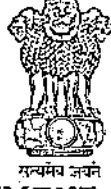


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.195/529/13-RA /7064
F.No.195/28/14-RA

Date of Issue: 07-12-21

⁸⁵¹⁻⁸⁵²
ORDER NO. /2021-CX (WZ)/ASRA/MUMBAI DATED 03.12.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Pandu Exports

Respondent: Commissioner of CGST, Surat.

Subject : Revision Applications filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. RKA/863/SRT-I/2008
dated 22.12.2008 and SUR-EXCUS-001-APP-349-13-14 dated 12.09.2013
passed by the Commissioner (Appeals) Central Excise & Customs, Surat.

ORDER

Two Revision Applications are filed by M/s. Pandu Exports, A/24/9, Road No.13, opp. Shiva Engineering, Udhyanagar, Udhna, Surat (hereinafter referred to as "the Applicant") against the following Orders-in-Appeal passed by Commissioner (Appeals) Central Excise & Customs, Surat:

Revision Application No./date	Order-in-Appeal No./date	Order-in-Original No./date	Amount involved (Penalty)
195/529/13 dated 01.04.2013	RKA/863/SRT-I/2008 dated 22.12.2008	SRT-I/ADJ/45/R/05-06 dated 08.11.2006	Rs. 7,20,000/-
195/28/14-RA dated 24.01.2014	SUR-EXCUS-001-APP-349-13-14 dated 12.09.2013	SRT-I/ADJ/16/07-08/R dated 27.11.2007	Rs. 7,20,000/-

R.A. No. 195/529/13 dated 1.4.2013

2. Brief facts of the case are as under:

2.1 M/s. Pandu Exports, a proprietorship firm, obtained registration No. AHVPP9235AXM001 for manufacturing excisable goods under Ch.5406.10 on 25.03.2004. They supplied 'processed fabrics' to M/s. Monika Impex, a merchant exporter, who received Rs.7,20,000/- as rebate on 19.05.2005 in respect of duty reflected on export invoice. In subsequent investigation it was discovered that M/s. Pandu Exports had paid the duty from their CENVAT Credit account wherein credit was taken against invoices of M/s. Krishna Textiles, a fictitious unit. A Show Cause Notice was issued to M/s. Monika Impex, M/s. Krishna Textiles and the applicant.

2.2 The said Show Cause Notice was confirmed vide Order-in-Original No. SRT-I/ADJ/45/R/2006 dated 08.11.2006 wherein penalty of Rs.7,20,000/- was imposed upon the applicant for fraudulently availing credit.

2.3 Aggrieved by the above said Order-in-Original, the applicant approached the Commissioner (Appeals). Their appeal was rejected by Commissioner (Appeals) vide Order-in-Appeal No. RKA/501/SRT-1/08 dated 21.07.2008 and the Order-in-Original was upheld.

2.4 Aggrieved by the said Order-in-Appeal, the applicant has filed the Revision Application No. 195/529/13 dated 1.4.2013. The applicant's main contentions in its R.A. are as under :-

- i. He had neither received the personal hearing memo nor Commissioner (Appeals) order in terms of Section 37C of the Central Excise Act, 1944.
- ii. He had surrendered the Central Excise Registration on 09.08.2005 and the residential address of the applicant was on record by way of Central Excise Registration application and copy of lease agreement dated 08.03.2004 and the Commissioner (Appeals) have sent personal hearing memo at factory address which is closed.
- iii. Imposition of penalty by the lower authorities without issuing show cause notice for recovery of credit is not correct.
- iv. When the adjudicating authority has not imposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004, the Commissioner (Appeals) has no power to confirm the penalty under Rule 15(2) of Cenvat Credit Rules, 2004.
- v. The Commissioner (Appeals) has failed to appreciate that there is nothing on the record to show that supplier M/s. Krishna Textile was declared fake/non-existent in any Alert Circular. In fact Krishna Textile was in existent at the address given and had physically supplied the grey fabrics to the applicant and there is no statement of any person or any evidence for non-transportation of goods from M/s. Krishna Textiles to the present applicant. Thus, the finding of the adjudicating authority is based on assumptions and presumptions and not on concrete corroborative evidences.

