

**REGISTERED
SPEED POST**



F.No. 195/25/11-RA & 198/190/11
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... 29/01/13

ORDER NO. 90-91/13-Cx DATED 29-01-2013 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,
1944 AGAINST THE ORDER-IN-APPEAL No.
282/CE/LDH/2010 dated 29-10-2010
passed by Commissioner of Central Excise,
(Appeals), Chandigarh-II.

APPLICANT No. 1 : M/s Braun Textiles Processors,
Ludhiana-(PB).

APPLICANT No. 2 : Commissioner of Central Excise,
Ludhiana.

RESPONDENT No. 1 : Commissioner of Central Excise,
Ludhiana.

RESPONDENT No. 2 : M/s Braun Textiles Processors,
Ludhiana-(PB).

ORDER

These revision applications have been filed by the applicants against the Order-in-Appeal passed by Commissioner of Central Excise (Appeals) Chandigarh-II as detailed below:-

Sl. No.	Name of applicant	Name of respondent	R.A. No.	Order-in-Appeal
1	M/s Braun Textiles Processors, Ludhiana-(PB)	Commissioner of Central Excise, Ludhiana.	195/25/11-RA-Cx	282/CE/LDH/2010 dated 29-10-2010
2	Commissioner of Central Excise, Ludhiana.	M/s Braun Textiles Processors, Ludhiana-(PB)	198/190/11-RA-Cx	282/CE/LDH/2010 dated 29-10-2010

2. Brief facts of the case are that the applicant M/s. Braun Textiles Processors , Ludhiana cleared goods for export through merchant exporter under Bond in terms of Rule 19 of Central Excise Rules 2002 The original authority observed that the applicant failed to file the documents for acceptance of proof of export in r/o impugned consignments within the prescribed time showing export of goods within stipulated period of 6 months. Show cause notice was issued proposing recovery of Central Excise Duty of Rs. 9,35,469/-. The adjudicating authority vide impugned Order-in-Original confirmed the demand of Rs. 9,35,469/- as Central Excise Duty and also imposed penalty of amount equal to duty on the applicant No. (1).

3. Being aggrieved by the said Order-in-Original, applicant no. (1) filed appeal before Commissioner (Appeals), who modified impugned Order-in-Original as much as reduced the duty demand to Rs. 6,84,478/- and penalty to Rs. 6,84,428/-.

4. Being aggrieved by the impugned Order-in-Appeal, both the exporter (Applicant No. 1) and department (Applicant No. 2) has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Grounds of Revision Application in R.A No. 195/25/11-RA-Cx filed by the Applicant No. (1) M/s. Braun Textiles Processors, Ludhiana:

4.1.1 The applicant cleared Track Suits & T-Shirts vide ARE-1 No. 6 dt. 25-05-2006 and 19 dt. 27-06-2006 for export through merchant exporter M/s. Cannon Industries Pvt. Ltd., Ludhiana and M/s. CIS Exports Pvt. Ltd., Delhi under bond. The said goods were exported vide shipping bill No. 1613129 dt. 13-06-2006 and 1687415 dt. 27-01-2007 and payment thereto has also been realized.

4.1.2 It is incorrect to impose penalty on procedural lapses. The Tribunal in the case of Mitcom Jyoti Vs. Commissioner of Central Excise 1998 (104) ELT 744 (T) held that penalty not imposable for procedural lapses.

4.1.3 The applicant No. (1) has relied upon some case laws in favour of their contention.

4.2 Grounds of Revision Application in R.A No. 198/190/11-RA-Cx filed by the applicant no. (2) CCE Ludhiana:

4.2.1. The Commissioner (Appeals) while allowing the appeal of the party in respect of ARE-1 No. BTP/17/2006-07 dt. 21-06-2006, has totally ignored the fact that the party in contravention of the provisions of CBEC's Excise Manual of Supplementary Instructions of Chapter 7, Part V in para 1.2, had not incorporated the relevant changes in ARE-1 such as change in the name of merchant exporter.

4.2.2 The Commissioner (Appeals) while allowing the appeal simply ignored the findings of the adjudicating authority regarding the mismatch of the signature of

the Customs Official in various documents. The signatures of Customs officials at the port of export on the original and duplicate copies of ARE-1s were different from those on the relevant shipping bills pertaining to the said export. There is a dispute regarding mis-match of the signatures of Customs Officer. Its a glaring fact verifiable from the documents itself, which needs no further verification.

4.2.3 The orders of tribunal and Government of India relied upon by Commissioner (Appeals) is not applicable to this impugned case.

5. A Show Cause Notice was issued to the respondent in R.A No. 198/190/11-RA- Cx filed by department under section 35 EE of Central Excise Act, 1944 to file their counter reply. However, no reply has been received from the respondents.

