Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Miscellaneous (EH) Application No. 10012 of 2021

Excise Appeal No.11510 of 2015

(Arising out of OIO-SIL-EXCUS-000-COM-041-14-15 dated 12/06/2015 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Kec International Limited ......**Appellant**

Plot No. 273/4, Demni Road, Dadra,
Silvassa
Dadra & Nagar Haveli

VERSUS

C.C.E & S.T.-Silvasa ...**Respondent**

Commissioner Central Excise, Customs & Service Tax, Silvassa,
4th Floor, Adarsh Dham Building, Vapi Daman Road Vapi
Opp. Old Town Police Station
Vapi, Gujarat

APPEARANCE:

Shri Mihir Jivani, Advocate for the appellant
Shri T.G Rathod, Additional Commissioner (AR) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10011 /2022

DATE OF HEARING: 10.09.2021
DATE OF DECISION: 10.01.2022

Ramesh Nair

Brief facts of the case are that the appellant is engaged in the manufacture of electric wires and cables HW, electric wires and cables aluminium falling under chapter heading 85 of Central Excise Tariff Act 1985. The appellant has procured duty free raw material from M/s Sterlite Industries (I) Ltd, Tuticorin against invalidation of two advance licences No 0310465594 dated 19.03.2008 and 0310475240 dated 18.06.2008. Invalidation numbers of these two licences are 0859001556 dated 04.04.2008 and 0359010404 dated 04.09.2008 respectively. Both the above licences were issued by the JDGFT (Mumbai) in favour of the assessee unit i.e. M/s RPG Cables Mysore (Karnataka) now known as KEC International Ltd without endorsing any other unit as supporting manufacturer or Co-licensee. However, the appellant at the Silvassa unit has procured

124.57MT and 199.23MT inputs viz. continuous cast copper wire rod at Rs 46,08,34,018/- and 3,32,44,604/- respectively involving total duty foregone Rs 6,61,05,308/-.

1.1 A Show Cause Notice dated 20.07.2013 was issued to the appellant and also to Shri. D.P Shrivastav Authorized Signatory of KEC International Ltd wherein it was contended that since no supporting manufacturer was endorsed by the Regional Authority and procurement under the licences were made before exports, duty free procurement was to be done mandatorily by the Mysore unit of the appellant only and not by their Silvassa unit which was not endorsed by the Regional Authority. Further, the proof of exports (Shipping bills) in respect of exports made against licence dated 19.03.2008 did not even depict the name of the appellant as supporting manufacturer. This has resulted in irregular availment of benefit of duty free procurement under advance licence to the extent of Rs 6,61,05,308/-.

1.2 In the Show cause notice it was alleged that as per para 4.1.5 of the FTP (2004-09) advance authorization and raw material imported thereunder will be with actual user condition and would not be transferable even after completion of export obligation. Therefore, it was contended that whereas it appears that as per the para 4.16 of Handbook of procedure imported material may be used in any unit of holder of advance authorization provided the same is endorsed on authorization by Regional Authority (RA) i.e. Joint Director General of Foreign Trade (JDGFT), such endorsement shall be mandatory where prior import before export is condition for availing advance authorization.

1.3 In the instant case the appellant failed to follow the procedure as laid down in Para 4.16 of Handbook of Procedures (Volume 1) and without getting endorsement from Regional Authority i.e. Joint Director General of Foreign Trade (JDGFT) as per above contention of the Show cause notice.

The Show cause notice proposed to demand of duty amounting to Rs 6,61,05,308/- under proviso to section 11A(1) [Now section 11A(4)] of Central Excise Act, 1944 and penalty under section 11AC of Central Excise Act,1944 demand of interest under section 11AB (Now 11AA) of Central Excise,1944. Personal penalty was also proposed to be imposed on Shri. D.P Shrivastav, Authorized Signatory of KEC International Ltd under Rule 26 of Central Excise Rules, 2002. The Adjudicating Authority convincing with the charges made in the Show cause notice adjudicated vide Order-In- Original dated 12.06.2015 confirming the duty interest and penalty as proposed in the Show cause notice. Being aggrieved by the said Order-in-original, appellant filed the present appeal.

