

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.195/192/2015
F.No.195/193/2015

19104

Date of Issue:- 26.05.22

878-879
ORDER NO. /2022-CEX (WZ) /ASRA/MUMBAI DATED 22.09.2022 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.

Subject :- Revision Applications filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No.
AV(29)07/2014 dt. 06.02.2014 & No. AV(71)45/2014 dt.
16.05.2014 passed by the Commissioner (Appeals), GST &
CX Aurangabad.

Applicant :- M/s. Aegis Ampoules Vials Ltd., C-87/88/89, MIDC Waluj,
Aurangabad.

Respondent :- Commissioner, GST & CX, Aurangabad.

ORDER

These Revision Applications have been filed by M/s Aegis Ampoules Vials Ltd, C-87-89, MIDC Walu), Aurangabad (hereinafter referred to as "the applicant") against Orders-in-Appeal No. AV(29)07/2014 dt. 06.02.2014 & No. AV(71)45/2014 dt. 16.05.2014 passed by the Commissioner (Appeals), Central Excise & Customs Aurangabad.

2. The brief facts of the case are that the appellant is holding Central Excise Registration No. AACCA2960QXM001 and are engaged in manufacture of excisable goods falling under Chapter 70 of the Central Excise Tariff Act, 1985. They are clearing the final products for home consumption as well as for export under 'letter of Undertaking' (LUT-1).

3.1 The appellant has cleared the goods for exports which are reflected in their monthly ER-1 returns, as under:-

Sr. No.	Month	Value of Clearance (Rs.)	Type of Clearance as per ER-1 return	Goods exported under Notification No.
1.	April, 2012	93,693	SEZ/Under Bond	22/2001-CE(NT)
2.	May, 2012	1,16,681	Export/Under Bond	22/2001-CE(NT)
3.	June, 2012	35,60,899	Export/Under Bond	42/2003-CE(NT)

The applicant cleared the above consignments under self removal procedure, except ARE-1 No. 03 dated 21.06.2021; which was cleared under supervision of Central Excise Officials, But the appellant could not produce any documents pertaining to exports made by them except for ARE-1 No. 03.

3.2 The appellant has cleared the goods for exports which are reflected in their monthly ER-1 returns, as under:-

Sr. No.	Month	Value of Clearance (Rs.)	Type of Clearance as per ER-1 return	Goods exported under Notification No.
1.	July, 2012	25,94,001/-	Export/Bond	42/2003-CE(NT)
2.	Sept., 2012	1,26,836/-	SEZ/LUT	42/2003-CE(NT)
3.	Oct., 2012	3,28,432/-	Export/Bond	42/2003-CE(NT)
4.	Nov., 2012	3,47,757/-	Export/Bond	42/2003-CE(NT)

But the appellant could not produce any documents pertaining to exports made by them.

4.1 Thus the applicant was issued show cause notices for failing to produce proof of exports (Table in Para 3.1 supra) as per the guidelines under Para 13 of Ch. 7 of CBEC Excise Manual for Supplementary Instructions for the above referred exports made under LUT, proposing to recover the duty on the said goods cleared for exports from them, by invoking the provisions of Sec. 11A of Central Excise Act, 1944 along with interest under Section 11AA and penalty under Rule 25 of Central Excise Rules,2002 read with Section 11AC of Central Excise Act, 1944. The show cause notice was adjudicated by Assistant Commissioner, Central Excise & Customs, Aurangabad-II Division vide Order-in-Original No. 14/CEX/AC/2013-14 dated 31.10.2013, confirming the duty demand of Rs. 4,66,129/-, recovery of interest and penalty of Rs. 4,66,129/-.

4.2 Thus the applicant was issued show cause notices for failing to produce proof of exports (Table in Para 3.2 supra) as per the guidelines under Para 13 of Ch. 7 of CBEC Excise Manual for Supplementary Instructions for the above referred exports made under UT, proposing to recover the duty on the said goods cleared for exports from them, by invoking the provisions of Sec. 11A of Central Excise Act, 1944 along with interest under Section 11AA and penalty under Rule 25 of Central Excise Rules,2002 read with Section 11AC of Central Excise Act, 1944. The show cause notice was adjudicated by Assistant Commissioner, Central Excise & Customs, Aurangabad-II Division vide Order-in-Original No. 19/CEX/AC/2013-14 dated 22.11.2013, confirming the duty demand of Rs. 4,19,872/-, recovery of interest and penalty of Rs. 4,19,872/-.

5.1 Being aggrieved, the applicant preferred appeal against the Order-in-Original No. 14/CEX/AC/2013-14 dated 31.10.2013 before Commissioner (Appeals). The Commissioner (Appeals) vide Order in Appeal No. AV(29)07/2014 dt. 06.02.2014 modified to the extent of setting aside Order-

in-Original No. 14/CEX/AC/2013-14 dated 31.10.2013 in respect of ARE-1 No. 03 dated 21.06.2012 (Row No. 3 of Table in Para 3.1 supra), consequently, reducing the overall confirmed demand, interest and penalty.

