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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.195/492-493/2011-RA / 5

Date of Issue: 13/12/2018

ORDER NO. <sup>413-414</sup> /2018-CX (WZ)/ASRA/MUMBAI DATED 30.11.2018  
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.

Applicants : Sr. No. 1 M/s Avni Dresses  
Sr.No. 2 Shri Anil Haridas Panchmatia,  
Partner of M/s Avni Dresses.

Respondent : Commissioner, Central Excise, Mumbai-V.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
SB(06)06/MV/2011 dated 07.02.2011 passed by the  
Commissioner (Appeals), Central Excise, Mumbai Zone-I.

## ORDER

These Revision Applications are filed by M/s Avni Dresses and Shri Anil Haridas Panchmatia, Partner of M/s Avni Dresses (hereinafter referred to as "the applicants") against the Order-in-Appeal No. SB(06)06/MV/2011 dated 07.02.2011 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I, wherein Revenue's appeal was upheld and rejected Order-in-Original No. 118/65/AC/BVL/2010 dated 10.5.2010 passed by the original adjudicating authority.

2. The issue in brief is that the Applicant was engaged in manufacture of Readymade garments falling under Chapter 61 and 62 of Central Excise Tariff Act, 1985. In Financial Year 2003-2004, the Government of India brought Readymade garments under the purview of Central Excise -

2.1 The Applicant had filed declaration in terms of Notification of 36/2001 CE (NT) dated 26.06.2001 as amended wherein they had declared that the goods manufactured by them are solely for export and had claimed exemption from Central Excise duty in terms of Notification No 34/2003 dated 30.04.2003 as amended by Notification No 47/2003 dated 17.05.2003. They had also declared that goods were exported under simplified export procedure vide CBEC Circular No 705/21/9003 dated 08.04.2003. They had filed quarterly returns in form Annexure-20 for the quarter ending April 2003 to June 2003 & July 2003 to Sept. 2003 on 05.01.2004 and Oct. 2003 to Dec. 2003 on 28.01.2004 and Jan. 2004 to Mar. 2004 on 22.04.2004 under simplified export procedure wherein they have shown the value of clearance of goods for export through merchant exporter for the year 2003-04 was Rs.47,90,376/-. The Applicant vide letter dated 06.02.2004 had submitted that they have sold the goods to the merchant exporters viz M/s Ruchit Enterprises, M/s R K International, M/s Tip Top Impex who had exported the goods in their own name. They have also submitted that they do not

have Import/Export Code number, Custom BIN No etc. and under the simplified export procedure, Form 14B has been prescribed as the proof of export and the documentary evidence like Shipping Bill, Bill of Lading etc. are available with the merchant exporters. A statement of Shri Anil Haridas Panchmatia, Partner of the company was recorded under Section 14 of the Central Excise Act, 1944 who in his statement dated 17.12.2004 stated that the export had not taken place directly from the manufacturing unit and that the exports were made by various merchant exporters and he was in no way involved in export. As per CBEC Circular No 648/39/2002-CX dated 25.07.2002, it is clarified that export under simplified Export Procedure for exempted units are applicable only to those assesses who undertake export through merchant exporters directly from the unit itself. Since the exports did not taken place directly from the manufacturing unit itself, the simplified export procedure was not applicable and hence the clearances from the factory premises of the applicant cannot be treated as export clearances. Therefore, the applicant was issued a Show Cause cum Demand Notice No V-Adj(62)15-B/125/B/Tech-II/2004 dated 28.12.2004.

2.2 The Adjudicating Authority Deputy Commissioner, Central Excise, Borivali Division, Mumbai-V Commissionerate vide Order-in-Original No. 205/45/DCCEX/BVL/05 dated 19.05.2005 held that the goods cleared by Applicant were mere local sale transaction and during the year 2003-04 had sold the goods locally and ordered as follows :

- (i) Confirmed the demand and recovery of Rs.4,79,038/- from the Applicant under the provisions Section 11A(1) of the Central Excise Act, 1944.

