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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, Cuff Parade,
Mumbai- 400 005

F.No. 195/1024/13-RA / 4487

Date of Issue: 04.10.2022

ORDER No. 924 /2022-CX (WZ) /ASRA/MUMBAI DATED 30.09.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. New Era International

155/1235 Motilal Nagar 1, Road No. 4, Opp Ganesh Temple,
Goregaon (W), Mumbai-400104.

Respondent : The Pr. Commissioner of CGST, Mumbai West Zone.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BPS/49/M-V/2013 dated 28.08.2013 passed by the Commissioner, CGST (Appeals-I), Mumbai.

ORDER

This revision application is filed by the M/s. New Era International situated at 155/1235 Motilal Nagar 1, Road No. 4, Opp Ganesh Temple, Goregaon (W), Mumbai-400104 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BPS/49/M-V/2013 dated 28.08.2013 passed by the Commissioner, CGST (Appeals-I), Mumbai.

2. The facts in brief of this case are that the applicant are engaged in manufacture of sable goods viz Readymade garments falling under Chapter Heading No.61 62 and 63 of Central Excise Tariff Act 1985 for which they have obtained a Central Excise Registration AACPB1232FEM001. They are clearing the final products for home consumption as well as for export.

3.1 The Applicant herein, had cleared goods for export without following the proper procedure for clearance of export goods under Rule 19 of Central Excise Rules, 2002. Therefore, a Show Cause Notice bearing No V/Ad(Ch-62)158-284/G-06/2012 dated 31.10 2012 was issued to them proposing there under to impose penalty under Rule 27 of Central Excise Rules, 2002 for affecting clearances without following proper procedure for export under Rule 19 of Central Excise Rule, 2002 read with Notification No 42/2001 CE (NT) dated 25.02.2001. The Show Cause Notice was adjudicated Order-in- Order-in-Original No. 26/17/Supdt./G-06/2013 dated 11.01.2013, wherein he imposed a penalty of Rs 5,000/- under the provisions of Rule 27 of the Central Excise Rules, 2002.

3.2 The Order-in-Original dated 11.01.2013 was examined for its legality and correctness by the Commissioner, Central Excise, Thane-I, who reviewed the same and authorised filing of Appeal on his behalf.

3.3 Commissioner, CGST (Appeals-1), Mumbai vide his Order-in-Appeal No. BPS/49/M-V/2013 dated 28.08.2013 set aside the Order-in-Original dated 11.01.2013 with following orders:-

"(a) I order for payment of duty along with interest on the subject goods.

(b) I order for appropriation of duty paid under protest by the assessee on 08.02 2013.

(c) I order for payment of interest on duty leviable on the subject from the actual due date of duty payment and actual duty paid by them.

(d) I order for equal penalty equivalent to the duty payable on the subject goods under Section 11 AC of the Central Excise Act, 1944

(e) The penalty of Rs 5,000/ imposed under Rule 27 of the Central Excise Rules, 2002 in the impugned order in original is upheld."

4. Being aggrieved by the impugned Order-in-Appeal dated 28.08.2013, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following main grounds :-

A. Order-in-Appeal is ex-facie bad in law for imposing penalty under Section 11AC when in the SCN penalty was proposed only under Rule 27:

We submit that in the proceedings initiated by the show cause notice dated 31.10.2012 only penalty was proposed to be imposed under Rule 27 of the Central Excise Rules, 2002. The Order-in-Original was passed imposing penalty of Rs.5,000/- under the said Rule. Further in the EA2 filed by the Revenue inter alia relief at Serial No.6 of ie. EA2 were claimed to the effect that the word/sentence "that the export has been effected by the assessee in favour of M/s Harrow Exports, Kannur may be deleted from the said Order-in-Original and any other on merits as deemed fit. The learned Commissioner of Central Excise (Appeals) failed to appreciate the fundamental fact that there was no proposition to impose penalty under Section 11AC in the impugned notice dated 31.10.2012 Accordingly, penalty imposed under Section 11AC by OIA is legally not sustainable We, therefore, pray that the said penalty imposed under Section 11AC may be set aside by modifying the Respondent Order.

