

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  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.198/987/2013-RA /3602

Date of Issue: 29.02.2020

ORDER NO. 516/2020-CX (WZ)/ASRA/MUMBAI DATED 16.06.2020 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.

Applicant : Commissioner, Central Excise & Service Tax, LTU, Mumbai

Respondent : M/s Bajaj Auto Ltd (Pune and Aurangabad units).

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No163/BPS/LTU/MUM/2013 dated 27.07.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai.



## ORDER

This Revision Application is filed by the Commissioner, Central Excise & Service Tax, LTU, Mumbai (hereinafter referred to as "the Applicant") against the Order-in-Appeal No163/BPS/LTU/MUM/2013 dated 27.07.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai

2. The facts of the case, in brief, M/s Bajaj Auto Ltd (herein after as "Respondents") in their two units i.e. Plot No. 1, Village Mahalunge, MIDC, Chakan, Pune- 410501 and Bajaj Nagar, Waluj, Aurangabad-431136, are engaged in the manufacture of excisable goods viz. two wheelers, three wheelers under Chapter 87 of Central Excise Tariff Act, 1985 and also export of the goods manufactured by them in terms of Rules 18 and 19 of Central Excise Rules, 2002. The Respondents vide letter No. ORP/FIN/CEX/PERMISSION/72 dated 24.02.2010 addressed to the Commissioner of Central Excise & Service Tax, LTU, Mumbai informed that the excisable goods removed for export without payment of duty, which were deposited in Customs Bonded Warehouse known as Punjab State Container & Warehousing Corporation Ltd. [CONWARE] situated at Sector 2, Dronagiri, Taluka Uran, Dist. Raigad, Navi Mumbai-400107 have been destroyed in the fire on 31.01.2010 pending customs inspection / shipment order. They enclosed various documents for receipt of goods and the fire report made by CFS personnel with police station. They further claimed that the said excisable goods cleared from the factory under cover of ARE-1's, which got damaged in fire, are unfit for consumption or marketing and claimed remission of duty on the goods. Thereupon the Respondents were issued Show Cause Notices Nos.LTUNUM/CX/GLT-1/Bajaj-Chakan/151/2010-11 and LTU/MUM/CX/GLT-1/Bajaj-Waluj/152/2010-11 both dated 14.01.2011 on the grounds that the subject excisable goods were destroyed / damaged in fire on 31.01.2010 i.e after the said goods had been removed from the factory of their manufacture and they had failed to submit proof of export for such goods removed from the factory of manufacture, within six months. They were required to 'suo moto' to deposit the duty and interest, which they had failed to do so. Therefore, the duties of payable



on the said excisable goods removed for export without payment of duty, was recoverable with interest from them. Therefore, the Respondents were upon to show cause as to why the duties of excise amounting to Rs. 15,55,424/- and Rs. 18,17,067/- respectively should not be recovered from them, with interest under Section 11A read with section 11A13 of the Central Excise Act, 1944.

3. In a common order, the aforesaid two show cause notices were adjudicated by the Additional Commissioner, Central Excise & Service Tax, LTU, Mumbai vide the Order-in-Original No. 03/LTU/Mum/2013/ADDL/AU dated 08.02.2013 wherein

- (i) confirmed demands of Central excise duty amounting to Rs 15,55,424/- and Rs. 18,17,067/- respectively along with interest
- (ii) imposed penalty of Rs. 1,56,000/- and Rs. 1,82,000/- respectively under Rule 25(1)(d) of Central Excise Rules, 2002
- (iii) imposed penalty of Rs. 10,000/- on each unit under Rule 27 of Central Excise Rules, 2002.

Aggrieved, the Respondents then filed appeals with the Commissioner(Appeals), Central Excise & Service Tax, LTU, Mumbai. The Commissioner(Appeals) vide Order-in-Appeal No163/BPS/LTU/MUM/2013 dated 27.07.2013 set aside the Order-in-Original dated 08.02.2013 on its merit as well as on jurisdiction as the same was found not sustainable in law and allowed the Respondents appeal with all its consequential relief, if any.

4. Aggrieved, the Applicant then filed the current Revision Application on the following grounds:

- (i) The Additional Commissioner, LTU vide impugned OIO had decided two issues.
  - (a) Non-submission of proof of export within six months from the removal of goods; and
  - (b) Claim for Remission of duty.





