

SPEED POST



F.No. 195/29/2020-R.A.
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..20/12/21..

Order No. 287/2021-CX dated 20-12-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 05/HWH/CE/2020-21 dated 12.08.2020 passed by the Commissioner (Appelas-II), CGST & CE, Kolkkata.

Applicants : M/s Indotan Chemicals Ltd., Hooghly (WB).

Respondent : The Commissioner of CGST & CE, Howrah.

ORDER

A revision application no. 195/29/2020-R.A. dated 10.12.2020 has been filed by M/s Indotan Chemicals Ltd., Hooghly (WB) (hereinafter referred to as the Applicants) against the Order-in-Appeal no. 05/HWH/CE/2020-21 dated 12.08.2020 passed by the Commissioner (Appeals-II), CGST & CE, Kolkata, whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicants against the Order-in-Original No. 01/R-I/CGR/19-20 dated 11.04.2019, passed by the Superintendent, Central Excise, Range-I, Chandannagar.

2. Briefly stated, the Applicants were engaged in the manufacturing of leather finishing chemicals classifiable under CETH 28 of Central Excise Tariff Act, 1985. The Applicants exported 20000 kgs of Basic Chromium Sulphate under ARE-1 No. EXP/ICL/001/17-18 dated 24.04.2017, without payment of central excise duty of Rs. 1,43,663/-, on the basis of LUT No. 05/LUT/ICL/CGR/2016-17 dated 22.02.2017 executed before AC, Central Excise, Chandannagar Division. However, the Applicants did not submit the proof of export of the said goods i.e., original and duplicate copies of the ARE-1, duly certified by the Customs Authority within the time frame as per notification no. 42/2001-CE(NT) dated 26.06.2001. The Superintendent of Central Excise & CGST, Chandannagar, vide Order-in-Original No. 01/R-I/CGR/19-20 dated 11.04.2019, confirmed the demand of Rs. 1,43,663/- and ordered for its recovery in terms of Section 11A (10) of the Central Excise Act, 1944 along with interest. An equal penalty was also imposed under Rule 25 of the Central Excise Act, 1944. Aggrieved, the Applicants filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The revision application has been filed, mainly, on the grounds that non-submission of customs endorsed ARE-1 is a mere procedural infraction and the duty cannot be demanded for its non-

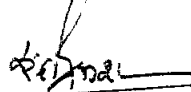
observance especially when several other documents have been produced evidencing export of the said goods.

4. Personal hearing was held on 20.12.2021, in virtual mode. Sh. N.N. Chakraborty, Consultant, appeared for the Applicants and drew attention to the Written Submissions filed by email on 17.12.2021. He reiterated the contents of the RA and Written Submissions filed on 17.12.2021. Sh. Apurba Swarnkar, AC, appeared for the department. Written submissions were filed by him on 20.12.2021.

5. The Government has carefully examined the matter. It is an admitted fact that the Applicants could not produce the customs endorsed copies of ARE-1. Instead, they had submitted a copy of an affidavit executed before the CMM Court, Kolkata, the copy of the relevant Shipping Bill No. 5553065, a copy of the Bill of Lading No. KCA-CCU-SGN-0050/17 dated 30.04.2007 and a copy of BRC to prove that the goods were actually exported. But the Applicants did not produce original copies of these documents before the lower authorities for verification. Further, the original authority has observed that in the affidavit there was an unauthenticated correction in the number of ARE-1 and the copies of Shipping Bill as well as Bill of lading were illegible. Despite such unequivocal observations by the original authority, the Applicants herein failed to produce original documents for verification before the Commissioner (Appeals). Consequently, the Commissioner (Appeals) has proceeded to decide the case against the Applicants in the light of the judgment of Hon'ble Bombay High Court in the case of M/s Manik Machinery Pvt. Ltd. Vs UOI [2014 (310) ELT 26 (Bom.)]. The Government observes that the Customs endorsed copy of the ARE-1 is required to establish that the goods, that were removed for export under the cover of relevant ARE-1, were actually exported. In absence thereof, the factum of export was sought to be established with reference to certain other documents. However, as brought out hereinabove, these alternate documents themselves had discrepancies or were illegible. As such, the factum of export could not be established. In

these facts and circumstances, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. In view of the above, the revision application is rejected.



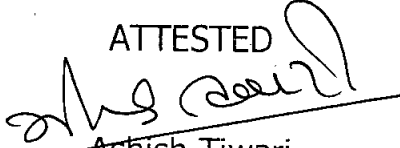
(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Indotan Chemicals Limited,
Village-Garji, PO-Bighati,
Distt.- Hooghly-712 124

G.O.I. Order No. 287/21-CX dated 20-12-2021

Copy to: -

1. The Commissioner of CGST & CE, Howrah.
2. The Commissioner (Appeals-II), Kolkata.
3. P.S. to A.S. (Revision Application).
4. Guard File.
5. Spare copy.

ATTESTED


Ashish Tiwari
(Assistant Commissioner)