2. Shri Mehul Jivani, Learned counsel appearing on behalf of the appellant argued the case on merit as well as on limitation. The learned counsel post hearing also submitted a synopsis dated 15.09.2021.

3. Shri T.G Rathod, Learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He also filed a detailed written submission along with the compilation of case laws vide letter dated 09.09.2021. All the submissions were taken on record.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the present case can be decided on limitation itself therefore, we are not discussing the issue on merit. In the present case demand involved is for the year 2008 whereas Show cause notice has been issued in June 2013 therefore, the entire demand is under extended period. The Show cause notice as well as the Order-In-Original alleged that the appellant has not disclosed the facts to the department that they have procured the duty free material from the M/s Sterlite Industries (I) Ltd against invalidation of advance licence. On this basis the larger period was invoked.

4.1 We find that the above observation made by the Adjudicating Authority is absolutely wrong on the basis of the records. The appellant has intimated to the department vide letter dated 21.11.2008 for procurement of the material from M/s Sterlite Industries (I) Ltd against invalidation of advance authorization. Along with said letter the appellant had also submitted an application under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001. The copy of advance licence as well as general bond was submitted. The relevant letter dated 21.11.2008 and the application under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 are scanned below:

Annexure. 10

RPG CABLES LIMITED

Plot No. 273/4, Demni Road, Dadra, Silvassa - 396 191. (D. & N. H.)
Tel. : 0260 - 2668518, 2669769 Fax : 0260 - 2668519

Date: 21/11/2008

To,
The Assistant Commissioner of Central Excise,
Range: IV, Divvision: I Silvassa,
Sahkar Bhavan, Piparia,
Silvassa.

We RPG CABLES LTD. Situated at plot No. 273/4, Demni Road, Dadra, Silvassa-396191 to procure continuous cast Copper Rod from Sterlite Industries against Advance License No.0310475240 /2/03/00 dt. 18/06/2008 under Notification No. 44/2001 dated 26.06.2001 issued under the Sub Rule (3) read with the sub rule (2) of Rule 19 Central Excise No. 2 Rules 2001, (section 5A (1) of the Central Excise Act,1944) read with the relevant provisions of the Central Excise Act, 1944 (1 of 1944) and Central Excise Tariff Act,1985 (5 of 1986) (Removal of goods at concessional rate or NIL rate of duty.)

Our Advance License is invalidated to M/s. Sterlite Industries vide Invalidation Letter No. 0359010404 dt. 04.09.2008. & 0359010784 dt. 07.11.2008

We hereby furnishing the Bond dated 21.11.2008. we are not required to submit the security vide Notification No. 15/2004 dated 10-08-2004.

We hereby are enclosing the following documents:-

1) Application under rule 3 of the Central Excise (Removal of goods at concessional rate Or NIL rate of duty) Rules, 2001.
2) Input / Output Ratio duly Certified by Chartered Engineer.
3) Copy of Advance License.
4) General Bond.

For RPG CABLES LTD.
For, RPG CABLES LTD.

Authorised Signatory
Authorised Signatory

129 115

RPG CABLES LIMITED

Asian

Plot No. 273/4, Demni Road, Dadra, Silvassa - 396 191. (D. & N. H.)
Tel. : 0260 - 2668518, 2669769 Fax : 0260 - 2668519

M/s. RPG CABLES LTD.-Dadra. Silvassa

CALCULATION SHEET FOR CERTIFICATE UNDER RULE 3 OF THE CENTRAL EXCISE

(Removal of goods at concessional rate or NIL rate of duty)Rule 2001.

Name of Raw Materials: Continuous Cast Copper Rod.

Commodity Code: 74071090.

Invalidation Letter No. 0359010404 dt. 04.09.2008. & 0359010784 dt. 07.11.2008

Total Quantity required :	1150.000 M.T.
Value of Above :	432500000
Excise Duty @ 14% on above :	60550000
Education Cess @ 2% on above :	1211000
Higher Education Cess @ 1% on above	605500
Total duty Involved :	62366500

RPG CABLES LIMITED SILVASSA

24/11/08
(R. M. MARU)
Superintendent,
Central Excise, Range-IV.
Division-I, SILVASSA.