B. Substantial compliance made with provisions of Rule 19 to treat our clearance as export without payment of duty :

We submit that the Respondent has erred in considering our clearance of goods for export through Merchant Exporter as local clearance in spite of

adducing various documentary evidences in the matter. The following documentary evidences substantiate the fact that the goods were cleared by us for export and same are co-relatable with the export documents, namely, Shipping Bill, Bill of Lading and the Merchant Exporter has realized Foreign Exchange which conclusively establish that the goods have been exported out of India

- (a) B1 Bond executed by Merchant Exporter (However no. CT1 was obtained in our favour as we were under the impression that Form H is sufficient compliance for export procedure),
- (b) Certified copy of Shipping Bill,
- (c) Certified copy of Bill of Lading,
- (d) Copy of Purchase Order / Performa invoice raised on of the Merchant Exporter,
- (e) Bank Realization Certificate, &
- (f) Form-H.

Accordingly, we submit that the Respondent has erred in treating the said clearance as local clearance and erred in ordering duty payment thereon. According said Order needs to be modified to the extent indicated and the benefit of without payment of duty may be extended to us. In this context, we refer to an upon the following decision:

IN RE: Shrenik Pharma Ltd. [reported in 2012 (281) ELT Page 477 (G.O.I.)]

Demand Export of goods ARE-1 contains name of manufacturer, merchant exporter, Central Excise Invoice No., Mark and number of packages of goods- Name of goods is mentioned on CT-1 and all documents i.e. ARE-1 Goods cleared under department's supervision - Departmental Officers have verified in Part A of ARE-1 that bond was executed - Customs certified in Part B of ARE-1 that goods were exported - Proof of export cannot be rejected merely on procedural lapses pointed out by Department - Non-endorsement of name merchant exporter in CT-1 Certificates, non-execution of bond on behalf merchant exporter is minor procedural lapse can be condoned when there is sufficient proof of actual export of duty paid goods is available. - Procedural condition of technical nature and substantive condition in interpreting statute can be condoned so that substantive benefit is not denied for mere procedural lapses- Order-in-Original and Order-in-Appeal set aside - Application allowed -Section 11A of Central Excise Act, 1944. [paras 7, 8]

5. Respondent made submissions dated 03.12.2019 wherein they stated though taxpayer has submitted that being newly registered taxpayer, he was unaware of the Central Excise Rules and Regulations for export. But it is

clearly established doctrine that the ignorance of law cannot be the excuse to breach the law. The applicant cleared the goods without payment of duty, they have not mentioned the details pertaining to the said clearance in ER-1 for the month of January, 2012, they have not done proper documentation such as preparation of ARE-1 and also cleared the goods for export without executing any Bond or LUT. They requested that the Order-in-Appeal may be upheld.

6. A Personal hearing was fixed on 26.03.2018, 03.10.2019, 03.12.2019, 10.02.2021, 24.02.2021, 18.03.2021, 25.03.2021, 12.10.2021 and on 20.10.2021. Neither the Department nor the respondent appeared for personal hearing or made 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.

7. 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. The issue to be decided in this revision application is whether substantial compliance of provisions of Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001 CE(NT) dated 26.06.2001 have been made to treat the subject clearance as export without payment of duty and grant the consequent benefits; whether the penalty imposed on the applicant under Section 11AC of the Central Excise Act, 1944, for contravention of provisions of Rule 12 of the Central Excise Rules, 2002 and Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001 CE(NT) dated 26.06.2001 is proper or otherwise.

8.1 The applicant has contended in the ground of appeal, that the reliefs claimed by the respondents in EA-2 application – *‘Further in the EA2 filed by the Revenue inter alia relief at Serial No.6 of the EA2 were claimed to the effect that the word/sentence “that the export has been effected by the assessee in favour of M/s. Harrow Exports, Kannur” may be deleted from the said Order-in-Original and any other on merits as deemed fit.’*

In this regards government is of the view that the fact, that it was M/s. Harrow Exports, Kannur and not the applicant who had effected the export which was sought to be corrected in the Order-in-Original and this is not a valid ground for appeal as it was only a presentation error in the order which was sought to be corrected.

8.2 The applicants reliance on decision of Shrenik Pharma Ltd. [reported in 2012 (281) ELT Page 477 (G.O.I.)] is misplaced in as much as while in that case ARE-1 with the name of the manufacturer, merchant exporter, name of goods is mention on CT-1, all documents i.e. ARE-1 – goods were cleared under department’s supervision, Departmental Officers have verified that Bond was executed Customs has certified in Part B of ARE-1 that goods were exported. None of these attributes are present in the impugned case.