- (ii) Also Confirmed the demand and recovery of interest at appropriate rate under Section 11AB of the Central Excise Act, 1944.
- (iii) Imposed a penalty of Rs. 1,20,000/- in terms of Rule 25 of the Central Excise Rules, 2002.
- (iv) Also imposed a penalty of Rs. 30,000/- on Shri Anil Haridas Panchamatia, Partner of the firm under Rule 26 of the Central Excise Rules, 2002.

3. Being aggrieved, two appeals were filed by the Applicants and its partner Shri Anil Haridas Panchamatia with the Commissioner(Appeals), Central Excise, Mumbai Zone-I. The Appellate Authority vide Order-in-Appeal No. BR(561)19/MV/2006 dated 21.02.2006 rejected the appeal and upheld the Order-in-Original dated 19.05.2005 Since the Applicants had not compiled with instructions of the CBEC Circulars Nos 705/21/9003 dated 08.04.2003 & 648/39/2002-CX dated 25.07.2002, as the merchant exporter had not effected the export from the Applicant's premises.

4. Being aggrieved, two Revision Applications were filed by the Applicants with the Government of India, who vide Order No. 279-280/09-CX dated 08.09.2009 found that

*"13. In terms of CBEC Circular No 705/21/9003 dated 20.06.03, for relaxation of condition of export from premises other than manufacturers factory, the applicant has to establish that the same goods which have suffered duty has actually been exported by the merchant exporter. In the instant case, the applicant is said to be submitted linkage statement from the place of clearance (manufacturer's factory) to the port of export through various documents. This part had not been considered either by the Commissioner(Appeals) or the adjudicating authority.*

*14. In view of the above discussions and findings, Government sets aside the impugned orders and remanded the case back to the adjudicating authority for denovo adjudication by giving reasonable opportunity of hearing and by taking into account the applicant's submission and CESTAT order in*

*the case of Merry Vs Commissioner of Central Excise Mumbai-II reported in 2008(226) ELT 422 (T-Mum)."*

5. In denovo adjudication, the Assisstant Commissioner, Central Excise, Borivali Division, Mumbai-V Commissionerate vide Order-in-Original No. 118/65/AC/BVL/2010 dated 10.05.2010 –

*"18. In view of the above, the clearances effected by M/s Avni Dresses during the year 2003-04, valued at Rs. 47,90,376/- are for the export and not for the local clearances. Therefore, the C.Ex. duty is not leviable on this value of export clearances & hence the duty demanded under Section 11A(1). Hence the duty demanded in the SCN No. V-Adj(62)15-B/125/B/Tech-II/2004 dated 28.12.2004. does not sustain. Consequently, the interest under Section 11AB of CEA, 1944 & penalty under Rules 25 & 26 of the C.Ex. Rules, 2002 will also not sustain.*

*In view of the above, I pass the following order:-*

**ORDER**

*I drop the proceedings initiated under SCN No. V-Adj(62)15-B/125/B/Tech-II/2004 dated 28.12.2004."*

6. Being aggrieved, the Department then filed appeal with the Commissioner(Appeals), Central Excise, Mumbai Zone-I, who vide Order-in-Appeal No. SB(06)06/MV/2011 dated 07.02.2011 upheld the Department's appeal and reject the Order-in-Original dated 10.05.2010

- (i) as the "description and quantity" of the Invoices Nos. 2242, 2243, 2244, 2245, 2246, 2247 & 2248 does not match;
- (ii) the Applicants failed to establish that the goods cleared under their invoices to the various merchant exporters had actually been exported; and

(iii) the Show Cause Notice issued for demand of duty was not time barred

7. Being aggrieved, two Revision Applications were filed by the Applicant and its partner Shri Anil Haridas Panchamatia with the Government of India, who vide common Order No. 1078-1079/2013-CX dated 31.07.2013 confirmed the order of Commissioner(Appeals), however, observing that the penal action taken against the Applicants appears to be harsh and therefore, reduced penalty on the M/s Avni Dresses under Rule 25 of the Central Excise Rules, 2002 to Rs. 50,000/- and the penalty imposed on the Partner of the firm was reduced to Rs. 15,000/-. The Order-in-Original was accordingly modified to that extent.

