

REGISTERED
SPEED POST



F.No. 195/1651/2012—R.A.
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..12/01/18

Order No. 45/18-CX dated 10-01-18 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 188/CE/LDH/2011 dated 21/08/2012 passed by Commissioner (Appeals), Customs and Central Excise Chandigarh-I.

Applicant : M/s. N.V.R. Forgings, Jalāndhar.

Respondent : Commissioner of Central Excise, Ludhiana

ORDER

A Revision Application No: 195/1651/2012—R.A. dated 22/11/2012 is filed by M/s N.V.R. Forgings (hereinafter referred to as applicant) against order-in-appeal no. 188/CE/LDH/2011 dated 21/08/2012, passed by the Commissioner (Appeals), Customs and Central Excise, Chandigarh-I.

2. The brief facts leading to the present proceeding are that on scrutiny of the excise returns of the applicant it was observed by the jurisdictional authorities that the applicant had cleared excisable goods valued at Rs. 38,30,216/- for export. However, the applicant did not follow the due procedure relating to export of goods such as issuing of ARE-Is. Further no proof of export in respect of the above clearances was also provided as per Rule 19 of the Central Excise Rules, 2002. Therefore, it was held by the Deputy Commissioner, Central Excise, Jalandhar, vide Order-in-Original dated 16/03/2011, that the above clearances were made without payment of central excise duty of Rs.3,15,610/- which was recoverable under Section 11A of Central Excise Act, 1944 from the applicant. Being aggrieved by this order, the applicant filed an appeal before the Commissioner (Appeals) which was rejected and hence the applicant has filed this revision application mainly on the ground that the applicant has exported the goods and during the period they exported the goods no duty was payable by them since their total value

of clearances was still within the threshold exemption limit prescribed under Notification No. 08/2003-CE(NT) dated 01/03/2003. However, the Revision Application of the applicant was rejected by then Joint Secretary (RA) vide Order No.52/2015-CX dated 25/08/2015. The applicant approached the Hon'ble High Court of Punjab and Haryana in Writ Petition on the ground that the Joint Secretary (RA) was not competent to decide the revision application as her rank is equal to the Commissioner (Appeals) only. Allowing the Writ Petition, the Hon'ble Court set aside the Order of the J.S., but gave liberty to the Government to decide the revision application afresh. Accordingly, this revision application was taken up for fresh decision.

3. Personal hearing was granted on 20/12/2017 which was attended by Sh. Harvinder Singh, Advocate, on behalf of the applicant who mainly reiterated the grounds of revision already pleaded in the revision application and he further furnished additional submission vide letter dated 01/01/2018. However, no one appeared for the respondent.

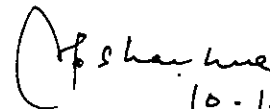
4. On examination of all relevant records in this case, the Government finds that the lower authorities have confirmed the demand of duty against the applicant solely on the ground that the applicant did not follow the procedure relating to export of goods like issuing of the ARE-Is. On the other hand, the applicant has claimed right from the beginning that they have exported the goods, even though they did not file ARE-Is due to their

ignorance about the procedure relating to exports. Along with their Revision Application and thereafter, the applicant has produced several documents like invoices, H-Forms issued by the State VAT, Shipping Bills, Bank Realization Certificates etc. and a detailed chart containing several details has also been given to establish that the goods cleared from their factory have been exported by the merchant exporter. But these collateral evidences have not been considered at all by the lower authorities. Accepting that ARE-I is a very crucial document to establish the export of goods by a manufacturer, the Government also considers it unfair to confirm the demand of duty just for single lapse of not issuing the ARE-Is by the applicant for clearance of the goods to the merchant exporter from their factory. Even in Part-III of Chapter-7 of the Excise Manual and CBEC Circular No. 648/39/2002-CE dated 25/07/2002 it has been clarified that in the case of export by exporting units through merchant exporters, the documents prescribed by Sales Tax department viz. H-Form or ST-XXII Form or any other equivalent Sales Tax Form will be accepted as proof of export. Therefore, the Government considers it imperative that to reach a fair conclusion whether the goods cleared from the factory of the applicant have really been exported or not, the original authority must consider all other export documents, including H-Forms, produced by the applicant. Besides above, the applicant has asserted that they had cleared the exported goods while their total clearances of the

excisable goods was much below the threshold exemption limit as specified under Notification No. 08/2003-CE(NT) dated 01/03/2003 during the relevant period. This point is undoubtedly very crucial in this proceeding for demanding any duty of excise in the event of holding that the goods have not been exported as in the event of non-export of goods, these are to be considered as having been cleared for home consumption. However, this primary legal issue has not been examined either at the level of original authority or at the end of the first appellate authority. Therefore, the orders passed by the lower authorities cannot be described as just and fair for this reason also.

5. Accordingly, the orders passed by original and first appellate authorities are quashed and this matter is remanded back to the jurisdictional Assistant/Deputy Commissioner to decide the matter afresh in the light of above directions. It is needless to state here that due opportunity will be provided to the applicant to produce all relevant evidences before deciding this matter.

6. In view of the above discussion, the Revision Application is allowed to the above extent.


10-1-18

(R. P. Sharma)
Additional Secretary to the Government of India

M/s NVR Forgings
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Kapurthala Road,
Jalandhar

G.O.I. Order No. 45/18-Cx dated/0-1-2018

Copy to:-

1. Commissioner of Central Excise, Ludhiana, Central Excise House, "F" Block, Rishi Nagar, Ludhiana-141001.
2. Commissioner, ^(A.P. 42) Central Excise, Service Tax and Customs, Chandigarh-I, Central revenues Building, Plot No. 19, Sector-17 C, Chandigarh.
3. Deputy Commissioner, Central Excise Division, Model Town Road, Opp. Hotel Skylark, Jalandhar.
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy

ATTESTED

10.1.2018

(Debjit Banerjee)

Sr. Technical Officer (R.A.)