

REGISTERED
SPEED POST



F.No.195/1050/2011-RA
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.....18/3/14.....

ORDER NO. 82/14-Cx DATED 14.03.2014 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT 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 orders-in-appeal
No. PKS/60/BEL/2011 dated 11.07.2011 passed by
Commissioner of Central Excise (Appeals),
Mumbai-III

APPLICANT : M/s Aseptic Projects, B-17, Suryanagar Vikhroli (W),
Mumbai

RESPONDENT : Commissioner of Central Excise Mumbai-III

ORDER

This revision application is filed by M/s Aseptic Projects, B-17, Suryanagar Vikhroli (W), Mumbai against the order-in-appeal No. PKS/60/BEL/2011 dated 11.07.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-III with respect to order-in-original No. 304/Adj/KDN/RKD/10-11 dated 12.01.2011 passed by Commissioner of Central Excise, Kanjur Division, Mumbai-III Commissioneate.

2. Brief facts of the case are that applicants are engaged in the manufacture of excisable goods falling under Chapter 94 of the first schedule to Central Excise Tariff Act, 1985. They have exported the goods vide ARE-1 No. 1/09-10 dated 16.09.2009 under self sealing procedure at nil rate of duty under Letter of Undertaking issued under F.No.C.Ex/T-II/KDN/UTI/AP/R-1/2009 by the Assistant Commissioner, Central Excise, Kanjur Division, Mumbai-III. The applicants were given a letter dated 21.03.2010 by the Range Supdt. to furnish proof of export pertaining to the above export since six months period from the date of export has lapsed. The applicants vide their letter dated 25.07.2010 informed that they have exported the said goods under Shipping Bill No. 7154864 dated 15.09.2009 but unfortunately, they have lost the original and duplicate copies of ARE-1. Since the original and duplicate of ARE-1 duly certified by the Customs Authority is an evidence of actual exportation of goods and same is vital document for acceptance of proof of export and same was not submitted, a show cause notice dated 09.09.2010 was issued seeking to demand the duty involved on the goods exported along with interest etc.

After following due process of law, adjudicating authority vide impugned order-in-original, confirmed the duty demand of Rs.2,52,223/- along with interest. Personal penalty of equal amount was also imposed under rule 25 of Central Excise Rules, 2002.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal as time barred since there was a delay of 30 days in filing appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Commissioner (Appeals) has based his conclusions on a report issued from a wrong office. While the shipment certificate in question was issued by CFS Mulund, he made inquiries with JNPT. The very foundations of the conclusion are incorrect.

4.2 The only ground that led the Commissioner (Appeals) to doubt veracity of the grounds for seeking 'condonation of delay' is that the certificate produced by the applicant was not confirmed as genuine by the JNPT authorities. However, the certificate was not confirmed as genuine simply because it was in fact not issued by the JNPT authorities. It was issued by CFS Mulund. The verification ought to have been carried out at CFS Mulund and not at JNPT.

4.3 In the matters of 'condonation of delay' the Hon'ble Supreme Court has favoured liberal approach and has laid down the following guidelines – Collector, Land Acquisition Anantnag and Another vs. Mst. Katiji and others [1987 (28) ELT 185 (SC)].

4.4 The applicant submits that delay was caused due to the circumstances where the applicant was shifting his office from one place to another and the employee dealing with the matter was absent. This led to mix up of the records with other things. The applicant was rendered helpless as the entire case record and relevant documents went missing.

4.5 The Commissioner (Appeals) erred in rejecting the application for 'condonation of delay' which has led to denial of substantial justice.

4.6 The applicant submits that all the evidences put together viz. the Central Excise invoice, the commercial invoice, shipping bill, the bank realization certificate prove beyond doubt that the goods have been exported. Veracity of the circumstances in which the ARE-1 was lost, has not been doubted. Therefore insistence on production of ARE-1 is unfair.

4.7 Description and the quantity of the goods removed from the factory is mentioned on the ARE-1, the Central Excise invoice as well as on the shipping bill. Even while the original and the duplicate copy of the ARE-1 were not available, the excise invoice, and the third copy of the ARE-1 was very much available to the department. Therefore, it was very much possible to scrutinize and compare the quantity of the goods removed from the factory and that exported under the shipping bill.