129 416

RPG CABLES LTD. Survey No. 273/4, Dadra-Demeni Road, Dadra, Silvassa

ANNEXURE-1

Application under central excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001

To, Date: 21-11-2008
The Assistant Commissioner of Central Excise
Division I, Silvassa,
Dadra & Nagar Haveli
Commissionerate: Vapi

Vide S.No of the notification No. 44/2001 Central Excise dated the 26th June, 2001 issued under the Sub Rule (3) read with the sub rule (2) of Rule 19 of Central Excise No. 2 Rules 2001,(Section 5A (1) of the Central Excise Act, 1944) read with the relevant provisions of the Central Excise Act, 1944 (1 of 1944) and the Central excise Tariff Act,1985 (5 of 1986) and other laws for the time being in force the goods, namely, Continuous Cast Copper Rod used for the specified purpose of manufacture of Low Voltage Underground Cables , attracts the basic excise duty @ 14% and Education Cess @ 2% and Secondary & higher Education Cess @ 1%.

We undertake to follow the Central Excise (Removal of Goods at Concessional rate of duty for manufacture of excisable goods) Rules, 2001as required by the above notification. The quantity and value of Continuous cast Copper Rod is (500.000 M.T @ 410000/Pmt.& 650.00 MT @ 350000/Pmt)Total Qty is 1150.00 M.T. Amounting Rs. =43,25,00,000/- Purchase from Sterlite Industries (India) Limited, Madurai by pass Road, T.V. Puram, Tuticorin-628002 having central Excise Registration No. AAABCS4955QXM002 & we intent to procure the subject goods for use in our premises at Plot No. 273/4, Demini Road, Dadra, Silvassa U. T. of D. N. H.

- The estimated duty leviable on the subject goods but for the exemption under the above notification is rupees as under.

S.No.	Description of R.M	Quantity	Rate/Pmt	Value	14% Cenavt	2%Ed Cess	1% H & S Cess
01	Continuous Cast Copper Rod	500.00 MT	410000/-	205000000/-	28700000/-	574000/-	287000/-
02	Continuous Cast Copper Rod	650.00 M.T	350000/-	227500000/-	31850000/-	637000/-	318500/-
	TOTAL	1150 M.T.		432500000/-	60550000/-	1211000/-	605500/-

Rs.6,23,66,500/-(Rs.6,05,50,000 + 12,11,000 + 6,05,500) only and the estimated total duty on the subject goods payable at the time of removal under above notification is rupees is NIL.

KEC INTERNATIONAL LIMITED MUMBAI

STERLITE INDUSTRIES (I) Ltd CHINCHPADA MATERIAL IN 03 DEC 2008 Entry No Time

03/12/08 PANKAJ TOLHE

(130) (117)

We also hereby undertake,

a) To use the subject goods Continuous Cast Copper Wire used for the specified purpose of manufacture of Low Voltage Underground Cables and to follow any other condition in the said notification.

b) To pay on demand, in the event of failure to comply with (a) above, an amount equal to the difference between the duty leviable on such quantity of the subject goods but for the exemption under the aforesaid notification and that paid at the time of removal.

We have also executed the necessary bond amounting to Rs.6,23,66,500/- dated ~~-11-2008~~ 02-12-08 vide Sr. No. Bond — for your acceptance.

Opening Balance:	6,23,66,500/-
Less Annexure :	6,23,66,500/-
Balance Available	NIL

Date:
Place: Silvassa

FOR RPG CABLES LTD.
For RPG CABLES LTD.

Authorised Signatory
Authorised Signatory
(Umesh Chandra)
(Sr.Manager Operation)

Endorsement and counter – Signature of the said Asstt. Commissioner on the application

It is hereby certified that **M/s RPG CABLES LTD.** having their premises at Plot No. 273/4, Demini Road, Dadra, Silvassa have executed the bond as required by the said rules, for rupees 6,23,66,500/- (Six Crores Twenty three Lakhs Sixty six Thousand Five hundred Only) Which has been accepted by on behalf of president of India by the undersigned and entered at Sr. No. 16/2008 Dated 02-12-2008 of Bond Register.

Date: / /2008
Place: SILVASSA

DSTU-I/misc. procurement/Nut/441/RPG/ 2008-09
cc. to i) RPG cables Ltd. Dadra.
ii) Sterlite Industries Ltd. Tuticorin.
iii) The Superintendent of central Excise Range - Sipcot; C-030, Sipcot Complex; Tuticorin - 2.