8.3 As regards penalty imposed under Section 11AC of the Central Excise Act, 1944. Government finds that Order-in-Appeal goes beyond the scope of the Show Cause Notice, which was proposed only for imposition of penalty under Rule 27 of The Central Excise Rules, 2002. A Show Cause Notice gives the applicant an opportunity to present his case, which was not available to the applicant and so penalty imposed under Section 11AC of the Central Excise Act, 1944 is not sustainable.

9.1 Government observes that the applicant has argued that their lapses were only Procedural and of technical nature. The facts of the case are that the applicant failed to follow the provisions of Rule 12 of the Central Excise Rules,

2002 and Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001 CE(NT) dated 26.06.2001. The policy of the Government and its purposes cannot overwhelm the statute and the delegated legislations which are the essential machinery put in place to give effect to the objectives of granting export incentives. Government concurs with the view that technical lapses must be dealt with pragmatically. However, the present case is one where the entire procedure has not been followed. Leniency to an applicant who has not at all followed the procedures laid down under the notification would be a disservice to the diligent applicant who has painfully followed procedures. Such leniency could be counterproductive when a decision is taken as a precedent.

9.2 Government observes that there are several judgments of the courts which hold that when the law lays down that something is to be done in a particular manner, it must be done in that manner or not done at all. In this regard, Government places reliance upon the following judgments.

(a) Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. vs. UOI[2014(305)ELT 100(All)]

"24. It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner. It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law. The principle was recognized in Nazir Ahmad v. King-Emperor – AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would like to refer a few recent one."

"35. In any case, ignorance of law is no excuse. Since this Court has also taken the view that procedure with respect filing of ARE-1, looking from the view of straight and simple principle of interpretation, as also looking from

the angle of its objective, purpose etc., in my view, is obligatory, the order impugned in the writ petition, cannot be held faulty in any manner.”

(b) State of Jharkhand vs. Ambay Cements[2004(178)ELT 55(SC)]

“26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee-the respondent herein.”

(c) NGA Steels (P) Ltd. vs. CESTAT, Chennai[2017(350)ELT 51(Mad)]

“19.The explanation offered by the appellant as well as M/s Sri Krishna Alloys cannot be said to be a plausible explanation so as to brush aside the stake of the department to its rightful share of duty claim. If something needs to be done in a particular manner, as is mandated under the relevant provision of law, it needs to be done in the said manner and trying to do the same in any other manner than the one contemplated under the law is trying to make mockery of the statutory provision, which is embodied under the Act.”

(d) CC, Chennai-I vs. Avenue Impex[2014(306)ELT 69(Mad)]

“36. It is obligatory on the part of the 1st respondent/importer to strictly adhere to the PFA Act and Rules framed thereunder and if the statute prescribed a thing to be done in a particular manner, it should be done only in that manner and not in any other manner. Since the 1st respondent/importer has failed to adhere to the said statute and rules framed thereunder, and the customs authorities were also mandated in the abovesaid circulars/instructions to strictly comply with the provisions

of the PFA Act and Rules framed thereunder, the non-furnishing of the full address of the manufacturer and the date of manufacture, on the part of the 1st respondent/importer, cannot be condoned."

10. In the light of the above observations and respectfully following the judgments of the Hon'ble Supreme Court and the Hon'ble High Courts cited above, Government rejects the revision applications as regards, the refund of the amount of Rs 1,16,369/- which the applicant has paid under protest against the Central Excise duty amount, as being devoid of merits and holds it inadmissible.

11. Government, therefore, orders modification of the order of the Commissioner (A) to the extent of dropping the penalty imposed under Section 11AC of the Central Excise Act, 1944, which will meet the ends of justice.

12. The Revision application is disposed off on the above terms.

Shrawan
30/9/22

(SHRAWAN KUMAR)

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

ORDER No. 924 /2022-CEX (WZ) /ASRA/Mumbai Dated 30.09.2022

To,
M/s. New Era International
155/1235 Motilal Nagar 1,
Road No. 4, Opp Ganesh Temple,
Goregaon (W), Mumbai-400104

Copy to:

1. The Pr. Commissioner of CGST, Mumbai West Zone, Mahavir Jain Vidyalaya, C.D. Burfiwala Marg, Juhu Lane, Andheri (W), Mumbai-400058
2. The Commissioner of CGST, APPEALS-I, Mumbai, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400012.
3. The Deputy / Assistant Commissioner, CGST, Goregaon Division, Mumbai-West Commissionerate, Takshashila Building, Samant Wadi, Goregaon (E), Mumbai-400063.
4. Superintendent CGST, Range-06, Goregaon Division, Mumbai-West Commissionerate.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard file
7. Spare Copy.