5.2 Being aggrieved, the applicant preferred appeal against the Order-in-Original No. 19/CEX/AC/2013-14 dated 22.11.2013 before Commissioner (Appeals). The Commissioner (Appeals) vide Order in Appeal No. AV(71)45/2014 dt. 16.05.2014 upheld the Order-in-Original No. 19/CEX/AC/2013-14 dated 22.11.2013 as applicant had not submitted Proof of Export before the Adjudicating Authority and sought to submit xerox copies of proof of export at appellate stage for the first time. The applicant agreed to pay Central Excise duty in respect of goods cleared by them under Invoice No. 175 dated 12.11.2012 involving duty of Rs. 7,868/- since, they were not able to get the re-warehousing certificate. Accordingly, the applicant, is said to have paid Rs. 7,868/- alongwith interest of Rs. 1,790/-.

6. Being aggrieved with the Orders-in-Appeal No. AV(29)07/2014 dt. 06.02.2014 the applicant has preferred an appeal with CESTAT, Mumbai, since the pre-ambule to the impugned order dated 06.02.2014 mentioned that "Any person aggrieved by the Order-in-Appeal may file an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), West Regional Bench, 34, P D Mello Road, Poona Street, Masjid Bunder (E) Mumbai - 400 009." CESTAT, Mumbai vide Final Order No. A/933/15/SMB dated 23.04.2015 decided the appeal and dropped the demand of Rs. 43,810/- towards the goods supplied to 100% EOU and refrained from passing any order in respect of demand of Rs. 38,732/- towards export of goods outside India, as Tribunal does not have any jurisdiction to pass any order in respect of this part of demand and opined that, the appellant is at liberty to file revision application before the Revisionary Authority of Government of India. Accordingly, applicant has preferred a Revision Application. Applying the same ratio to Order-in-Appeal No. AV(29)07/2014 dated 06.02.2014, which was filed in similar circumstances, applicant has

filed another Revision Application against the Order-in-Appeal dated 06.02.2014 also.

7. Accordingly, the applicant filed applications for Condonation of Delay and have preferred Revision Applications mainly on the following common grounds-

7.1 Actual export not in dispute:

The appellants say and submit that the goods cleared for export without payment of duty cleared under ARE-1 No 1 & ARE-1 No. 2 both dt 20.06.2012 (involving duty of Rs. 38732/-) have actually been exported vide Shipping Bill No. 9536250 dt. 23.06.12 and 9932009 dt. 19.07.12 respectively. The ARE-1's duly endorsed by Customs authorities evidencing the actual export have been produced before the Commissioner (Appeals). The dispute is not of actual export but of non submission of proof of export within time limit of six months.

The appellants say and submit that the delay in submission of documents was due to reason that the CHA has not furnished the documents to the appellants. The appellants further submit that it is an established position of law that the substantial benefit of exemption cannot be denied for procedural infractions.

7.2 Penalty under Section 11AC not attracted:

The appellants say and submit that the Commissioner has erred in upholding 100% penalty under Section 11AC of Central Excise Act, 1944 in the instant case on the following grounds -

The appellants say and submit that there is no suppression of any fact in the instant case with an intention to evade payment of duty. The appellants have not suppressed any facts from the knowledge of the department.

a. The fact of clearances of the goods for export/deemed export has been mentioned in the respective ER-1 returns

b. The Excise invoices for clearances of the goods for export/deemed export has been prepared and are available on record.

c. It has neither been alleged nor proved that the goods cleared for export/deemed

export has been diverted for home consumption.

d. Since the demand itself is not sustainable on merits, there is no cause for imposition of penalty.

7.3. Without prejudice to the submissions made herein above the applicants submits that the exemption from payment of duty for export goods serves as export incentive boost export and earn foreign exchange. In the instant case the substantive fact export having been made is not in doubt therefore a liberal interpretation is to be given in case of technical breaches, and mere delay in submission of proof of export should not be a cause for demand of duty on the exported goods. In support of above say the applicants rely on the following amongst other decisions -

1. Sanket Industries Ltd [2011 (268) ELT 125 (GOI)]
2. Ikea Trading (India) Ltd (2003 (157) ELT 359 (GOI))
3. Krishna Filaments Ltd [2001 (131) ELT 726 (GOI)]

