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CENTRAL EXCISE, HYDERABAD: 500 001.

O.R.No.1/81 (Adjn.)

Adjn.Ord. No. 30/81

Dated 26-9-1981

ORDER

Sub:- Central Excise-Tariff Item No.68- Offence- case against M/S Meera Industries, Azamabad, Hyderabad- L.4 No.2/80 NES - Adjudication Order passed.

The Superintendent of Central Excise Preventive and Intelligence, Division II, Hyderabad visited M/S Meera Industries, Azamabad on 20-12-80. M/S Meera Industries manufactures deep well hand pumps. The pumps fall under T.I. 68 of the Central Excise Tariff. A Central Excise L.4 No.2/80 was obtained by the manufacturer for the manufacture of the pumps.

The Superintendent investigated into the transactions of the manufacturer and noticed that during 1979-80, the manufacturer had sold pumps of a value of Rs.33,83,326-50 and during 1980-81 upto 20-12-80 (the date of visit of the Superintendent) the value of the goods sold is about Rs.39,79,205-40. It was also noticed that the value of the machinery installed in the factory was less than Rs.10 lakhs.

Under notification No.89/79 dt. 1-3-79, goods falling under T.I. 68 cleared by a manufacturer in a financial year are entitled to exemption from payment of duty so long as the value of the goods cleared is not more than Rs.15 lakhs, provided the value of the capital investment of plant and machinery installed is not more than Rs.10 lakhs and also provided the value of the goods cleared during the preceding financial year was not more than Rs.30 lakhs.

The Superintendent observed that during 1978-79 the goods sold by M/S Meera Industries were not more than Rs.30 lakhs and therefore the value upto Rs.15 lakhs in 1979-80 is entitled for duty free allowance and the remainder is assessable to duty of excise; the value in excess of Rs.15 lakhs assessable to duty for 1979-80 is Rs. 18,09,864-00 and that however, in respect of

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clearances during 1980-81 the entire value of the goods which is Rs. 39,79,205-40 is assessable to duty as the clearances during the preceding financial year 1979-80 had crossed the limit of Rs. 30 lakhs.

Sri Satish Modi, partner of the firm deposed on 13-1-81 before the Superintendent that the goods cleared for home consumption did not cross Rs. 30 lakhs during 1979-80. Most of the goods were sold through UNICEF.

The value of such goods is Rs. 18,09,864-00. They should be considered as "Deemed exports" in terms of Government of India, Ministry of Foreign Trade, New Delhi's letter No. 1(3)/71 EAC dt. 6-1-71. It would be seen from the letter that the goods supplied to the UNICEF are entitled to all the benefits that are available under Rule 12 of the Central Excise Rules 1944 to other excisable goods exported outside the country. The goods so supplied to UNICEF are to be considered as exports and not as goods cleared for home consumption. The value of the goods supplied to UNICEF amounting to Rs. 18,09,864-00 cannot be taken into account for arriving at the total value of clearances for home consumption. The total value of clearances of goods sold to other parties is only Rs. 15,73,462-50 for 1979-80. This value includes values of certain bought out items supplied to customers. The value of such items is Rs. 1,25,107-30 and as this amount is to be deducted from the total clearances of Rs. 15,73,462-50 the value of value of goods cleared for home consumption from the factory during 1979-80 is Rs. 14,48,355-20. Such being the case there is no warrant for payment of duty on clearances of 1979-80. During 1980-81, according to Government of India Notification No. 105/80 dt. 19-6-80, the factory is entitled to clear the goods upto a limit of Rs. 30 lakhs, since the goods cleared during 1979-80 for home consumption did not exceed Rs. 30 lakhs. The goods cleared from the factory upto 20-2-80 were all supplied through UNICEF. Their value is Rs. 14,23,137-00. Goods sold to others are of a value of Rs. 25,56,048-40. The goods supplied to UNICEF cannot be taken into account for computing the total value of clearances under Notification No. 105/80 dt. 19-6-80 for the reasons

already explained. The clearances for home consumption during 1980-81 upto 26-12-80 are of a value of Rs.25,56,658-40 only. That being the case, the factory had not exceeded the limit of exemption from payment of duty on the goods cleared during 1980-81 also.

Sri Modi further explained in his statement that the orders of UNICEF are declared to Panchayat Raj Department, Government of Andhra Pradesh, and Tamil Nadu Water and Drainage Board of Tamil Nadu, Madras. The invoice amount is paid by UNICEF in U.S. Dollars. The goods have gone into home consumption under the aid programme of UNICEF.