- (ii) So far as first issue is concerned, the conditions and procedure relating to export without payment of duties are contained in Notification No.42/2001-CE(NT) dt. 26.6.2001. In the present case, the Respondents had furnished Letter of undertaking and were aware of their obligation referred to in Para 3.5 of the Notification dated 26.6.2001 and ought to have fulfilled the same *suo moto*. Para 3.5 of the Chapter 7 states that after 15 days of expiry of the stipulated period, the non-payment of duty will be treated as arrears of revenue and department will proceed to recover the same as 'sum due to Government'. It is observed that the assessee have failed to file the proof of export as required under provisions of Rule 19 of the said Rules read with Notification No.42/2001-CE(NT) dt. 26.6.2001 within six months from the date of export or such extended period, to the jurisdictional Dy./Asstt. Commissioner of Central Excise. Hence the Order-In-Original passed by the Additional Commissioner, LTU on this issue is well reasoned and proper and legal. In this they relied in judgment of Hon'ble CESTAT in case of S.V.G. Export (P) Ltd. Vs. Commissioner of C. Excise, Chennai-III [2008 (232)E.L.T 305 (Tri.Chennai)]
- (iii) The Commissioner(Appeals) contended that the Respondent had cleared their goods without payment of duty i.e. under Bond for export purposes and had deposited them in the Custom Bonded Warehouse (CONWARE) and held that as per definition of "place of removal" the place of removal is port of export of the said goods. Thus goods were destroyed before their removal. However, in the light of above said judgment of M/s S.V.G. Export (Supra), the contention of Commissioner (A) is not correct.
- (iv) As regards second issue, Rule 21 of the Central Excise Rules,2002 provided for remission of duty in certain situations. Considering the total amount of duty of Rs. 33.72,491/- in the present case, the Competent Central Excise Officer for remission of duty is "Commissioner". Therefore instead of setting aside the issue on the



basis of 'jurisdiction', the Commissioner (A) should have remanded to the Commissioner, LTU for deciding the issue of remission of goods.

- (v) Legal provision of the remission of duty in certain situations as been clarified at Chapter 18 Part-I of the CBEC's Central Excise Manual is reproduced herein below :

*"1.2. Where it is shown to the satisfaction of the Central Excise Officers specified in Table below that goods have been lost or destroyed by natural cause or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods as specified in the corresponding entry in the said Table, subject to such conditions also may be imposed by him by order in writing. The competence to supervise destruction of excisable goods claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal has also been specified in column 4 of the said Table. Destruction shall be carried on only after the competent officers have passed the order for remission (emphasis added)".*

- (vi) In case of judgment of Hon'ble Tribunal in S.V.G Export (Supra) in para 4 it is held that —

*"4. I have carefully considered the facts of the case and the rival submissions. The impugned order sustained demand of duty due on goods cleared for export but were involved in accident and were damaged. As the impugned goods were not exported in terms of the bond executed by the appellants, they are required to discharge the duty due on those goods. The duty liability on the impugned goods could be waived only if there are enabling provision in the statute. Rule 21 of Central Excise Rules, 2002 which provides for remission of goods destroyed in the accidents is subject to the condition that the damage is suffered by the excisable goods before their removal from the factory. In the instant case, the goods have been damaged after they were cleared for export and outside the factory. There Tribunal in the case of Hind Nippon Rural Industries (P) Ltd. case supra, had held that there is no provisions for remission of the duty once goods have been cleared from the factory. The Tribunal, in the case of Siraj Sons, Bombay v. Collector of Central Excise Bombay-I reported in 1988 (35) E.L.T. 597(Tri.) has held that waiver of duty is not claimable if goods are destroyed by the fire after clearance and before export. The ratio of the Tribunal's decisions are to the effect that duty is liable*





*to be paid by the assessee in respect of goods cleared for export and destroyed before export. Respectfully following the above ratio, I find that the appeals to be devoid of merit. Therefore, the appeals are dismissed."*

- (vii) Thus, Applicant prayed that the said Order-in-Appeal, to the extent of "non-submission of proof of export" be set aside, with regards to "remission of duty" be remanded back to the proper authority and suitable orders may be issued considering the above points.

5. A personal hearing in the case was held on 06.11.2019 which was attended by Shri Yogish Rudra M, Sr. Manager(Finance) on behalf of the Respondent and cited that the matter is now settled by the Larger Bench in the Cestat, West Zonal Bench Ahmedabad in the case of Honest Bio-Vet Pvt Ltd Vs Commr. of C.Ex. Ahmedabad-I [2014 (310) ELT 526 (Tri. I.B.)]

6. 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.

7. On perusal of the records, it is observed that the Respondents had cleared few consignments for exports under Notification No. 42/2001-CE(NT) dated 26.06.2001 and the same were deposited in Punjab CONWARE, the Approved Customs Bonded Warehouse, wherein the impugned goods were pending for the Customs Inspection and clearance for shipment by passing Let Export Order. On 03.02.2010, the Respondents gave an intimation regarding the fire accident which took place on 31.01.2010 at Punjab CONWARE wherein the goods had been destroyed. The Respondent vide letter dated 24.02.2010 submitted their application for remission of duty before the Commissioner, LTU, Mumbai along with the necessary documents. The Additional Commissioner, LTU, Mumbai then issued 02 show cause notices both dated 14.01.2011.

8. Government notes that the issue "Whether 'Remission of duty' is allowable when goods, cleared from factory without payment of duty for export under Bond, are destroyed due to unavoidable accident before the said goods could be exported" has already been decided by the Larger Bench of CESTAT, West Zonal



Bench, Ahmedabad in the case of Honest Bio-Vet Pvt Vs Commr. of C.Ex. Ahmedabad-I [2014 (310) ELT 526 (Tri. L.B.)]