8. Respondent made submissions dated 13.05.2016 wherein they stated-

8.1 'As per Boards Circular No. 586/23/2001/CX dt. 12/09/2001 stipulates that, "Procedures for export under letter of undertaking" and "under bond" have been specified Special attention is drawn to "proof of export procedure". The procedure, in nutshell is as follows: The exporter has to maintain "running bond account" and make "self-debits" as specified in the notification. This will be based on CT-1, which is initially signed by bond-accepting authority and given to the exporter. Exporter gets his own copy of ARE-1 duly certified by Customs. He is required to submit this within six months or any extended period, or else has to discharge duty with interest. He shall submit the original copies of ARE-1 (in original) under a covering "Statement" which is in 5 parts. The Statement will be used by Central Excise Offices to check the proof of export. On the acknowledged copy of statement, the exporter will take the credit, without waiting for Department to send any letter of acceptance of proof of export. The office of the bond accepting officer shall conduct the necessary verification using the "duplicate copy" certified by Customs and sent to "bond-accepting authority". This will help expediting proof of export [Chapter 7. part-1, para 13]

As per provisions of Rule 19 of Central Excise Rules, 2002 read with Notification No. 42/2001-CE(NT) dated 26/06/2001 the goods are allowed clearance without payment of duty for export under LUT subject to condition that, to export the excisable goods removed from factory/warehouse/approved place of storage without payment of duty under rule 19 of the Central Excise (No.2) Rules, 2002 within six months from the date of such removal or such extended period as may be permitted by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or the Maritime Commissioner or the Central excise Officer duly authorised by the Board;

(b) to observe all the provisions of the Central Excise (No.2) Rules, 2001 and all such amendments thereto as may be issued from time to time to be observed, in respect of export of excisable goods to a foreign country,

(c) to export the goods to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of production or manufacture

(d) pay the excise duty payable on such excisable goods in the event of failure to export along with an equal to interest prescribed under Section 11AA of the Central Excise Act, 1944 on the amount of duty not paid, from the date of removal for export till the date of payment". When assessee had given himself an undertaking then after six months assessee is required to pay duty suomoto along with interest. Hence judgement quoted by the assessee in support of the say is not applicable here.

As held by Govt. Of India, Ministry of Finance Department of Revenue- Revisionary

Authority in the case of M/s TATA Steel Ltd 2012(281)ELT 313(G.O.I) that documents compulsorily to be submitted for proof of export within six months from the date of export.

8.2 Government Of India, Ministry of Finance Department of Revenue- Revisionary Authority in the case of M/s. Suman Industries 2013/290)ELT 133(G.O.I.) held that, non compliance of certain procedural requirements including that of not property submitted copies of impugned ARE-1s well within 24 hrs. Of export clearances, penalty liable to be imposed.

9. Personal hearing in this case was scheduled on 11.08.2018/18.08.2021, 17.09.2021/24.09.2021. Shri Deepak Gangurde, Assistant Commissioner duly authorized, appeared online on behalf of the respondent and reiterated the submissions already made. He submitted that claims were rejected due to non submission of documents. He requested to uphold Commissioner(Appeals) Orders. However, the applicant did not appear for the personal hearing on the appointed dates or make any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

10. Government notes that in these revision applications the aforesaid background and the issues involved in both these Revision Applications being similar, Government now takes up these Revision Applications for decision vide a common order.

11. Government has carefully gone through the relevant case records available in case files and perused the Orders-in-Original and impugned Order-in-Appeal, CESTAT Order.

12. Government observes that the applicant initially filed appeal against the impugned Order before Tribunal, Mumbai as per the pre-amble to the Order-in-Appeal No. AV(29)07/2014 dt. 06.02.2014. CESTAT, Mumbai vide Final Order No. A/933/15/SMB dated 23.04.2015 has decided the appeal and dropped the demand of Rs. 43,810/- towards the goods supplied to 100% EOU and refrained from passing any order in respect of demand of Rs. 38,732/- towards export of goods outside India, as Tribunal does not have any jurisdiction to pass any order in respect of this part of demand. On receipt of the said CESTAT order, applicant filed the instant Revision Applications and pleaded therein that since the appeals were inadvertently filed before the Tribunal, there was a delay in submitting the Revision Application, which may be condoned.

13. Government first proceeds to discuss issue of delay in filing Revision Applications where the Tribunal Mumbai, vide Final Order No. A/933/15/SMB dated 23.04.2015 decided the Order-in-Appeal No. AV(29)07/2014 dt. 06.02.2014 and dropped the demand of Rs. 43,810/- towards the goods supplied to 100% EOU and refrained from passing any order in respect of demand of Rs. 38,732/- towards export of goods outside India. Applying the same ratio Applicant has filed a Revision Application in respect of Order-in-Appeal No. No. AV(71)45/2014 dt. 16.05.201. The chronological history of events is as under:-

Sl. No.		Order-in-Appeal No. AV(29)07/2014 dt. 06.02.2014	Order-in-Appeal No. AV(71)45/2014 dt. 16.05.2014
1.	Date of Receipt of Order in Appeal by the Respondent	10.02.2014	21.05.2014
2.	Date of filing of appeal before Tribunal	09.05.2014	20.08.2014
3.	Time taken in filing appeal before Tribunal	3 months	3 months
4.	Date of receipt of Tribunal order Final Order No. A/933/15/SMB	23.04.2015	23.04.2015
5.	Date of filing of Revision application	06.07.2015	06.07.2015
6.	Time taken between date of receipt of Tribunal order to date of filing of Revision	2months 14 days	2months 14 days

	application		
7.	Time taken for filing Revision Applications when the time period spent in proceedings before CESTAT is excluded.	5 months 14 day	5 months 14 day

As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are good reasons to explain such delay.