He stated that he did not have any notification issued by the Ministry of Finance exempting from payment of Central Excise duty "so far as deemed exports are concerned". As he had no such notification with him he did not apply to the Collector of Central Excise, Hyderabad "for the privileges of refund of duty etc. under the deemed exports category".

The Superintendent of Central Excise again visited M/S Meera Industries on 16-1-81. He found that after his last visit on 20-12-80, factory was still clearing its deep well pumps without payment of duty and that about 395 such pumps were so cleared on gate pass Nos. 51, dt. 8-1-81, 52 dt. 9-1-81, 53 dt. 10-1-81 and 54 dt. 10-1-81. The value of the cleared goods was Rs.4,39,405-80. During his visit on 20-12-80, the Superintendent held the goods cleared should have paid duty. He recovered the gate pass book in use for issue of nil duty gate passes. The manufacturer should have after the Superintendent's visit cleared his goods only on payment of duty. However as the goods still continued to be cleared by him without payment of duty, the Superintendent registered another offence case against the firm on 16-1-81 in respect of the clearances made without payment of duty on the four gate passes.

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According to Government of India, Ministry of Foreign Trade Circular No.1(3)71-EAC dt. 6-1-71, supplies made by Indian firms against order by United Organisations for use in their aid programmes in India against payment in free foreign exchange, are eligible for normal export benefits, as long as the prices are paid in free foreign exchange. The pumps cleared are eligible for grant of draw back of Central Excise and Customs duty and rebate of Central Excise duties on finished products. The supplies should therefore be deemed as exports.

M/S Meera Industries stated further in the reply that in Hyderabad Collectorate's Trade Notice No.46/79 Gen- 10/79 dt. 27-2-79, the Central Board of Excise and Customs exempted certain goods falling under T.I.68 supplied to Central Tool Room and Training Centre, Calcutta against orders by Danish International Agency. Such clearances were also treated as exports for all purposes since the payments were required to be made in free foreign exchange. Therefore, similarly, the supplies made to UNICEF can rightly be classified as exports. That being the case, the aggregate value of such exports are not to be included in the value of clearances for home consumption, as the notification No.89/79 dt.1-3-79 refers only to the value of clearances for home consumption and not goods cleared for export. As the value of the goods supplied to UNICEF and also the value of certain bought out items are not to be taken into account for arriving at the aggregate value and as the amount that remains is less than Rs.15 lakhs, the clearances are entitled for exemption from payment of duty under the notification No.89/79 dt. 1-3-79. During 1980-81, in respect of the goods supplied to UNICEF, the total turn over did not exceed the aggregate value of Rs.30 lakhs. Therefore, there is no warrant under notification No.105/80 dt. 19-6-80 either, to assess the clearances to duty.

It was further averred that, in fact clearances were being made with the knowledge of the Department. A

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declaration was filed on 1-8-79 and on 9-4-80 before the Superintendent that a licence would be taken as soon as the total value of the goods cleared crossed the limits of 80% of the exempted limits on value of clearances. Monthly returns in the prescribed form were submitted at the end of each month. There was no removal of goods with an intent to evade payment of duty; therefore, the proposed demand for duty on all the previous clearances effected during 1979-80 and clearances effected during the months of April to August, 1980 would be time barred under 9(2) of Central Excise Rules 1944, since the show cause notice was issued on 2-3-81 long after the expiry of the time limit under rule 9(2). Further, as there was no contravention of the Rules, there is no case for penal action under Rule 173 Q of the Rules.

An additional show cause notice was issued to the factory in O.R.No.1/81 dt. 12-5-81. By this notice, the paragraphs 10 and 11 of previous notice were superseded and substituted by the following:
"Paragraph 10:- The facts disclose that M/S Meera Industries was aware that the goods cleared for UNICER have also to pay Central Excise duty at the time of clearance, and that therefore the value of these clearances should be taken into account to determine the eligibility to exemption under Notification No.89/79 dated 1-3-79. That being the case M/S Meera Industries had no ground to exclude the value of clearances for UNICER from the aggregate value of clearances and consider only the remainder as the aggregate value of clearances under notification No.89/79 dt. 1-3-79. It would therefore appear that M/S Meera Industries, with a view to evade payment of duty, willfully suppressed an important part of the aggregate value of clearances in 1979-80 and 1980-81 and thus committed a fraud on the revenue."

Because of this time limit under rule 10 of Central Excise Rules, 1944 and Section 11 (A) of Central Excise and Salt Act, 1944 will run to 5 years.

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Paragraph 11:- By virtue of rule 10 of the Central Excise Rules 1944, and Section 11 (a) of Central Excise and Salt Act, 1944 M/S Meera Industries, Hyderabad are hereby required to show cause to the Collector of Central Excise Hyderabad within 10 days of receipt of this notice why duty of excise on the goods cleared in excess over 15 lakhs of rupees during the year 1979-80 and duty on the entire value of goods cleared upto 20-12-80 during the year 1980-81, should not be recovered from it."