8. Being aggrieved the Applicants then filed two Writ Petitions No. 197 of 2014 and 316 of 2014 with the Bombay High Court challenging the Joint Secretary (Revision Applications) common order dated 31.07.2013 against the Commissioner(Appeals) Order-in-Appeal dated 07.02.2011. The Hon'ble Bombay High Court vide their Order dated 05.03.2014-

*"5. We are informed at the bar that the Revisionary Authority hold some sittings in Mumbai and that the next sitting would be held between 10<sup>th</sup> April, 2014 to 12<sup>th</sup> April, 2014. In view of these peculiar circumstance, we set the impugned order dated 31.7.2013 passed by the Revision Applications filed by them before the Revisionary Authority in the sitting to be held in Mumbai between 10<sup>th</sup> April, 2014 to 12<sup>th</sup> April, 2014 and pass appropriate orders on the Revision Applications in accordance with law. It is made clear that if the Petitioner fails to attend the hearing before the Revisionary Authority between 10<sup>th</sup> April, 2014 to 12<sup>th</sup> April, 2014 in Mumbai, the Petitioner shall not be entitled to have any benefit of this order.*

6. *Writ Petitions stand disposed of in the aforesaid terms. No orders as to costs."*

9. A personal hearing in the case was held on 11.04.2014 which was attended by Shri D.H. Nadkarni, Advocate on behalf of the M/s Avni Dresses and Shri Anil Panchamatia, Partner of M/s Avni Dresses. The Applicants stated that in this case, the GOI Revision Order No. 1078-1079/2013-CX dated 31.07.2013 is set aside by the Hon'ble Bombay High vide order dated 05.03.2014 in W.P. No. 316 of 2014, and direct this authority to hear the application at Mumbai on 10/11.04.2014. Grounds of Revision Applications are reiterated. The linkage chains were explained and it was contended that Commissioner(Appeals) has mentioned quantity/ weight of total consignment and not of the quantity/ packages relating to applicants. The Form 14 is a valid document and is not disputed at any stage. They have requested for some time for filing written submissions. In case the matter is not acceptable in month, the case may be remanded on following ground:

- (a) Department in EA 2 Applications filed before Commissione(Appeals) has contended as under – Adjudicating Authority vide letter 11.06.2010 has confirmed that packing slip and shipment invoices were not verified and therefore the directions of JS(RA) in his order dated 04.09.2009 were complied with;
- (b) The table prepared by the Commissioner(Appeal) in the impugned order has factual mistake with respect to quantity/ weight.

The Department did not attend the hearing.

10. The Applicants filed a written submission as follows:

10.1 They had filed a Revision Applicants before the Government, which was disposed off vide ex-parte common order 1078-10179/2013-CX dated 31.07.2013. Hence they appealed before the Hon'ble Bombay High Court in Writ Petition and the Hon'ble High Court remanded the matter to decided afresh.

10.2 The issues involved in the proceedings were as follows:

- (i) Whether the clearance of readymade garments made to the merchant exporters during the period from April 2003 to March, 2004 which was allegedly subsequently sold by such merchant exporters to the foreign customers can be treated as export clearance or clearance for home consumption, when Form N-14-B prescribed by Sales Tax Authority (issued by merchant exporters) as proof of export is present before the Central Excise Authorities;
- (ii) Whether clearance of exports made through merchant exports and not directly from the factory of manufacturer.

10.3 In Order-in-Appeal dated 07.02.2011, it was observed at page No. 14 that on comparison of their invoice with Form N-14-B and Airway Bill, discrepancy as regard to quantity and description were found. In this regard, they submitted as follows:

Invoice No. 2242

Particulars	Description of goods	Quantity	Applicant's submission
Invoice	Bhagalpur duppata; Net with sumocrush Overgadi patch	169 pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>
Form N14B	Ladies Maxis	36 pcs + 132 pcs	Pcs are not mentioned in Airway Bill by merchant exporter.
Airway Bill	Readymade Garments & dupattas	Pcs not mentioned	<b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>



