CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40734 of 2016

(Arising out of Order-in-Original No.02/2016 Dated 28.01.2016 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course, Coimbatore 641 018)

M/s.Golden Coir Tufts **.... Appellant**
S.F. No.57/1A, Zamin Uthukuli Road,
Singanallur,
Akhilandapuram
Pollachi 642 002.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

APPEARANCE :

Shri M.N. Bharathi, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.41201/2025

DATE OF HEARING : 08.05.2025
DATE OF DECISION :30.10.2025

Per: Shri P. Dinesha

The Appellant is manufacturer of PVC Tufted Coir Mats and is registered as 100% Export Oriented Unit (EOU). It is alleged by the Department that Appellant have contravened the provisions of Rule 19 of Central Excise Rules, 2002 read with Notification No.42/2001-CE (NT) dated 26.06.2001 and para 7.13.6 of CBEC's manual of supplementary instructions in as much as by diverting the goods to Domestic Tariff Area (DTA) under the guise of export without payment of applicable Central Excise duty of Rs.2,56,09,022/- worked out in terms of proviso to Section 3 (1) of Central Excise Act, 1944 under Section 11A of Central Excise Act, 1944 on the value of goods of Rs.8,87,60,446/- cleared during the period from February, 2013 to January 2014. As per condition (ii) of Notification No.42/2001-CE (NT) dated 26.06.2001 as amended, export of excisable goods are allowed without payment of duty from the factory of production or manufacture or warehouse or any other premises subject to the condition that goods shall be exported within six months from the date on which these were cleared for export from the factory of production or manufacture or warehouse or other approved premises or within such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or the Maritme Commissioner, in any particular case may allow.

2. It appeared that clearances made by Appellant-Assessee during the period from February 2013 to June 2013 were under ARE-1s; that the clearances made during the period from July 2013 to January 2014 were without raising any ARE-1s but mentioned as export as per their ER-2 returns filed by the Assessee for which they have not submitted any proof of export. The Superintendent of Central Excise, Pollachi I Range vide letter O.C No.72/2014 dated 30.01.2014 requested the Assessee to remit appropriate duty on the export clearances. The Assessee has remitted duty of Rs.79,176/- (Duty : Rs.53,006/- + Education Cess: Rs.1,060/- + SHEC : Rs.530/- + Interest: Rs.10,770/- + Penalty : Rs.13,810/-) in respect of clearances made by them. The Appellant have also remitted the duty amount towards export clearances for the period from February 2013 to January 2014 for non-submission of proof of export. Hence, a SCN dated 02.03.2015 was issued to the Appellant.

3. Apropos the allegations in the SCN, the noticee/Appellant herein appears to have given a detailed reply; they appear to have contended *inter-alia* that they have been filing the mandatory E.R.1 returns every month regularly wherein they have been disclosing the details of goods manufactured and exported by them including the quantity of goods manufactured and cleared on export. They also took a stand that they were in fact having Form-H, which is a document issued by the State Government Authority/Sales Tax Department, which by itself implies the export of goods and also the acceptance as proof of shipment; the said Form-H was also enclosed with their reply to the SCN. In this context, they also relied on the orders of Tribunal in **Benara Bearings Pvt. Ltd. Vs CCE Kanpur** - 1999 (105) ELT 398 (Tri.) and **CCE Mumbai Vs Universal Packaging** – 2013 (292) ELT 191 (Bom.). They also seriously urged in their reply that all their transactions were duly reflected in their audited Balance Sheets and Invoices which are public documents and hence, there was nothing that they suppressed, that too, with an intention to evade duty. In this context, they appear to have relied on the decision of Tribunal in **Hindalco Industries Ltd. Vs CCE -** 2003 (161) ELT 346 (Tri.-Del).

4. Heard Shri M.N. Bharathi, ld. Advocate for the Appellant and Smt. Anandalakshmi Ganeshram, ld. Assistant Commissioner for the Respondent.

