F NO. 195/29/14-RA

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Mumbai- 400 005

F NO. 195/29/14-RA/5426 Date of Issue: 02.10.2020

ORDER NO. 640 /2020-CX (WZ) /ASRA/MUMBAI DATED 14.09. 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 : M/s Princeware International Ltd.

Respondent : Commissioner of Central Excise, Daman.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. DMN-EXCUS-000-APP-262-13-14 dated 30.12.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman.

ORDER

This Revision Application is filed by M/s Princeware International Ltd, S.No. 21/4, Kachingam Road, Ringanwada, Daman – 396 210 (herein after as "the Applicant") against the Order-in-Appeal No. DMN-EXCUS-000-APP-262-13-14 dated 30.12.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman

2. The brief facts of the case are that the Applicant manufacturers had removed excisable goods under self-sealing and self-certification procedure under Letter of Undertaking (LUT) for export under 12 ARE-1s dated from 19.04.2011 to 13.07.2011 and submitted proof of export of the goods i.e Annexure-19. On scrutiny of the proof of export, it was noticed that the Shipping Bills had been filed by M/s Toyop Relief Pvt. Ltd. Mumbai, exporter and the name of the Applicant was not mentioned anywhere in the Shipping Bills. Further in the ARE-1 under which the said goods were cleared for export, the name of M/s Toyop Relief Pvt. Ltd. Mumbai was no-where mentioned. Hence there was no co-relation between ARE-1s and Shipping Bills submitted by the Applicant. Therefore the Applicant was issued a Show Cause Notice dated 17.04.2012.

3. The Additional Commissioner, Central Excise & Service Tax, Daman Commissionerate vide Order-in-Original No. C.EX./05/DEM/ADJ/KVKS-ADC/SDMN/2013-14 dated 31.05.2013 rejected the proof of exports and confirmed demand for the duty totally amounting to Rs. 11,18,037/- (Rupees Eleven Lakhs Eighteen Thousand and Thirty Seven Only) with interest on the goods exported under LTU and imposed a penalty of Rs. 3,00,000/-(Rupees Three Lakhs Only) under Rule 25 of the Central Excise Rules, 2002.

4. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Daman, who Order-in-Appeal No. DMN-EXCUS-000-APP-262-13-14 dated 30.12.2013 rejected their appeal while reducing the penalty amount to Rs 1,00,000/- (Rupees One Lakhs Only).

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

(i) The Commissioner (Appeal) had erred in not appreciating the fact that the documents submitted by them as proof of exports conclusively establish the fact of export of goods cleared by them under the respective ARE-1s.

(ii) After computerization of the Customs data and Shipping Bills are generated by computerized programme in the Customs House. In the Customs software, there are no provisions for indicating name of the manufacturer in addition to the name of the exporter. The said practice was followed earlier when the Shipping Bills were prepared manually. There are even no columns in the computerized Shipping Bill form, for indicating the name of manufacturer of the export goods, besides the name of exporter. Therefore, not only in the case of the Applicant, in all cases, name of the manufacturers, over and above name of exporter. Therefore, not only in the case of the Applicant, in all cases name of the manufactures, over and above name of the exporters, are not indicated in the Shipping Bill. Therefore, non-indication of the Applicant's name as a manufacturer in the Shipping Bills ought not to have been made a reason for not acceptance of proof of export.

(iii) The documents submitted by them as proof of export clearly established positive co-relation between the goods exported and cleared by the Applicant. The ARE-1s under cover of which the goods were cleared for export had been duly endorsed by the Customs authority, verifying export of the goods. The certificate of the Customs Officer on the ARE-1s also gives cross-reference of the Shipping Bills. Thus, though the name of the Applicant was not indicated in the Shipping Bills, the cross-reference of these documents clearly establish that the same goods were cleared under the subject ARE-1s which have been exported under the cover of respective Shipping Bills. Therefore, the fact of export of the goods cleared under the subject ARE-1s are duly established and

the proof of exports submitted by the Applicant were liable to be accepted and the liability under LUT deserved to be discharged.

(iv) Further, all the export documents showed the name of the exporter as M/s Toyup Relief Pvt. Ltd. The relevant invoices issued by the Applicant also clearly showed that the goods had been sold and cleared by them for export by M/s Toyup Relief Pvt. Ltd. and that the said goods had been duly exported by M/s Toyup Relief Pvt. Ltd. under the respective shipping documents. This fact had also been established from the various particulars appearing on the documents submitted by the Applicants as proof of export, such as number of packages, weight, the total quantity, destination etc. which exactly matches.

