has correctly distinguished the judgements relied upon by the applicant in their support and for the sake of brevity does not find it necessary to discuss them. In view of above, Government holds that the provisions of Section 11A of Central Excise Act, 1944 are not valid in the instant case and duty has been correctly demanded under Rule 14A of Central Excise Rules, 1994.

16. As regards remission claimed by the applicant, it is pertinent to note that remission of duty can be granted only if loss is caused by natural causes or by unavoidable accident. The unavoidable Accident means an event which is beyond control of assessee and has taken place despite exercise of due/reasonable care/protection. It is also to note that the competent officer should be satisfied that the loss or destruction was effected by causes which are natural or beyond the human control so that the remission can be granted. In the instant case, the goods were not lost or destroyed by natural causes or unavoidable accident during transport. As the goods were removed from the factory for export, the chance that the goods were unfit for consumption or marketing before removal is ruled out. The Government, therefore, finds that the loss of goods in the instant case is attributable to lack of due diligence on applicant's part and not due to natural causes. As such, the remission cannot be granted to the applicant.

17. In view of above discussions and findings, Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned order and upholds the impugned order in appeal.

18. The Revision Application is thus rejected being devoid of merit.

19. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Priyanka Overseas Pvt. Ltd.,
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Copy to :

1. The Commissioner of CGST & Central Excise, Mumbai South, 13th & 14th Floor, Air India Building, Nariman Point, Mumbai - 400 021.
2. The Commissioner (Appeals-I), CGST & Central Excise, 9th floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400 012.
3. Sr. P.S. to AS (RA), Mumbai. _____
4. Guard File.
5. Spare copy.