## Invoice No. 2243

Particulars	Description of goods	Quantity	Applicant's submission
Invoice	Sumocrush salin withnet Prisom Haviprint with new Stripe rinkle Havi Rose patch prism print	117 pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>  Pcs are not mentioned in Airway Bill by merchant exporter.
Form N14B	Ladies Maxies	45 + 72 pcs	<b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>
Airway Bill	Readymade Garments & dupattas	Pcs not mentioned	

## Invoice No. 2244

Particulars	Description of goods	Quantity	Applicant's submission
Invoice	Readymade garment ladies maxi Readymade garment ladies wear	168 pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>  Pcs are not mentioned in Airway Bill by merchant exporter.
Form N14B	Ladies Maxies	168 pcs	<b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>
Airway Bill	Readymade Garments & dupattas	Pcs not mentioned	

## Invoice No. 2245

Particulars	Description of goods	Quantity	Applicant's submission
Invoice	Readymade garment maxi ladies wear	120 Pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>
Form N14B	Readymade garment ladies dress	120 Pcs	5845 Pcs are mentioned in Airway Bill by merchant exporter, inclusive of procurement from other manufacturers.  <b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>
Airway Bill	Readymade garments/Dupatta	5845 Pcs	

## Invoice No. 2246 &amp; 2248

Particulars	Description of goods	Quantity	Applicant' s submission
Invoice	Overgarli Patch and Readymade garment ladies maxi	120 pcs 60 pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>  3872 Pcs are not mentioned in Airway Bill by merchant exporter, inclusive of procurement from other manufacturers.  <b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>
Form N14B	Readymade garment ladies dress	180 pcs	
Airway Bill	Readymade garments/ Duppata	3872 pcs	

## Invoice No. 2247

Particulars	Description of goods	Quantity	Applicant' s submission
Invoice	Tissue Prizam with new Overgadi velvet patch	24 pcs 48 pcs	<b>Wrong comparison of pcs with weight in Kgs.</b>  <b>Description on form N14B and Airway Bill is generic in nature as per international norm while description on invoice is specific.</b>
Form N14B	Ladies Maxis	24 pcs + 48 pcs	
Airway Bill	Readymade garments/ Duppata	Pcs not mentioned	

Further the invoices raised by the merchant manufacturers and packing lists are required to be summoned from merchant exporter, as the Applicant has no role in preparing these documents.

- 10.4 In Appellate proceedings, the Commissioner(Appeals) traversed beyond the scope of proceedings. In the SCN, there is no allegation that goods were not exported by the merchant exporters. It is an admitted position that goods were exported by merchant exporters. As per simplified export procedure, expression used is goods to be directly exported from the factory

of manufacturer and Department case is that as the goods were supplied to merchant exporter for exports, it has not satisfied the requirement of export of goods directly from the factory. They relied on the decisions of the following case laws, wherein it has been observed that documents prescribed by the Sales Tax Department for exports, when presented by the Applicant, which were neither been doubted nor rebutted by Revenue, it is acceptable document for establishment exports

- (i) Pioneer Magnesia Works Ltd [2010 (252) ELT 316(T)]
- (ii) Hare Krishna Boxes P Ltd [2011 (267) ELT 525(T)]
- (iii) Universal Packaging [2011(264) ELT 147 (T)]
- (iv) Vadapalani Press [2007 (217) ELT 248(T)]

10.5 In the appeal filed by the Department, a ground was taken that adjudicating authority vide his letter dated 11.06.2010 has confirmed that the packing slip and shipment invoices were not verified. It is relevant to note that in the order passed by the Commissioner(Appeals), he has not verified packing slip and shipment invoices. On the contrary, said authority only compared invoices issued by the Applicant Firm, Form N-14 B and Airway Bill. It is to be noted that :

- (i) merchant exporter exporting the goods after procuring the same for various manufacturers and how he has packed the goods is not made know to the Applicants. Even the invoice raised on the ultimate customer by merchant exporter due to business secrecy, is not given to the Applicants;
- (ii) when description on the invoice raised by the Applicants is matching with Form N-14 B and said Form is not

questioned by Revenue, it is improper to confirm demand of duty of Rs. 4,79,039/- along with interest and penalty.