R.A. No. 195/28/14-RA dated 24.01.2014

3. Brief facts of the case are similar to that mentioned for earlier Revision Application. M/s. Monica Impex, Surat claimed rebate of Rs.7,20,000/- on account of export of 'dyed & printed dupatta' manufactured by the applicant. However, the rebate sanctioning authority issued a show cause notice on the basis of verification report of the range superintendent. It had been reported that the applicant had purchased grey fabrics from M/s. Krishna Textiles, Surat. However, despite taking all out efforts including issuing summons, M/s. Krishna Textiles failed to respond hence the duty paying documents issued by M/s. Krishna Textiles to the applicant were deemed to be fake/bogus. Hence Cenvat Credit availed and utilized by the applicant for payment of duty on the goods exported needed to be denied.

3.1 The said Show Cause Notice was confirmed vide Order-in-Original No. SRT-I/16/07-08/R dated 27.11.2007 wherein penalty of Rs.7,20,000/- was imposed upon the applicant for fraudulently availing credit.

3.2 Aggrieved by the above said Order-in-Original, the applicant approached the Commissioner (Appeals). Their appeal was rejected by Commissioner (Appeals) vide Order-in-Appeal No. SUR-EXCUS-001-APP-349-13-14 dated 12.09.2013 and the Order-in-Original was upheld.

3.3 Aggrieved by the said Order-in-Appeal, the applicant has filed the Revision Application No. 195/28/2014-R.A. dated 24.01.2014. The applicant's main contentions in its R.A. are as under:-

- i. Ld. Commissioner (Appeals) has erred in not giving any finding on the judgments cited in the case of Afloat Textile Pvt. Ltd. to the effect that there was violation of principles of natural justice as no effective hearing of three opportunities in terms of Section 33A of the Central Excise Act, 1944 was granted to the applicant and therefore the

- adjudication order imposing penalty without hearing the applicant on merits was not sustainable in law.
- ii. He had surrendered the Central Excise Registration on 09.08.2005 and the residential address of the applicant was on record by way of Central Excise Registration application and copy of lease agreement dated 08.03.2004 and the Commissioner (Appeals) have sent personal hearing memo at factory address which is closed.
 - iii. Imposition of penalty by the lower authorities without issuing show cause notice for recovery of credit is not correct.
 - iv. When the adjudicating authority has not imposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004, the Commissioner (Appeals) has no power to confirm the penalty under Rule 15(2) of Cenvat Credit Rules, 2004
 - v. The Commissioner (Appeals) has failed to appreciate that there is nothing on the record to show that supplier M/s. Krishna Textile was declared fake/non-existent in any Alert Circular. In fact Krishna Textile was in existent at the address given and had physically supplied the grey fabrics to the applicant and there is no statement of any person or any evidence for non-transportation of goods from M/s. Krishna Textiles to the present applicant. Thus, the finding of the adjudicating authority is based on assumptions and presumptions and not on concrete corroborative evidences
 - vi. The Ld. Commissioner (Appeals) has failed to appreciate that the adjudicating authority has imposed penalty on the basis that the applicant had taken credit wrongly and contravened the provisions of Rule 9(3) to the effect that the credit was taken on the supplier's invoice without any physical receipt of the goods. These allegations are totally incorrect as no notice to the applicant have been issued for denial of Cenvat Credit and therefore there is no cause for imposition of penalty in terms of violation of Rule 9(3) of Cenvat Credit Rules, 2004 and therefore the orders of the lower authorities

imposing/upholding penalty is without authority of law and required to set aside in the interest of justice.

4. Personal hearings in the case of R.A. No. 195/529/13 dated 1.4.2013 were fixed on following dates: 18.04.2018, 05.12.2019, 18.03.2021, 15.07.2021 and 01.09.2021 and in the case of R.A. No. 195/28/2014-R.A. dated 24.01.2014 on following dates: 23.05.2018, 26.08.2019, 09.09.2019, 02.02.2021, 18.03.2021, 06.07.2021. But the applicant never attended any of the personal hearings. However a letter dated 20.03.2021 was received from Shri Kaushik I. Vyas, Advocate of the applicant requesting for adjournment. Thereafter, a letter dated 19.07.2021 was received from Adv. Raj K. Vyas, informing about demise of Shri Kaushik I. Vyas and that further instruction are being sought from the applicant for change in appearance and filing of another vakaltnama. However, since then no communication has been received in this office from the applicant or his representative.