4.8 The applicant submits that the shipping bill contains a reference to the ARE-1. On the last page of the shipping bill, details of the AR-4 no. (the old name of ARE-1) are mentioned. It also mentions name of the Central Excise division and Commissionerate.

4.9 The department accepts that the goods were taken into its custody and transferred to the exit port. There is no allegation or positive evidence to show that the goods were taken back from the Customs custody. Once the goods are in custody of the department the department itself is responsible and liable to account for the same. Failure of internal communications between the exit port and the CFS cannot be made a basis to demand duty from the applicant. Merely because the exit port has not sent the transference copy, it cannot be said that the goods were returned to the applicant.

4.10 It has repeatedly been stressed by various authorities that the procedural infraction of Notification/Circulars etc., are to be condoned if the fact of export is proved by other means. The law is settled now that substantive benefit cannot be denied for procedural lapses.

4.11 It is submitted that the circumstances do not warrant penalty equal to the duty. There is no indication of any intentional breach by the applicant. There is no mens rea alleged or found. The applicant is a genuine exporter and loss of document is not an occurrence that should be so harshly penalized.

5. Personal hearing was scheduled in this case on 7.8.2013, 19.09.2013 and 11.03.2014. Nobody has attended hearings on said dates, on behalf of the applicant as well as department.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that applicant had exported goods valuing Rs.30,60,964.20 vide ARE-1 No. 1/09-10 dated 16.09.2009 under bond. Since no proof of export was submitted, Range Supdt. vide letter dated 22.03.2010 asked the exporter to submit proof of export. Applicant vide letter dated 25.07.2010 claimed to have exported the goods vide shipping bill No. 7154864 dated 15.09.2009 and contended that ARE-1 original & duplicate could not be produced as they were lost. Original authority after following due process of law confirmed the demand of Rs.2,52,223/- along with interest and also imposed penalty of Rs.2,52,223/- under rule 25 of Central Excise Rules 2002. Commissioner (Appeals) upheld the said order-in-original. Now applicant has filed this revision application on the grounds stated above.

8. Applicant has contended that they have submitted proof of export in the form of shipping bill, central excise invoice and third copy of ARE-1, that goods were in custody of department who is responsible for accountal of same, that non-receipt of transference copy by CFS Mulund from JNPT cannot be a ground for confirmation of demand.

9. In this regard, Government notes that as per conditions of bond, applicant exporter is required to submit valid proof of exports failing which the duty become payable. Applicant did not care to submit requisite documents upto six months and

replied to letter dated 22.03.2010 after 4 months on 25.07.2010, Since the original and duplicate copies of ARE-1 were not submitted, reference was made to CFC Mulund to know the authenticity of shipping bill No.7154864 dated 15.09.2009 under which said goods were claimed to be exported. The Assistant Commissioner, CFS Mulund vide letter dated 21.12.2010 informed that said shipping bill pertained to CFS Mulund however due to non-receipt of transference copy of shipping bill with part of EGM form exit port Navasheva, actual export cannot be confirmed. It is quite clear that department had made efforts to ascertain whether said goods were exported but it could not be confirmed by Assistant Commissioner Customs CFS Mulund. It is the responsibility of export^{er} to submit valid proof of export in time which he failed to submit. Rather he has blamed the department for failure in internal communication. Government observes that applicant exporter has failed to submit valid proof of export and therefore demand of duty is rightly confirmed in this case. The penalty equal to the duty involved, imposed in this case is quite harsh. Therefore, Government reduces the penalty to Rs.20,000/- under rule 25 of the Central Excise Rules, 2002. The impugned order-in-appeal is modified to this extent.

10. The revision application is disposed off in terms of above.

11. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

M/s Aseptic Projects,
B-17, Suryanagar Vikhroli (W),
Mumbai



(भागवत शर्मा/Shekhar Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 82/14-Cx dated 14.03.2014

Copy to:

1. Commissioner of Central Excise, Mumbai-III Commissionerate, 1st Floor, New Central Excise Bldg., Road No.22, Wagle Estate, Thane - 400604
2. Commissioner of Central Excise (Appeals), Mumbai-III, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai - 400614
3. The Deputy Commissioner of Central Excise, Division Kunjur, Mumbai-III Commissionerate, 1st Floor, New Central Excise Bldg., Road No.22, Wagle Estate, Thane - 400604
4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)