The factory replied on 18-5-81 to the show cause notice. It explained that the factory was not aware as stated in the show cause notice, that the goods supplied to UNICEF should have paid Central Excise duty. According to the contract, UNICEF enjoys immunity from paying any tax. This includes both sales tax as well as Central Excise duty on the goods that are to be supplied to the UNICEF by the Indian firms. The matter regarding the supplies to UNICEF was discussed with the Range Superintendent on 11-9-79. The Superintendent was asked about the procedure to be adopted in the matter of supplies to UNICEF. The Officer did not inform that Central excise duty should be paid for the goods supplied to the UNICEF.

A copy of the factory's letter dated 11-9-79 addressed to the Superintendent was filed along with reply.

The factory further maintained that it was not made known to it nor was it aware that central excise duty should be paid on goods supplied to UNICEF. According to the letter dt. 6-1-81 of the Ministry of Foreign Trade, the goods supplied to UNICEF were entitled to be treated as "deemed exports". Therefore, the question of inclusion of their value in goods cleared for home consumption does not arise. The reply went on to say further that the instructions of the Central excise officers were followed. It filed declarations under Notification No.111/78 dt. 9-5-78 on 1-8-79, informed in its letter dated 11-9-79 about the supply to UNICEF and did not violate

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any rules as it obtained licence, maintained records and submitted returns. A register prescribed in Trade Notice No. 202/79 dt. 17-8-79 was maintained. Production and clearances were entered in this register. This was checked by the Superintendent on several dates 4-12-79, 16-4-80, 7-8-80, 6-2-80, 6-5-80, 12-9-80, 7-3-80 and 7-6-80. The factory finally averred that the proposed demand would be time barred and the five year limitation referred in the additional notice also would not apply.

In another notice No. POR 17/80 dt. 9-6-81, the Superintendent of Central Excise (P & I) Division -II, Hyderabad detailed the quantum of duty that should have been paid by the factory during 1979-80 and 1980-81. The amount of duty specified is Rs. 4,09,002-55.

A show cause notice NO. POR 2/81 dt. 28-2-81 was also issued in respect of the case registered on 16-1-81 as the Superintendent found that the factory was still continuing to clear goods without payment of duty. (This notice will also be dealt with in this order) In the show cause notice, the factory was asked to show cause why a penalty should not be imposed on it under Rules 173 D of Central Excise Rules, 1944. The notice inter-alia charged that M/S Meera Industries had cleared goods of a value of Rs. 4,39,435-80 without payment of duty in the month of January. The factory was asked to show cause why duty should not be paid by it on this value.

To this notice, the factory reiterated the same contentions as it did for the earlier case. It also stated, inter-alia, that the preventive officers who have recorded the statement on 13-1-81 were aware of the clearances the factory effected on 8-1-81, 9-1-81 and 16-1-81 and that they had not raised any objection nor obtained any statement on these clearances. Instead they again visited on

16-1-81 and recorded a statement for the alleged offence. The officers reported a second case for the same and similar breach.

It is further stated " As we were not informed specifically that we should not clear our goods without payment of duty, we have effected our clearances as usual under the presumption that we are still eligible for exemption. It is a fact that whether we are eligible for exemption or not, none of the officers, who visited our premises during their usual visits, have not appraised us, the correct position. Had they informed us, the correct position, we could have paid duty on all the clearances. There is no intention on our part to evade Central Excise duty at any time."

Shri Mahesh Desai of M/S Meera Industries and Shri C.Viswanatham, consultant of the firm appeared for the hearing on 2-7-81 and made submissions in respect of the 2 cases:-

Shri Mahesh Desai declared that he manufactured hand pumps and supplied to UNICEF on the basis of contract executed by the factory. Detailed accounts were maintained in respect of the supplies made to UNICEF. The accounts were frequently checked by the officers. In fact officers visited the factory every month. No officer informed the factory that excise duty was leviable in respect of supplies made to UNICEF. The factory was informed that supplies to UNICEF amount to exports and no duty was chargeable on exports.

As the factory was specifically informed that sales to UNICEF amount to export, no excise duty was collected from UNICEF. The goods were sold without collecting any duty. If the departmental officers who visited the factory had guided the factory that sales to UNICEF cannot be deemed as exports, the factory would have collected excise duty in respect of such sales and paid to the department. The factory was informed by the Preventive Officer that sales to UNICEF could not be treated as exports only at the time of instituting the case.