10.6. They submitted that when penalty is imposed on Partnership Firm, then penalty on Partner is not imposable.

10.7 The Applicants in addition to the aforesaid mentioned submissions, also placed reliance on the Grounds of Application filed in their Revision Applications.

11. A fresh hearing in the case was held which was attended by Shri Kirti Bhoite, Advocate on behalf of the Applicants. The Applicants reiterated the submission in Revision Application, written brief and case laws along with the submission made during earlier personal hearing on 11.4.2014. In view of the same, it was pleaded that the impugned Order-in-Appeal be set aside and Revision Applications be allowed. However, the Department did not attend the hearing.

12. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Hon'ble Bombay High Court order.

13. From the perusal of the orders, Government observes that the Applicants, a manufacturer of readymade garments was working under CBEC Circular No. 705/21/9003 dated 08.04.2003 and accordingly filed declaration under Notification No. 36/2001-CE(NT) dated 26.06.2001 and claimed exemption from Central Excise duty in terms of Notification No 34/2003 dated 30.04.2003 as amended by Notification No 47/2003 dated 17.05.200 and were filing quarterly returns in the prescribed Annexure 20 in which the value of clearances of exporter through merchant exporter wa shown. The Applicants cleared the goods to their merchant exporters who claims to have exported the same and submitted a certificate in Form N-14-

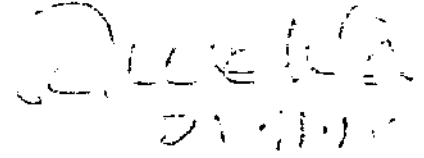
B to the Applicant in which various details i.e. name of the purchaser of readymade garments along with address, BST No. and CST No. of the purchaser of the goods, name of the seller of the ready made goods along with the details of sales bills, description and quantity of goods, details of exports i.e. name of the airport, details of Airway Bill along with quantitative details etc. were mentioned. This certificate in Form N-14-B is issued by a dealer purchasing the goods from another and selling the same in the course of export out of the territory of India within the meaning of sub-section (3) of Section 5 of the Central Sales Tax Act, 1956.

14. The Government further, observes that CBEC vide its Circular No 648/39/2002-CX dated 25.07.2002 in Para 2 has also clarified that photo copy of the Form H or ST-XXII Form or any other equivalent Sales Tax Form duly attested and stamped by the manufacturer or his authorized agent will be accepted for purpose of proof of export. This facility is available only in respect of exempted units which undertake exports themselves or through merchant exporter directly from the unit itself.

15 The Government notes that here the impugned goods were not exported directly from the Applicant's unit and the Applicant had submitted the Form N-14-B issued by their merchant exporters as proof of export was presented before the Central Excise Authorities. There is no doubt that Form N-14-B is one of the evidence to indicate that the goods are exported, but in the current case, the same goods were exported is not proved as the description of the impugned goods in the Form N-14-B, and Air Way Bill does not indicate connection with the Applicant's invoices and there are no other documents submitted by the Applicants to prove that the impugned goods had been exported. Government therefore conclude here that the correlation statement submitted by the Applicants is not acceptable and the Applicants was not able to convince that the impugned goods were exported.

16. Government therefore upholds impugned Order-in-Appeal No. SB(06)06/MV/2011 dated 07.02.2011 and rejects the Revision Applications filed by the Applicants.

17. So ordered.



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

ORDER No. <sup>413-419</sup> /2018-CX (WZ)/ASRA/Mumbai DATED 30.11.2018.

To,

1. M/s Avni Dresses,  
122, Jadhav Park, Chawl No.1,  
Behind A-1 Apartments, Shivaji Road,  
Dahanukar Wadi, Kandivali (West),  
Mumbai - 400 067.
2. Shri Anil Panchamatia,  
Partner in M/s Avni Dresses,  
122, Jadhav Park, Chawl No.1,  
Behind A-1 Apartments, Shivaji Road,  
Dahanukar Wadi, Kandivali (West),  
Mumbai - 400 067.

Copy to:

1. The Commissioner(Appeals), Central Excise, Mumbai Zone-I
2. The Commissioner, Central Excise, Mumbai-V.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.