

REGISTERED
SPEED POST



F.No. 195/771/2009—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..15/11/18..

Order No. 51/2018 -CX dated 12-01-2018 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. 266/CE/APPL/JAL/06 dated 31/08/2006 passed by Commissioner (Appeals), Central Excise, Jalandhar (Hqrs. at Chandigarh), Chandigarh.

Applicant : M/s. KENT Malleables Pvt. Ltd., Jalandhar.

Respondent : Commissioner of Central Excise, Jalandhar

ORDER

A Revision Application No. 195/771/2009-R.A. dated 05/10/2009 is filed by M/s KENT Malleables Pvt. Ltd., Jalandhar (hereinafter referred to as the applicant) against order-in-appeal no. 266/CE/APPL/JAL/06 dated 31/08/2006, passed by the Commissioner (Appeals), Central Excise, Jalandhar (Hqrs. at Chandigarh), Chandigarh.

2. The brief facts leading to the present proceeding are 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 execution of bond, issued of ARE-Is and did not furnish proof of export 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.3,79,371/- and education cess of Rs. 4976/- and the same were held recoverable along with interest under Section 11A and 11AB 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 the applicant filed an appeal before CESTAT which was allowed vide Final Order dated 26/03/2008 with consequential relief. But this order was challenged by the department before Hon'ble Punjab and Haryana High Court questioning the

jurisdiction of CESTAT in the matter. Accepting the revenue's case, the High Court set aside the said order of CESTAT and directed the applicant to file a revision application to the Central Government. Hence the applicant has filed this revision application mainly on the ground that the applicant has exported the goods and no duty was payable by them on the excisable goods during the period of dispute as their total value of clearances was within the threshold exemption limit prescribed under Notification No. 08/2003-CE (NT) dated 01/03/2003 at the time of export. However, the Revision Application of the applicant was rejected by the Joint Secretary (RA) vide Order No.1217/2011-CX dated 09/09/2011. Being aggrieved, the applicant questioned the vires of the above order before the Hon'ble High Court of Punjab and Haryana in Writ Petition on the ground that the JS(RA) is not competent to decide the revision application as Joint Secretary 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 a 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 08/01/2018 which was attended by Sh. Ravi Chopra, Advocate, on behalf of the applicant who mainly reiterated the above grounds of revision only and furnished additional

submissions during the personal hearing vide letter dated 08/01/2018.

However, no one appeared for the respondent.

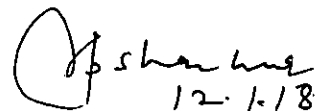
4. On examination of all relevant records in this case, the Government finds that the lower authorities have confirmed the demand of duty against the applicant solely on the ground that the applicant did not follow the procedure relating to export of goods like issuing of the ARE-Is, execution of bond and did not furnish proof of exports. On the other hand, the applicant has claimed right from the beginning that they have exported the goods directly as well as through merchant exporter and has accepted that they did not strictly observe the procedure relating to exports as prescribed under the Central Excise law under the bonafide belief that they were not required to follow these procedures as long as their value of clearances were below the threshold limit under the SSI Exemption Notification No.08/2003-CE (NT) dated 01/03/2003. Along with their revision application, the applicant has also produced several documents like invoices, Shipping Bills, Bill of Lading and Bank Realization Certificates etc. to establish that the goods cleared from the factory have been exported. But these documents have not been analyzed at all by the lower authorities. While it cannot be denied that ARE-I is 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 it for clearance of the goods from the factory or for export directly by the applicant which is a small scale unit. Even in Part-III of Chapter-7, Paras 1.1 of the Excise Manual it has been clarified that in the case of export by units which are fully exempted from payment of duty by a notification granting exemption based on value of clearances for home consumption may be exempted from filing ARE-I and Bond till they remain within the full exemption limit. 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 with an open mind all other export documents, such as invoices, packing lists, Shipping Bills; Bills of Lading and Bank Realization Certificates etc. 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.


12.1.18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s KENT Malleables
B-8, Focal Point Ext.,
Jalandhar-4

G.O.I. Order No. 5/18-Cx dated 12-01-2018

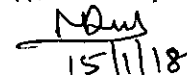
Copy to:-

1. Commissioner of Central Excise and Service Tax, Jalandhar (HQRS at Ludhiana), Central Excise House, "F" Block, Rishi Nagar, Ludhiana-141001.
2. Commissioner (Appeals), Central Excise, Jalandhar (HQRS at Chandigarh), Central Revenues Building, Plot No. 19, Sector-17 C, Chandigarh.

3. PA to AS(Revision Application)

4. Guard File

Attested


15/1/18

Section officer
Revision Application unit