14. Government notes that Hon'ble High Court of Gujarat in the case of M/s. Choice Laboratory [2015 (315) E.L.T. 197 (Guj.)] , Hon'ble High Court of Delhi in the case of M/s. High Polymers Ltd. [2016 (344) E.L.T. 127 (Del.)] and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in [2013 (290) E.L.T. 364 (Bom.)] have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgements is squarely applicable to these cases. Government therefore keeping in view the above cited judgments holds that revision application No.195/192/2015 & No.195/193/2015 is condonable. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up these Revision Application for decision on merit.

15. Government observes that the applicants exported goods vide various ARE-1s. The original authority impugned Orders-in-Original confirmed the demand of duty mainly on the ground that the applicants failed to produce proof of export within the time limit and also imposed penalty on the applicant on the ground that the proof of export was submitted late. On appeal being filed by the applicant, Commissioner (Appeals) vide impugned Orders rejected the appeals(Para 5.1 & 5.2 supra).

16. Government observes that in an identical case, M/s. Kaizen Plastomould Pvt. Ltd., Bhayander (E), the applicant in that case, had exported their goods under Bond without payment of duty. Show cause

notices were issued to said M/s. Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time. The Original Authority subsequently confirmed the duty and imposed penalty on M/s. Kaizen Plastomould Pvt. Ltd. The appeal filed by M/s. Kaizen Plastomould Pvt. Ltd. against the Orders in Original confirming the duty and imposing penalty were rejected by the Appellate Authority. Revision Applications filed against such Orders in Appeal were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s. Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide judgment dated 03.03.2014 [2015(330) E.L.T.40 (Bom)] observed as under :-

11. While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.

12. We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited v. Union of India*. In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :

16.....

17.....

13. In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited v. Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom.)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In

the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.

14. As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 is quashed and set aside. The Revision Application is restored to the file of respondent No. 2 for a decision afresh on merits and in accordance with law.

15. The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court.

17. GOI while deciding the said Revision Applications in remand vide Order No. 274-277/14-CX dated 20.06.2014 (para 9.2 of the Order) observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s. Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of original documents either available with M/s. Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s. Kaizen Plastomould Pvt. Ltd.

18. On perusal of Orders in original, Order-in-Appeal and as also claimed by the applicant, they have provided copies of appropriate Shipping Bills and ARE-1 duly endorsed by Customs Authorities evidencing the actual export have taken place to substantiate the factum of the goods being exported and cleared outside country. There is no case that the goods cleared have not been exported. Demand of duty cannot be raised merely because there was delay in submission of documents.

19. Respectfully following the aforesaid Orders/Judgements (discussed at Para 15, 16 & 17 supra) Government directs the original authority to

examine the aspect of proof of export in all these cases on the basis of collateral evidences available on records or submitted by the applicant.

20. In view of above position, Government sets aside Orders-in-Appeal No. AV(29)07/2014 dt. 06.02.2014 & No. No. AV(71)45/2014 dt. 16.05.2014 passed by the Commissioner (Appeals), Central Excise & Customs Aurangabad which has upheld confirmation of demand of Central Excise duty on the excisable goods exported by the applicant without payment of Central Excise Duty, under Section 11 (A) of Central Excise Act, 1944 along with interest under Section 11AA of Central Excise Act, 1944 and penalty under Section 11AC of Central Excise Act, 1944 read with Rule 25 of CER, 2002.

21. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the applicant to present their case.

22. The Revision applications are disposed off on the above terms.


(SHRAWAN KUMAR)

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

878-879

ORDER No. /2022-CEX (WZ) /ASRA/Mumbai

Dated 22.09.2022

To,

M/s. Aegis Ampoules Vials Ltd.,
C-87/88/89, MIDC Waluj,
Aurangabad.

Copy to:

1. Commissioner, GST & CX, Aurangabad. N-5, Town Centre, CIDCO, Aurangabad-431003.
2. Commissioner (Appeals), Central Excise & Customs Aurangabad. N-5, Town Centre, CIDCO, Aurangabad-431003.
3. Assistant Commissioner, Central Excise & Customs, Aurangabad-II Division N-5, Town Centre, CIDCO, Aurangabad-431003.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.