(v) The goods were exported on urgent basis by M/s Toyop Relief Pvt. Ltd against UNHRC for providing reliefs to riot affected people of Sudan. Therefore, what was acceptable to the exporter were Buckets of 15 Ltrs or higher capacity. They can supply Buckets of higher capacity, but cannot supply Buckets of lower capacity. Therefore, when the Applicants had offered Buckets of 16 Ltrs, the exporter had accepted the same against their export of 15 Ltrs/10 Ltrs Buckets. In the export documents, they had described the goods as per the order received by them whereas in the Central Excise documents, the goods were described as per the Applicant's Central Excise records. Thus, merely difference in capacity of Buckets, cannot be basis to assume that the goods cleared and exported were not the same, ignoring overwhelming documentary evidence.

(vi) It is also a settled legal position that even if there are any lapses, when it is proved that the goods had been actually exported, the proper officer is empowered to condone such lapses and accept proof export, based on other supporting evidences.

(vii) In the light of facts of the case and legal position, no penalty is liable to be imposed on the Applicant, and therefore the penalty imposed on the Applicants is not justified.

(viii) The Applicant prayed that the Order-in-Appeal be set aside holding that proof of export submitted by them deserved to be accepted and penalty imposed be set aside and quashed as legally unsustainable.

6. Personal hearing in this case was fixed on 20.02.2020. The hearing was attended by Shri Nitin N Mehta, Consultant, on behalf of the Applicant and none on behalf of the Respondent. The Applicant reiterated the written submissions.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

8. Issue to be determined in the current revision application is whether the documents furnished by the Applicant are acceptable in respect of goods cleared under LUT-1 by the Applicant and if not, whether they are liable to pay Central Excise duty on the said goods.

9. The original authority as well as Commissioner(Appeals) concluded that export documents such as Shipping Bill, Bill of Lading, Mate Receipt, etc. do not bear the name of the Applicant and further the export documents do not contain the number of ARE-1 under which the goods were cleared under LUT. On the basis of these findings, it is established that Applicant failed to prove the nexus between the goods cleared by the Applicant and goods exported in the name of M/s Toyup Relief Pvt. Ltd.

10. Notification No. 42/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2002 prescribes procedure in respect of the Export under Bond of all excisable goods except to Nepal and Bhutan.

"2. Procedure: -

(i) ***Procedure for removal without payment of duty under this notification:*** *- (a) After furnishing bond, a merchant-exporter shall obtain certificates in Form CT-1 specified in Annexure-III issued by the Superintendent of Central Excise having jurisdiction over the factory or warehouse or approved premises or Maritime Commissioner or such other officer as may be authorised by the Board on this behalf and on the basis of such certificate he may procure excisable goods without payment of duty for export by indicating the quantity, value and duty involved therein;"*

Government finds that the Applicant had failed to fulfill the conditions as stipulated under Notification No. 42/2001-CE(NT) dated 26.06.2001 and guidelines given in Chapter 7, Para13 of CBEC's Excise Manual for Supplementary Instructions, as in the ARE-1s, only the name of the Applicant are appearing in the ARE-1s, which attribute that the Applicant is the manufacture-exporter. The Applicant has also cleared the goods intended for export by furnishing the LUT dated 08.08.2011 with its jurisdictional Division Office of Central Excise. The proof of export documents i.e. Shipping Bills, Bills of Lading, Mate Receipts etc. submitted by the Applicant are not "in the name of the Applicant". Thus it is clear that the documents furnished by the Applicant falls short of proving the nexus between the goods cleared under LUT and the goods exported under the respective export documents. Hence the Applicant is ineligible to avail the exemption of duty under Rule 19 of the Central Excise Rules, 2002.

11. As regards penalty imposed on the Applicant, Government is in agreement with the findings of the Commissioner(Appeals) that the penalty is imposable as the Applicant had failed to submit the proof of export within the specified period of time and thereby contravened provisions of Rule 19 of the Central Excise Rules, 2002 read with relevant notification and thereby evaded payment of duty.

13. In view of the above, Government finds no infirmity in the Order-in-Appeal No. DMN-EXCUS-000-APP-262-13-14 dated 30.12.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Daman and

therefore, upholds the same and dismisses the Revision Applications filed by the Applicant being devoid of merits.

14. So, ordered.

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

ORDER No.40/2020-CX (WZ) /ASRA/Mumbai Dated 14.09.2020

To,
M/s Princeware International Ltd,
S.No. 21/4, Kachingam Road,
Ringanwada,
Daman – 396 210

Copy to:
1. The Commissioner of Goods & Service Tax, Daman Commissionerate, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi 396 191.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.