6. Personal hearing was scheduled in this case on 27-06-2012 & 07-08-2012 & 09-10-2012. Nobody attended personal hearing. Hence, Government proceeds to decide this case on merits, on the basis of available records.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the applicant M/s. Braun Textiles Processors, Ludhiana exported the goods through their merchant exporters under Bond, without payment of duty. Department confirmed the demand of duty as the exporter failed to submit proof of export in r/o goods cleared for export within stipulated six months. Commissioner (Appeals), modified impugned Order-in-Original as much as he reduced the duty demand to Rs. 6,84,478/- and penalty to Rs. 6,84,428/-. Now, the claimant and department both have filed these revision applications against the same Order-in-Appeal on grounds mentioned in para (4) above.

9. Government observes that in the instant case the original authority has held that the goods were claimed to have been exported after six months from the date of clearance from factory in violation to provisions of the chapter 7 of the

CBEC's manual of supplementary instruction. Government observes that relevant provisions of chapter 7 reads as follows:

Para 2.1(i):-

"The goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or manufacture or warehouse or other approved premises within such extended period as the Deputy/Assistant Commissioner of Centre Excise or Maritime Commissioner may in any particular case allow;

Para 13.6:-

" In case of non-export within six months from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy/Assistant Commissioner of Central Excise or the bond-accepting authority) or any discrepancy, the exporter shall himself deposit the excise duties along with interest on his own immediately on completion of the statutory time period or within ten days of the Memorandum given to him by the Range/Division office or the Office of the bond-accepting authority. Otherwise necessary action can be initiated to recover the excise duties along with interest and fine/penalty. Failing this, the amount shall be recovered from the manufacturer exporter along with interest in terms of the Letter of Undertaking furnished by the manufacturer. In case where the exporter has furnished bond, the said bond shall be enforced and proceedings to recover duty and interest shall be initiated against the exporter. "

As per the said provision, the goods are to be exported within 6 months from the date on which they are cleared for export from factory. The Deputy/Assistant Commissioner is empowered to give extension of this period in deserving and genuine cases. In this case in fact such extension was not sought, before expiry of stipulated six month. The extension sought by the applicant in respect of ARE-1 No. BTP/17/2006-07 dt. 21-06-2006 was after expiry of said six months. It is obvious that the claimant have neither exported the goods within prescribed time nor have produced any extension of time limit permitted by competent authority.

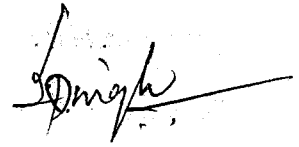
10. In the instant case proof of export was not submitted in r/o ARE-I Nos. BTP/06/06-07 dt. 25-05-2006 and BTP/19/06 dt. 27-06-2006 where as proof of export in r/o ARE-I No. 17/06-07 dt. 21-06-2006 was submitted on 04-05-2007 after

10 months of clearance of goods from the factory. The document submitted were not accepted by adjudication authority on the ground that merchant export has been charged without informing the Central Excise authorities, the description of goods in ARE-I/Invoice does not tally with Shipping Bill and Signature of Customs officers given on ARE-I and Shipping Bill did not tally. Commissioner (Appeals) has ignored the minor procedural lapses and held that proof of export in r/o ARE-I 17/06-07 dt. 21-06-2006 is valid and said demand was set aside. Government notes that relevant ARE-I has valid certification of Customs officers giving particulars of relevant Shipping Bill, container No. & OT seal stating that said goods have been exported out of India. Regarding mismatch of signatures of customs, department could have got the verification done from customs which they failed to do. Since, Commissioner (Appeals) has accepted the proof of export in this case and dropped demand of Rs. 2,51,041/-, the extension of time beyond six months for export of goods is deemed to have been given. Government agrees with the findings of Commissioner (Appeals) and holds that said duty demand in r/o ARE No. 17/06-07 dt. 21-06-2006 of Rs. 2,51,041/- and equal penalty is rightly set aside. In view of the position the revision application filed by department is liable to be rejected.

11. Regarding confirmation of duty demand in r/o goods pertaining to other ARE-I, applicant has not submitted any proof of export. The documents submitted by claimant were either not certified by customs or did not relate to the impugned export. Therefore the duty demands were rightly confirmed by lower authorities. Government agrees with the detailed finding of Commissioner (Appeals).

12. In view of above position, Government upholds the impugned Order-in-Appeal and rejects both the revision applications being devoid of merits.

13. So, Ordered.



(D.P. Singh)
Joint Secretary to the Govt. of India

Commissioner of Central Excise,
Central Excise House,
F-Block, Rishi Nagar,
Ludhiana-141001.

&

M/s Braun Textiles Processors,
851, Industrial Area-A,
Ludhiana-(PB).

ATTESTED



(महानगर निरीक्षण अधिकारी)
उप-निरीक्षक/असिस्टेंट कमिश्नर
C.H.E.C.O.U (Revision Application)
फिरोजपुरा (प.स. 141001)
लुधियाना, पंजाब (संघ. राज्य)
भारत - 141001 / Govt. of India
दूर: दिल्ली / Near Delhi

Order No. 90-91/13-Cx dated 29-01-2013

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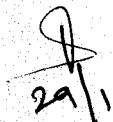
1. The Commissioner of Central Excise (Appeals), C.R.Building, Sector-17-C Chandigarh-I.

✓ 2. PS to JS (RA)

3. Guard File.

4. Spare Copy

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)