5. Upon hearing both sides and on perusal of records, we find that in the Order-in-Original, while analyzing the reply filed by the Assessee in the context of the materials available on record, the Adjudicating Authority finds that the Assessee intended to misuse the facilities extended to 100% EOU and evade payment of duty by suppressing the facts; they did not furnish documents like ARE–1 certified by the Customs Authorities to prove that the goods were really exported. It has also been held that the Assessee did not furnish proof of export along with Annexure-19 with documentary evidences and these findings have been held to be sufficient to justify the invoking of the extended period of limitation. Relevant extract of para 30.1 of the impugned OIO No.02/2016 dated 28.01.2016 reads as below:

> "30.1 Section 11A of the Central Excise Act, 1944 provides for recovery of duty not levied or not paid or short-levied or short-paid or erroneously refunded by the Central Excise Officer within one year from the relevant date by issue of a Show

> Cause Notice and proviso to the said Section provides for recovery of the said duty within five years where the failure to pay the Central Excise duty was by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act, 1944 or Rules made thereunder."

6. We deem it appropriate to first address the issue of invoking the extended period of limitation; if the invocation is held to be bad, then the whole demand would not survive and if the invocation of extended period of limitation is in order, then we will address the issue on merits as well.

7. In this context, we find that the CBEC Manual of Instructions prescribe certain set of documents as proof of export. Paras 4.1.2 and 4.2.2 which are relevant in this context, read as under:

> **"4.1.2 In the case of export through Merchant-exporter the document prescribed by Sales Tax Department will be accepted as the proof of export. Sales made by manufacturer of the goods' to the merchant exporter which ultimately are exported are exempt from Central Sales Tax. The Sales Tax Department issues booklet to the merchant exporters containing serially numbered H-Forms/ST-XXII form or equivalent Sales Tax form. After the goods have**

been exported by the merchant exporters, the latter issues these forms to the manufacturers of the goods. The merchant exporters in turn have to account all these serially numbered forms to the sales Tax Department by furnishing a proof that the goods have been exported out. These proofs are in the from of presentation of the Shipping Bill duly completed by the customs, bill of landing, foreign exchange remittance certificates etc. The liability of the manufacturers to the Central Sales Tax gets discharged only when they submit these forms to the Sales Tax Department. It is, therefore, seen that indirectly exports get accounted for through the issue of H-form or ST-XXII Form. Thus, photocopy of H-form or ST-XXII Form or any other equivalent Sales Tax form duly attested and stamped by the manufacturer or his authorized agent will be accepted for purpose of proof of export.

4.2.2 If Range Superintendent finds that the clearances for home consumption, and the clearances for export where proof of exports have not been furnished within 6 months, when taken together, are likely to exceed the exemption limit (which is presently Rs.100 lakhs for home consumption), he should issue show cause notices for safeguarding revenue. These show cause notices, however, should be kept pending for another three months by which time proof of exports are expected to be received."

In fact, even the CBEC has clarified the same in Circular No.648/39/2002-CX., dated 25.07.2002.

8. From the above, we find that Form-H is one of the documents specifically mentioned, which has claimed to have been placed before the lower Authority and undeniably, the same is also a part of the Appellant's reply to the SCN. It is unfortunate that the lower Authority has ignored a statutory document issued by the State Sales Tax authorities and it is a different matter altogether if there was some problem or issues with such Form-H issued, but without assigning any reasons, the lower Authority has not bothered even to refer to the same, despite the fact that they are issued by the State Government authorities. Hence, at the threshold, the observation of the lower Authority at para 30.1 and 30.2 as to the non-production of supporting documentary evidence of export actually does not hold any water since the said observation/finding appears to have been given without proper application of mind.

9. We are hence satisfied that the availability of Form-H, which is valid documentary evidence in support of the fact of export proves the *bona-fides* of the assessee, and hence, the extended period of limitation has been improperly invoked without there being any positive act of suppression, but only on surmises. This, according to us, is unsustainable as the

same lacks support in law. Therefore, we find it appropriate to set aside the demand raised beyond the normal period of limitation since the Revenue has not made out any case for invoking the extended period of limitation. However, from the record, we notice that the demand pertains to the period February 2013 to January 2014 and Show Cause Notice is issued on 02.03.2015. It is thus very clear that the entire demand is hit by limitation since the demand is raised on by invoking the extended period of limitation.

10. In the result, we set aside the impugned order and allow the Appeal with consequential benefits if any, as per law.

(Order pronounced in open court on 30.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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