

REGISTERED SPEED POST



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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/540/13-RA

Date of Issue: 03.12.2018

ORDER NO. <sup>382</sup>/2018-CX (WZ) /ASRA/MUMBAI DATED 02.11.2018 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Teksons Ltd.  
Kapurbawdi,  
Kolshet Road,  
Thane 400 607

Respondent : Commissioner, Central Excise, Thane-I

Subject : Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
BR/ 37/Th-I/2013 dated 17.01.2013 passed by the  
Commissioner(Appeals), Central Excise, Mumbai Zone-I.



**ORDER**

This revision application has been filed by M/s. Teksons Ltd, Kapurbawdi, Kolshet Road, Thane 400 607(hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/37/Th-I/2013 dated 17.01.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2.1 The applicant has been exporting finished goods under Notification No. 42/2001-CE(NT) dated 26.06.2001 as amended, without payment of duty under sub-rule (3) of Rule 19 of the Central Excise Rules, 2002. The applicant had cleared the excisable goods for export without payment of duty under the following ARE-1's:

Sr. No.	ARE1 No. & date	Invoice No. & Date	Assessable Value (Rs.)	Duty payable (Basic + EC + SHEC) (Rs.)
1	49/06-07 dated 15.03.2007	88, 89/15.03.2007	19,53,743/-	3,21,977/-
2	50/06-07 dated 20.03.2007	90/15.03.2007	13,39,722/-	2,20,787/-
3	51/06-07 dated 21.03.2007	91/21.03.2007	99,112/-	16,334/-
4	52/06-07 dated 22.03.2007	92/22.03.2007	15,32,067/-	2,52,485/-
5	4/07-08 dated 19.04.2007	6/19.04.2007	6,90,030/-	1,13,717/-
6	06/07-08	10,11,12,13/	7,54,292/-	1,24,308/-



	dated 28.04.2007	28.04.2007		
7	17/06-07 dated 13.07.2007	35/13.07.2007 36/13.07.2007	12,57,050/-	2,07,162/-
<b>Total</b>			<b>76,26,016/-</b>	<b>12,56,770/-</b>

2.2 The total value of the excisable goods cleared without payment of duty under LUT in respect of the above ARE 1's is Rs. 76,26,016/- and the total central excise duty involved is Rs. 12,56,770/- [Rs. 12,20,164/- (Basic) + Rs. 29,158/- (EC) + Rs. 7,448/- (SHEC)]. As per condition 1(ii) of Notification No. 42/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2002, the goods cleared without payment of central excise duty are required to be exported within six months from the date on which the goods were cleared from the factory or within such extended period permitted by the Assistant Commissioner/Deputy Commissioner or Maritime Commissioner. However, the applicant failed to submit proof of export in respect of the above said ARE 1's. The applicant was requested to submit the proof of export in respect of the above export clearances. However, since the applicant failed to submit the proof despite such request three show cause notices dated 14.03.2008, 17.03.2008 and 31.03.2008 were issued to the applicant calling upon them to show cause why central excise duty totally amounting to Rs. 12,56,770/- should not be recovered from them under Section 11A of the Central Excise Act, 1944 alongwith interest thereon under Section 11AB of the Central Excise Act, 1944 and penalty under Rule 25 of the Central Excise Rules, 2002 should not be imposed upon them for contravention of the provisions of Rule 19, notification issued under the said rules and instructions issued under CBEC's Manual of Supplementary Instructions.

3. On taking up the cases for adjudication, the Assistant Commissioner observed that the applicant had contravened the conditions and procedures specified in Notification No. 42/2001-CE(NT) dated 26.06.2001 as amended.



issued under Rule 19 of the Central Excise Rules, 2002 and the procedure laid down under the CBEC Excise Manual of Supplementary Instructions. The adjudicating authority found that the applicant had not taken sufficient care to ensure that the proof of export was filed on time. It was observed that there was a delay of six months in filing the proof of export in most of the cases. In two cases, the applicant had not even filed proof of export even after their assurance and repeated reminders. The adjudicating authority therefore vide Order-in-Original No. DP/03/08-09 dated 27.08.2008 confirmed duty demand of Rs. 3,20,879/- in respect of ARE 1 No. 4 dated 19.04.2007 and ARE 1 No. 17 dated 13.07.2007 under Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AB of the Central Excise Act, 1944. He dropped the demands in respect of consignments covered under the remaining ARE 1's since the applicant had submitted document for acceptance of proof of export in respect of these consignments with an warning to the applicant to take due care in future to file proof of export in time. He also imposed a penalty of Rs. 15,000/- under Rule 25 of the Central Excise Rules, 2002 for contravention of Rule 19 of the Central Excise Rules, 2002.