Meera Industries has claimed that its action in not including the pumps sold to UNICEF in its aggregate was with the full knowledge and approval of the Central Excise department. Such is not the case and Meera Industries has not been able to produce anything to convince me that anybody in the Central Excise department knew that the goods sold to UNICEF were not meant to leave Indian territory. In fact there is much evidence to support the charge that Meera Industries actively suppressed this fact, leading the Central Excise department to believe that the pumps sold to UNICEF had been exported. As I went through the register of exemption maintained by the factory for the period April, 1979 to February, 1981 I noticed that it speaks of exports to UNICEF without clarifying that the so-called exports were not really exports at all in the conventional or accepted sense of the word. In December, 1980 the officers found the true state of affairs in the Meera Industries when they visited the factory but apparently the visit of the officers had no effect whatsoever on the factory because it continued to clear the goods without payment of duty and this was found when the officers revisited the factory in January, 1981. This belies the factory's claim that it did what it did through ignorance and that it had never been informed by the Central Excise Department. If the factory had acted through ignorance prior to the visit of the officers, it would have changed its procedure of clearances after the visit of the officers in December, 1980. I am not impressed by Meera Industries' claim of innocence. There is no truth at all in the claim that the supplies made to the United Nations are to be deemed as exports for all purposes. The Government of India, Ministry of Foreign Trade's circular No. I(3)/71-FAC dated 6-1-1971 on the subject of export assistance on supplies made by Indian firms against the orders placed by U.N. Organisations for use in their aid programmes in India against payment in free foreign exchange, does not lend support to Meera Industries' Contd. . P. 13.

*you can't maintain that
after 1st order was
not aware that the
goods were sold by
C.E.O. signed with
the customs ministry
that the goods are
not the goods as
stated by the
clearance of the
customs.*

claim. Meera Industries claims in its replies that in terms of the Govt. of India's circular dated 6-1-71 Indian firms will be eligible to drawback of Customs and Central Excise duties and rebate of Central Excise duties on the finished products. This, however, is quite contrary to facts. Paragraph 5 of the same circular says very clear that since there will be no physical export, the Customs and Central Excise department will not pay the Customs drawback and excise rebate respectively. In lieu of such benefits, the party will be allowed equivalent amounts as supplementary cash assistance. There is no further need for me to elaborate. Meera Industries has demolished its claim by falsehoods.

However, I shall deal with certain arguments advanced by Meera Industries in its letter dated 1-7-81. The Rule 10 of the Central Excise Rules, 1944 was omitted from the Central Excise Rules 1944 by notification No.177/80 and for which Meera Industries appears to suggest that Rule 10 cannot be brought into play. The factory, however, forgets that since the rule was rescinded on 12-11-80 (Operative from 17-11-1980) it operates for the periods before 17-11-1980. Since, however, the additional show cause notice dated 11-5-81 sets out clearly that the demand is under rule 10 as well as under Section 11 -A, the demand is completely in order and there is no infirmity in it at all.

It is not clear why Meera Industries says that the contravention of rule 9(1) is not established. We have seen the clearance of goods without payment of duty is contrary to law and Meera Industries should have paid duty before clearance and should have also taken a licence at the appropriate time for the year 1979-80 and 1980-81. For the year 1979-80 Meera Industries crossed the value of 30 lakhs clearances. In that year it could have claimed the exemption of duty on clearances upto 15 lakhs but should have paid duty on the succeeding clearances. For the year 1980-81 duty at 8% on

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*Payment and reimbursement
is only technical flow
it does not deny the
reflexion right. Since
Officer charging the goods
was himself & the firm
then the officer to foreign
buyer giving the materials
as said is an export.
He has advised as accordingly
and has cleared the goods
by issuing the requisite documents.*

M/S Mee ra Industries, 7846, Hill Street, Rantigny,
Secunderabad -500 003 with preamble by R.F.A.D.

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COLLECTOR

H. R. SYTEM

It has been claimed in its letter dated 1-7-81 that on page 11 of the register of exemption the officer has entered "checked with invoices and cash memos" on 4-12-79. The check carried out by the officer on 4-12-79 obviously relates to items "Taxable" and "Second Sale" which he did by circling the figures originally entered and wrote correct figures below them. There is no correction in respect of "Unicef Exports". In declaring the UNICEF exports the party did not show that the UNICEF exports were not real exports but only contractual or interpretative exports. It will be noticed that the total value of the goods cleared upto 4-12-79 was only about 9 lakhs which would not have roused the officer's suspicions. That being the case there was no great reason for the officer to be excited as the value of the clearances was well below Rs. 15 lakhs. In the subsequent months no clearances under UNICEF (exports) are shown.

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