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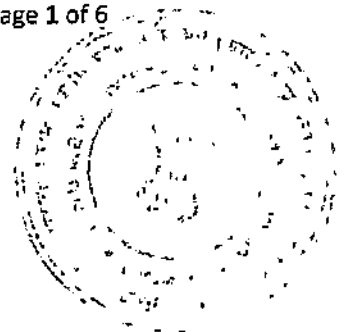
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 195/227/17-RA / 8471 Date of Issue .06.2020 20,07.2020

ORDER NO. ⁵²³ /2020-CX(SZ) / ASRA / MUMBAI/ DATED 24 .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 129DD OF THE
CUSTOMS, 1962.

- Applicant:** M/s Sakthi Sai Safety Class India,
No. 18, Anna Industrial, Gopal Nagar,
Vedaperumbakkam,
Chennai - 600 060.
- Respondent :** The Commissioner of Central Excise, Chennai-II
Commissionerate.
- Subject :** Revision Application filed, under Section 35EE of
the Central Excise Act, 1944 against the Order-in-
Appeal No.97/2017 (CXA-I), dated
21.04.2017 passed by the Commissioner of Central
Excise (Appeals-I), Chennai.



ORDER

The Revision Application is filed by M/s Sakhti Sai Safety Glass India, No. 18, Anna Industrial, Gopal Nagar, Vedperumbakkam, Chennai - 600 060 (herein after referred to as 'the applicant') against the Order in Appeal No.97/2017/(CXA-I) dated 21.04.2017 passed by the Commissioner of Central Excise (Appeals-I), Chennai, in respect of Order in Original No.11/2015 dated 27.11.2015 passed by the Assistant Commissioner of Central Excise, E Division Chennai-I Commissionerate.

2. Brief facts of the case are that the applicant are engaged in manufacture of Safety Glass, Toughened Glass falling under Chapter 40 of the Central Excise Tariff Act, 1985. The applicant were clearing the goods on payment of duty and were availing the Cenvat Credit. During the scrutiny of the ER-3 returns for the period from July-2013 to September-2013, it was noticed that the applicant had paid the Central Excise Duty of Rs. 16,65,804/- i.e. Rs. 3,46,997/- less than actual duty to be paid. The applicant informed the department that they have supplied Safety Glass for a value of RS.28,07,441/- to a merchant exporter viz. M/s 7Q Industries Pvt. Ltd. which were exported to Australia. The merchant exporter had not given CT-1 Certificate for the removal of the said goods. The applicant produced the copies of Shipping Bills and proof of shipment for the said goods. A Show Cause Notice was issued to the applicant demanding the duty of Rs. 3,46,997/- involved on the said clearance in terms of Rule 4 read with Rule 8 of Central Excise Rules, 2002 along with interest and applicable penalty. The adjudicating authority vide Order in Original No. 11/2015 dated 27.11.2015 confirmed the demand along with interest at applicable rate and also imposed penalty of Rs. 34,700/- under Rule 25 of the Central Excise Rules, 2002.



3. The Appellate Authority vide impugned Order in Appeal upheld the order in original. The Appellate Authority observed that :

3.1 The applicant did not observe the conditions prescribed under Rule 19 of Central Excise Rules, 2002 read with Notification No. 42/2001(NT) dated 26.06.2001.

3.2 The applicant had not satisfactorily proved that the impugned goods cleared from factory premises without payment of duty were actually exported.

3.3 There is no hesitation to hold that the impugned clearance is liable to be reckoned as clearance for domestic sale without payment of duty.

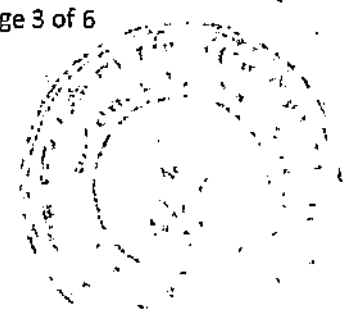
3.4 The imposition of penalty is warranted since the applicant had cleared the goods without payment of duty.

3.5 Non observance of conditions of impugned notification cannot be viewed as minor technical lapse but tantamount to violation of substantive nature.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds :-

4.1 The Safety Glass supplied by them to the merchant exporter has been fixed in the wardrobe slide frames and slide mirrors meeting with the requirement of the buyer at Australia and hence cannot be construed as the product supplied by the Applicant has undergone some process.

4.2 It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve, that is the ultimate purpose or objective is export.



4.3 The main objective of the EXIM Policy is to promote exports to the maximum extent. Exports should be promoted in such a manner that the economy of the country is not affected by unregulated exportable items. Export control is exercised in respect of a limited number of items whose supply position demands that their exports should be regulated in the larger interest of the country.

4.4 The demand of duty is not justifiable as the goods have been actually exported in this case and the goods cleared for home consumption was negligible.

4.5 The Appellate Authority ought not to have deprived the applicant of the advantage of the Notification for which they are duly entitled to when there has been substantial compliance.

4.6 The applicant did not have the requisite secretarial paraphernalia to clear goods for export which can be due to absence of awareness of the subject of export.

4.7 The applicant have also cited the various case laws they wish to rely on in support of their arguments as above.

5. Personal Hearing was held on 09.08.2018. Shri B. Kumar, Consultant attended the same on behalf of the applicant. No one attended the personal hearing on behalf of the department. As such, the instant Revision Applicant is taken up for decision on the basis of documents and submissions available on record.

6. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the submissions from both sides.

7. The issue involved in the dispute is non compliance of the conditions of Notification No. 42/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2001 which govern export of



goods without payment of duty. Government observe that the applicant have made clearances of the excisable goods viz. Safety Glass vide their invoice Nos. 1148 & 1149 both dated 27.08.2013, 1194 dated 03.09.2013 and 1334 dated 23.09.2013 to M/s 7Q Industris Pvt. Ltd., Chennai which were ultimately exported to Australia. However, the said merchant exporter had not given CT-1 Certificate for the said goods and the applicant cleared the goods without payment of duty.

8. Since the issue involved in the instant case pertains to demand of duty on goods cleared without payment of duty by the applicant. Government finds that this issue does not fall in the category of cases mentioned in proviso to Section 35B(1) of the Central Excise Act, 1944 and hence the instant revision application is filed beyond jurisdiction and not maintainable under Section 35EE of the Central Excise Act, 1944. The applicant is required to file appeal before Hon'ble CESTAT. As such, Government is constrained to dismiss this revision application as not maintainable.

9. Revision Application thus stands dismissed.

10. So, ordered.

(SELMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 523/2020-CX(SZ) /ASRA/MUMBAI

DATED 24.06.2020

ATTESTED

To,
M/s Sakthi Sai Safety Glass India,
At No. 18, Anna Industrial,
Goplanagar, Vadaperumbakam,
Chennai - 600 060.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)



Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, Chennai North Commissionerate, 26/1, Mahatma Gandhi Road, Nungmbakkam, Chennai - 600 034.
2. The Commissioner of Central Goods & Service Tax, (Appeals-I), 26/1, Mahatma Gandhi Road, Nungmbakkam, Chennai - 600 034.
3. The Assistant Commissioner of GST & Central Excise, Nungabakkam Division, Chennai North Commissionerate, 26/1, Mahatma Gandhi Road, Nungmbakkam, Chennai - 600 034.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard File.
6. Spare Copy.