4.1 Aggrieved by the Order-in-Original, the applicant preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal No. BR/37/Th-I/2013 dated 17.01.2013 observed that as per condition 1(ii) of Notification No. 42/2001-CE(NT) dated 26.06.2001, the goods cleared without payment of central excise duty are required to be exported within six months from the date on which the goods were cleared from the factory or within such extended period permitted by the Assistant/Deputy Commissioner or Maritime Commissioner. The applicant had failed to submit proof of export after repeated reminders in case of ARE 1 No. 04 dated 19.04.2007 and ARE 1 No. 17 dated 13.07.2007 after a delay of six months. The Commissioner(Appeals) observed that this fact was admitted by the applicant in their appeal memo that they have not submitted proof of export of the abovementioned ARE 1's as they are not traceable as their factory Excise Officer has left the job. He further observed that the applicant had been given sufficient opportunity to produce proof of



export but had to failed to produce it. In terms of sub-rule (3) of Rule 19 of the Central Excise Rules, 2002, Notification No. 42/2001-CE(NT) dated 26.06.2001, the conditions, safeguards and procedures to be followed by the exporter have been specified. As per the same, the submission of proof of export is a mandatory provision and cannot be relaxed.

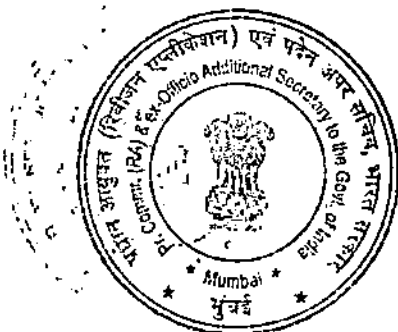
4.2 The CBEC Manual of Supplementary Instructions clearly specifies in Chapter 7, the procedure required to be followed for exporting the excisable goods without payment of central excise duty. As per these procedures and instructions, the manufacturer is statutorily required to export the goods within six months or such extended period as the Assistant/Deputy Commissioner or Maritime Commissioner may allow. The applicant has contravened the conditions and procedures laid down under Notification No. 42/2001-CE(NT) dated 26.06.2001 and the procedures laid down under CBEC Excise Manual of Supplementary Instructions by not submitting the proof of export in case of the ARE-1's in time. The Commissioner(Appeals) found that the arguments and case laws do not help their case and therefore upheld the Order-in-Original and rejected the appeal filed by the applicant.

5. Aggrieved by the order of the Commissioner(Appeals), the applicant has filed for revision on the following grounds:

- (i) The delay in filing the proof of exports was due to the fact that their Excise Office in-charge had left his job at very short notice and they did not have any experienced officer/staff to look into the export documentation.
- (ii) The export under ARE-1 No. 4 dated 19.04.2007 had been made through merchant exporters i.e. M/s Teksons Autocomp (P) Ltd. and the goods had been duly exported under Shipping Bill No. 5173195 dated 15.04.2007 and loaded under Mate Receipt No. 331329 dated 3.05.2007. Furthermore, the certificate at the back of the ARE-1 shows that the vessel had left on 3.05.2007. They claimed to have placed on record the copy of ARE-1 No. 4/2007-08 dated 19.04.2007, the shipping bill, bill of lading, the export invoice and the BRC of merchant exporter.