4.1 The Central Excise department in response to the PH letters submitted their reply vide letter dated 17.04.2018 wherein they interalia submitted that while filing the appeal before Commissioner (Appeals), the applicant had furnished Road No. 13, Opp. Shiva Engineering, Udhyanagar, Udhna, Surat as address for communication. Accordingly, the Personal Hearing letters were sent to the said address but all the PH letters returned with remark "unclaimed". The applicant had failed to provide any change in the address to Commissioner (Appeals) and hence all the communications were made to the postal address given in the Appeal. Further, the applicant had surrendered the Central Excise Registration on 09.08.2005 and the appeal with Commissioner (Appeals) was filed in the year 2007 and still the applicant had given the factory address as the postal address of communication. Therefore the contention of the applicant that by sending PH letters at factory address is the violation of principle of natural justice is totally wrong as the applicant himself had given the factory address as postal address in the appeal filed before the Commissioner

(Appeals) in the year 2007. Considering this the Revision Application of the applicant may be rejected.

4.2 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the issue involved in both the revision applications is whether imposition of penalty amounting to Rs.7,20,000/- under Rule15(2) of the Cenvat Credit Rules, 2004 readwith Section11AC of the Central Excise Act, 1944 as well as Rule 25 of the Central Excise Rules, 2002 by the original adjudication authority on the applicant is justified.

7. Government observes that the matter in hand can be summarized as follows:

- i. M/s. Pandu Exports took Central Excise registration No. AHVPP9235AXM001 on 25.03.2004 to manufacture excisable goods falling under CETH 5406.10 at A/24/9, Road No.13, opp. Shiva Engineering, Udhyognagar, Udhna, Surat-394210.
- ii. They surrendered this registration on 09.08.2005.
- iii. They supplied 60000 pcs of 'Poly x Poly Dyed & Printed Dupatta' to M/s. Monika Impex, 339, Tirupati Textile Market, Ring Road, Surat vide invoice No.29 and 30 both dated 05.07.2004.
- iv. M/s. Monika Impex exported the said consignment and claimed rebate of Rs.7,20,000/- being central excise duty paid on same.

- v. In similar fashion another consignment (details of which cannot be ascertained as concerned Order-in-Original has not been enclosed with the revision application no. 195/529/13-RA) was exported, on which too an amount of Rs.7,20,000/- was claimed as rebate by M/s. Monika Impex.
 - vi. For both these consignments, the applicant had procured inputs from M/s. Krishna Textile, Plot No.255-56-57, Sonal Ice factory Pandesara, Surat and availed Cenvat credit of duty involved.
 - vii. During verification it was found by jurisdictional central excise authorities that M/s. Krishna Textiles was a fictitious unit. An Alert Circular was also issued by the jurisdictional Commissioner declaring the said M/s. Krishna Textiles as fake, fictitious and non-existent.
 - viii. Therefore, two separate SCNs were issued to the applicant, M/s. Monica Impex and M/s. Krishna Textiles.
 - ix. An amount of Rs.7,20,000/- was imposed as penalty on the applicant in each of the case under Rule15(2) of the Cenvat Credit Rules, 2004 readwith Section11AC of the Central Excise Act, 1944 as well as Rule 25 of the Central Excise Rules, 2002 by the adjudicating authority.
8. Government observes that in his entire representation, either before appellate authorities or in the revision applications, the applicant has failed to answer the moot question regarding genuineness of its impugned transactions with M/s. Krishna Textiles. The applicant has raised queries regarding serving of notice/memo under Section 37C Central Excise Act, 1944, legality of imposition of penalty under Rule15(2) of the Cenvat Credit Rules, 2004, but has failed to defend the crux of problem. Not a single corroboratory evidence such as transportation document in respect of goods received from M/s. Krishna Textiles, bank details to show payments done

against the transaction, any correspondence regarding placement of order etc. has been mentioned/submitted by the applicant to counter the allegation regarding fictitiousness of transactions. Government finds that the impugned Order-in-Appeals already covers the grounds of appeal regarding serving of notice/PH memo, legality of imposition of penalty etc. in detail.

9. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No. RKA/863/SRT-I/2008 dated 22.12.2008 and SUR-EXCUS-001-APP-349-13-14 dated 12.09.2013, both passed by the Commissioner (Appeals) Central Excise & Customs, Surat.

10. The Revision Applications are disposed of on above terms.

Shrawan
3/12/21
(SHRAWAN KUMAR)

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

ORDER No. ⁸⁵¹⁻⁸⁵² /2021-CX (WZ)/ASRA/Mumbai DATED 03.12.2021

To,
M/s. Pandu Exports,
4, Raghuvir Bunglows,
City Light, Surat - 395 007.

Copy to:

1. Commissioner of CGST, Surat, New Central Excise Building,
Chowk Bazar, Surat - 395001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.