2405

02/12/08

ASSISTANT COMMISSIONER
Signature of the CENTRAL EXCISE & CUSTOMS Assistant Commissioner
With Date, Name & SILVASSA

KEC INTERNATIONAL LIMITED MUMBAI

Scanned with

From the above letter along with the application it is crystal clear that the appellant had declared that they are going to procure the raw material under advance authorization from M/s Sterlite Industries (I) Ltd. The aforesaid letter has been acknowledged by the department on 24.11.2008. Further, the appellant vide letter 19.01.2010 also clarifies that there is no violation of Para 4.16 of handbook procedure. The said letter is scanned below:

Annex. 7 (119)

RPG CABLES LIMITED

Asian

Plot No. 273/4, Demni Road, Dadra, Silvassa - 396 193 (D & N. H.)
Tel: 0260 - 2668518, 6618500 Fax: 0260 2668519

Tuesday, January 19, 2010

To,

The Superintendent
Central Excise,
Range – IV, Division – I
Silvassa

Sub. : Irregular availment of duty free procurement of Raw Material under Advance License.

Dear Sir

With reference to your letter C.No. SLV-IV/Misc/.9-10 dated 15.01.2010, we would like to submit that the complete procedure of hand book specified in paragraph 4.16 has been not considered while raising the query & the same has been raised on the ground of procedure not applicable to us as paragraph 4.16 of the Hand Book of Procedure clearly speak about the two different ways to use the material i.e.:

1st condition" Imported material may be used in any unit of holder of advance authorization or Non- Transferable DFIA subject to condition of Paragraph 4.5 of this handbook" 2nd Condition "*or Jobber/supporting manufacturer provided same is endorsed on Authorisation by RA (Regional Authority)*"

As the material has been directly procured as well as utilized by RPG Cables Ltd., Dadra & neither any supporting manufacturer nor jobber used to execute the export order the second condition i.e. endorsement on Advance License is not required, **whereas the first condition which is only applicable to us has been complied fully.**

We would also like to clarify that our Registered Office is situated at Mysore. We have obtained the Certificate of Importer – Exporter Code (IEC) in the name of our Registered Office and obtained the license accordingly. As per procedure specified under paragraph 4.16 the license holder can use the material in any unit incorporated under branch list of IEC code as per para 4.5 & our Dadra Unit is already coverd in the Branch list of IEC code hence, there is no requirement of any endorsement on Advance Licese ,a copy of the same is attached herewith for your ready reference.

Regarding the fulfillment of Actual user condition we would like to submit that we have neither used any Supporting Manufacturer nor Job-Worker to execute the Export Order , all the supplier Invoices raised directly in our name as well as delivery directly effected to our Dadra Unit. Periodical return for the receipt and utilisation of the material procured under the questioned Advance License has been submitted to your office in stipulated time period. Hence, the question to fulfill the actual user condition doesn't arise.

Hope the above will satisfy the queries raised by you.

For RPG C... LTD.

Authorised Signatory

Recd 25/01/10

Regd. Office : Hebbal Industrial Area, Hootagalli, Belavadi Post, Maysore - 571186.
Tel.: 0821-402401 / 403 / 404 / 409 Fax : 0821 - 402499, Gram - TELECABLES
Corp-Office : Ceat Mahal, 463, Dr. Annie Besant Road, Worli,
Mumbai - 400025 Tel. : 022 - 4937244 Fax : 022 - 4930206

RPG

4.2 The appellant vide letter 25.02.2010 again intimated that there is no violation of Para 4.16 of Handbook Procedure. From the above it is clear that the appellant have disclosed all the information as regard procurement of material under advance authorization from M/s Sterlite

Industries (I) Ltd. Therefore, there is no suppression of facts or Mis-declaration on the part of the appellant.

5. Accordingly, the demand is clearly hit by limitations. Since the entire demand is under extended period the same is not sustainable on limitation.

6. Accordingly the impugned order is set aside. Appeal is allowed. Early Hearing Application also stands disposed of.

(Pronounced in the open court 10.01.2022)

(RAMESH NAIR)
(MEMBER JUDICIAL)

(RAJU)
(MEMBER TECHNICAL)

Geeta