- (iii) With regard to the exports made under ARE-1 No. 17 dated 13.07.2007, they clarified that it was a direct export to M/s TVH Forklift Parts to Belgium. They stated that the copy of ARE-1 No. 17 dated 13.07.2007 could not be found inspite of detailed search and that it appeared to have been misplaced from their records as the issue is very old. They also claimed to have submitted the shipping bill, airway bill, export invoice and BRC.
- (iv) They claimed that the exports had been effected within six months from the date of removal from the factory and the documents submitted by them indicate that the goods have been exported and that foreign exchange had been realized.
- (v) They averred that there was no requirement in the rules or the notification that the proof of export should be filed within six months.
- (vi) That the requirement of filing proof of export was only visualized in the CBEC procedure and that procedural delays are condonable.
- (vii) They placed reliance on the case laws of MRF Ltd.[1991(54)ELT 319(GOI)], Shreeji Colour Chem Industries[2009(233)ELT 367(Tri-Ahmd)]. CCE, Jamshedpur vs. TISCO Tube Division[2003(156)ELT 777(Tri-Kol)].
- (viii) They further contended that since the goods have been exported, there are no grounds for recovery of duty under Section 11A of the CEA, 1944 and for imposing penalty under Rule 25 of the CER, 2002. The goods had been exported and foreign remittance received, therefore there was no contravention of the provisions of Central Excise with intent to evade payment of duty and therefore the penalty is required to be set aside.
- (ix) They placed reliance upon the judgment of the Supreme Court in the case of Amrit Foods[2005(190)ELT 433(SC)] to contend that they have not been put to notice under a specific sub-clause under which penalty is proposed and therefore the penalty is to be set aside.



6. A Personal hearing was held in the matter on 5.02.2018. Shri Bhushan D. Jani, CA appeared on behalf of the applicant. He reiterated the submissions in the revision application and relied upon the case law of UM Cables Ltd. vs. UOI[2013(293)ELT 641(Bom)]. He prayed that the order-in-appeal be set aside and the revision application be allowed.

7. 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.

8. Government observes that the issue involved is that the applicant has not filed proof of export in time. The applicant had not filed proof of exports even after a period of six months from the date of clearance of the excisable goods from the factory. Therefore, the Department had issued show cause cum demand notice for recovery of central excise duty on the goods covered under two ARE-1's.

9. However, it is seen from the grounds for revision that the applicant has claimed to have submitted copy of ARE-1 No. 04/2007-08 dated 19.04.2007 duly certified by the Customs Authority alongwith other documents to validate their claim of having exported the goods. In so far as the ARE-1 No. 17 dated 13.07.2007 is concerned, the applicant has simply stated that it is not available in their records and it appears to have been misplaced as the issue is very old. It appears from the Order-in-Original that the applicant had not made these submissions before the original authority. However, it appears that the submissions regarding ARE-1 No. 04/2007-08 dated 19.04.2007 were also made before the appellate authority. As regards ARE-1 No. 17/2007-08 dated 13.07.2007, the applicant has only assured to submit documents before the Commissioner(Appeals) but has not actually submitted any documents.

10. As such the provisions for export under rebate of duty, export without payment of duty are intended to facilitate exports with the avowed objective of earning foreign exchange for the country. Admittedly, the applicant has not been diligent and there has been a delay. Be that as it may, Government is inclined to take a lenient view in such matters. Government therefore



holds that if the bonafides of export are proved, the demand based on non-production of proof of export would not sustain.

11. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the documents. The original authority shall examine the documents submitted by the applicant after satisfying himself about the authenticity of the documents, to ascertain whether those documents establish the export of the excisable goods cleared from the factory. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BR/37/Th-I/2013 dated 17.01.2013.

13. The revision application is disposed off in terms of above.

14. So ordered.

*Ashok Kumar Mehta*  
02.11.18

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

ORDER No. 382/2018-CX (WZ) /ASRA/Mumbai DATED 02.11.2018.

To,  
M/s. Teksons Ltd.  
Kapurbawdi, Kolshet Road,  
Thane 400 607

Copy to:

1. The Commissioner of GST & CX, Thane Commissionerate.
2. The Commissioner of GST & CX, (Appeals), Thane, 12<sup>th</sup> Floor, Lotus Info Center, Near Parel Station(East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner , Division -I, GST & CX Bhiwandi Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