"12. As goods in question were cleared under ARE 1 for export under bond, in view the sale would be completed at load port only as per definition of "Place of Removal" given u/s 4(3)(C)(iii) of the Central Excise Act, 1944. Under these circumstances, ownership of the goods and duty liability is also extended up to the load port and if, the goods are not exported, concerned manufacturer will be required to discharge the duty liability. Therefore, 'removal' also get extended up to the port of shipment from where the sale would be completed and when the goods were to be exported. Hence, if the goods cleared for export under Bond are destroyed before the export, ownership of the said goods and also duty liability, if any, would be always to the account of appellant assessee and that the said goods would be considered having been destroyed before removal and the benefit of Remission of duty is allowable in such an exceptional situation in terms of Rule 21 of Central Excise Rules, 2002. Clause (iii) in Section 4(3)(C) for "Place of removal" was inserted w.e.f. 14-5-2003 vide Section 136 of the Finance Act, 2003 which has stipulated as under :-

"(iii) depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory."

Hence, the provision under clause (iii) in Section 4(3)(C) for "Place of Removal" will be applicable in the case under consideration.

13. By referring to Section 5 of Central Sales Tax Act, we also find that sale of goods can be deemed to take place in the course of Export of goods out of the territory of India only if the sale for such export is effected by a "transfer of documents of title to the goods, have crossed the custom frontier of India". It is settled position of law, in view of the decision placed before us, that in case of export the "place of removal" is the port of shipment. Accordingly, we have no hesitation in following the recent decision of the Hon'ble Gujarat High Court in case of Commissioner v Dyanamic Industries Ltd in the Tax Appeal No. 912 of 2012 decided on 25-7-2014, wherein the Hon'ble High Court has also upheld view taken by CESTAT to the effect that port of shipment is the 'place of Removal' in the cases of export. Once such a view is taken, we find that the decision in case of Kuntal Granites Ltd. v. C.C.F. reported in 2007 2007 (215) E.L.T. 515 (Tri.-Bang.) and followed in subsequent decisions like in case





*of Liva Healthcare Ltd. v CCE, Nasik - 2008 (222) E.L.T. 213 (Tri. Mum.) and others, in a good law, and required to be upheld. There is no reason to take a different view.*

14. *We are of the view that the goods cleared for export under Bond which were destroyed before the same could be exported, can be treated as having been destroyed before removal only. This would be the fair interpretation of the Rule 21 of the Central Excise Rules, 2002. Thus primary condition of eligibility of Remission of duty on the destroyed goods is fulfilled as required u/r 21 of Central Excise Rules, 2002. Appellant is eligible for the Remission of duty in respect of goods for export under Bond which were destroyed before the same could be exported.*

15. *We find that the issue as referred to the Larger Bench, as now decided by the Hon'ble High Court of Gujarat in Tax Appeal No. 912 of 2012 decided on 25-7-2014. Accordingly, reference to the several precedents by the ld. counsel for the assessee and by the SDR, would be of academic interest, since the judgment of the Hon'ble High Court of Gujarat in case of Commissioner v Dyanamic Industries Ltd. has considered the very same point which is in favour of the appellant.*

16. *In view of the foregoing, we hold that in cases where goods removed from factory for export under Bond are destroyed before export, due to unavoidable accident, then in such situation the goods destroyed are to be treated as having been destroyed before removal in terms of Rule 21 of Central Excise Rules, 2002.\**

Government finds that the ratio held by the Hon'ble CESTAT is squarely applicable to the present case as the material facts are identical

9. Further, it is observed that the Respondent had filed the remission application dated 24.02.2010 addressed to the Commissioner, LTU Mumbai and the proper authority to decide the remission of duty or otherwise under Rule ibid is "Commissioner" and not the "Additional Commissioner". Government is in agreement with the findings of the Commissioner(Appeals) that the Additional Commissioner had passed the Order-in-Original beyond the jurisdiction and hence is bad in law and is liable to be set-aside. Hence the case has is remanded to the jurisdictional Commissioner to decide the remission of duty which the Respondent had applied for.





10. In view of the above discussions and findings, Government modifies the Order-in-Appeal No163/BPS/LTU/MUM/2013 dated 27.07.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai to the extent of remanding the case to the jurisdictional Commissioner as discussed in Para 9 above.

11. The revision application is allowed on above terms

12. So ordered.

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

ORDER No. 516 /2020-CX (WZ)/ASRA/Mumbai DATED 16.06, 2020.

To,

1. The Commissioner,  
CGST  
Pune

**TESTED**

2. The Commissioner,  
CGST  
Aurangabad

**B. LOKANATHA REDDY**  
Deputy Commissioner (R & I)

Copy to:

1. M/s Bajaj Auto Ltd., Plot No. 1, Village Mahalunge, MIDC, Chakan, Pune-410501
2. M/s Bajaj Auto Ltd., Bajaj Nagar, Waluj, Aurangabad-431136.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

