

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, CHENNAI**

**Appeal No. E/41940/2017**

(Arising out of Order-in-Appeal No.125/2017 (CXA0I) dated 24.5.2017 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. Harita Fehrer Ltd.

Appellant

Vs.

Commissioner of GST & Central Excise  
Chennai

Respondent

Appearance

Shri V. Ravindran, Advocate for the Appellant  
Shri L. Nandakumar, AC (AR) for the Respondent

**CORAM**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**

Date of Hearing / Decision: **13.12.2018**

Final Order No. **43083 / 2018**

Brief facts are that the appellants are manufacturers of seats and cushions for automobiles. During scrutiny of records, it was noticed that they had exported various dutiable goods without renewing the letter of undertaking and therefore had contravened the provisions of Rule 19 of Central Excise Rules, 2002. It was also noted that they had not produced the proof of export with regard to three exports done by them. The

authorities below had imposed penalty for violation of the above conditions / law. Aggrieved, the appellant is now before the forum.

2. On behalf of the appellant, Id. counsel Shri V. Ravindran submitted that the appellant had made 16 export transactions which are listed in the show cause notice at page 28 of the appeal paper book. The appellant had produced proof of export of all these exports before the authorities below. However, out of the 16 exports, three exports were alleged to have not been exported for want of proof of export documents. The appellant vide letter dated 9.3.2016 had furnished the necessary proof of export for the three exports to the jurisdictional Superintendent of Central Excise. The authorities below have not considered the fact that the appellants have produced the proof of export. Hence, the penalty imposed is unsustainable. With regard to the letter of undertaking, it is submitted by him that renewal is required only as per the Board instructions and there is no law which says that the appellant has to get the letter of undertaking renewed within a period of one year. He relied upon the decision in the case of Ajay Chawala Vs. Commissioner of Customs, Delhi – I reported in 2016 (341) ELT 358 (Tri. Del.) to support his argument. He prayed that the penalty imposed is factually and legally incorrect and pleaded that the same may be set aside.

3. The Id. AR Shri L. Nandakumar supported the findings in the impugned order.

4. Heard both sides.

5. The authorities below have confirmed the penalty under Rule 25(1)(a) of Central Excise Rules, 2002. The allegation is that the appellant did not get the letter of undertaking renewed within the prescribed time. It is brought out from the submissions made by the Id. Counsel for the appellant that the renewal is required only as per the Board's instruction. The said issue has been analyzed by the Tribunal in the case of Ajay Chawala (supra) wherein the Tribunal has held that the penalties imposed on non-renewal of letter of undertaking and violation of Board's instruction cannot sustain. Following the same, I hold that the penalty imposed on this ground is unjustified and requires to be set aside, which I hereby do.

6. The second allegation on which the penalty is imposed is that the appellant has not produced documents evidencing proof of three exports. As per letter dated 9.3.2016, the appellant has furnished necessary proof of export to the jurisdictional Superintendent of Central Excise. The records placed along with the appeal paper book would show that the appellant has furnished all the documents evidencing proof of export of all 16 exports. It is to be noted that there is no dispute that the goods are not exported by the appellant. Therefore, the penalty

imposed on this count also cannot sustain and requires to be set aside, which I hereby do.

7. In view of the above discussions, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

**(Sulekha Beevi C.S.)**  
Member (Judicial)

Rex