

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2639/Mum/2022
(Assessment Year :2015-16)**

M/s. Standard Electrical Products 1 Sadhana Indl. Estate Oshiwara Bridge S.V.Road, Jogeshwari (W) Mumbai- 400 102	Vs.	ITO Ward 31(3)(4), Mumbai C-13, Bandra Kurla Complex Pratyakshakar Bhavan Bandra East Mumbai-400 051
PAN/GIR No.AAGFS8946R		
(Appellant)	..	(Respondent)

Assessee by	Shri Kirit Sanghvi
Revenue by	Shri Rajeev Kumar Singh
Date of Hearing	21/02/2023
Date of Pronouncement	24/02/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2639/Mum/2022 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) in appeal No.CIT(A)-42, Mumbai/10274/2017-18 dated 25/08/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 20/12/2017 by the Id. Income Tax Officer, Wd-31(3)(4), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made in the sum of

Rs.5,70,640/- being estimated gross margin at 11.69% of export sales in respect of these invoices which were denied by the assessee.

3. We have heard rival submissions and perused the materials available on record. The assessee is a partnership firm engaged in the business of manufacturing of electrical accessories. The return of income for the A.Y.2015-16 was filed on 26/09/2015 declaring total income of Rs.1,40,030/-. During the course of scrutiny assessment proceedings, the assessee filed the income tax return acknowledgement, computation of total income, audit report in form 3CB and 3CD, audited profit and loss account, audited balance sheet, audited capital account and annexures thereto by email on 08/08/2016. Since the case was selected for 'limited scrutiny' to verify the mismatch in export turnover and duty drawback received / receivable by the assessee, the Id. AO directed the assessee to furnish the following details:-

- Tax invoices in respect of export sales along with documents submitted to the custom department.
- Documents of claim of Duty Drawback made before the Custom Department and payment received in your bank account.
- Copy of bank account showing receipt from export.
- Nature of business in respect of export.
- As per ITS, you have made export to the tune of Rs.1,90,55,155/-(invoice value) whereas FOB value is Rs.1,87,14,618/ Please explain the difference
- As per ITS, Total export is Rs.190,55,155 however as per profit and loss account you have shown at Rs 141,73,722 50 Please explain the same with supporting documents
- Please reconcile duty drawback received as reported in ITS

3.1. Since no details were filed by the assessee on the scheduled date on 21/09/2017, the Id. AO issued a show-cause notice to the assessee as to why the difference in export turnover amounting to Rs.48,81,453/-

(Rs.1,90,55,155 – 1,41,73,722) be not brought to tax as income of the assessee. The assessee filed its reply through e-mail on 29/09/2013 furnishing the following documents:-

- a) Details of exports done during the year specifying the amount in foreign currency and in Indian rupees, invoice value and FOB value of exports, export documents, purchase orders, shipping bills, import export code & IED customer department copy, bill and clearing, bank realization certificate copy and exchange control copy. The assessee categorically stated before the Id. AO that it had made only four exports during the year totaling to Rs.1,41,73,722/- for which the entire documents as stated supra were furnished before the Id. AO. The assessee also submitted vide further letter dated 15/11/2017 that the following shipping bills which were carried out fraudulently using the name of the assessee together with its PAN and import export code as appearing in the customs department records had not been carried out by the assessee:-

Sr. No.	Shipping Bill No.	Date
1	8426829	17/03/2015
2	7910498	19/02/2015
3	7892136	18/02/2015
4	7698494	09/02/2015
5	7273515	17/01/2015
6	8727936	31/03/2015

3.2. Assessee had not done any exports in respect of these shipping bills. Accordingly, assessee explained that there was no need for it to account the alleged export sales made thereof in its books of accounts. The assessee categorically submitted that one Ganesh Forwarders Pvt. Ltd.

(clearing and handling agent) name is also mentioned in the shipping bill stating that he had handled the aforesaid disputed exports for and on behalf of the assessee. The assessee also placed on record the order No.233/2015-16 passed by the Additional Commissioner of Customs (NS-II) dated 30/12/2015 wherein pursuant to the enquiry conducted by the Customs department on the two containers carrying Red sanders, it came to the knowledge of the customs department that assessee's name had been used for export of some shipment by some unauthorized people. In response thereto, the assessee before the customs department categorically stated that it is no way connected with clearing and handling agent Ganesh Forwarders Pvt. Ltd. and no way involved with the containers containing Red sanders. Even M/s. Ganesh Forwarders Pvt. Ltd. categorically denied having any relationship with the assessee right from their inception. Obviously any exports that had been allegedly made would have to be either manufactured or purchased by the assessee and thereafter, the requisite quantity of goods could have gone out of India. The assessee had produced the entire audited books of accounts with all the supporting details and tax audit report before the Id. AO. It is not the case of the Revenue that the assessee had bought certain goods out of books and had exported the same out of India which has also been kept out of books. This is evident from the fact that the Id. AO had only resorted to add the gross profit of 11.69% on the alleged export sales. The gross profit rate of 11.69% is nothing but the gross profit disclosed by the assessee on the four exports carried out by it and disclosed by it in the profit and loss account. When the assessee had categorically denied having made the aforesaid six disputed exports and also the fact that its name had been fraudulently utilized in the aforesaid shipping bills, the Id. AO should have made verification from the bankers as to whether any export proceeds were received in the assessee's account which has been kept outside the books of accounts of the assessee firm. The Id. AR on his

part placed certificate from Abhudaya Co-operative Bank Ltd. dated 20/02/2023 before us for the first time which reads as under:-



Foreign Exchange Dept.
"Gurukrupa", Opp. Plaza Cinema,
N.C.Kelkar Road, Dadar (W),
Mumbai-400 028.
Tel. : 2438 4640 / 4644 / 4647
Fax : 2438 4650
E-mail: forex@abhyudayabank.net
Swift : ACBLINBB

REF: ACBL: FE:1945:2022-23

20th February 2023

M/s Standard Electrical Products
1, Sadhana Industrial Estate
S.V.Road
Oshiwara Bridge
Jogeshwar West
Mumbai -400102

KIND ATTN: Mr Bhavesh T. Patel

Dear Sir

Sub: Pending Shipping Bills in our EDPMS

We refer your letter dated 14.02.2023 in connection with the following shipping bills which are outstanding in our EDPMS for a very long time. We are closely following up with you for the submission of related shipping documents. But you have not so far submitted them stating that these shipments were not made by you and some unknown persons have misused your export credentials.

As you have not submitted related shipping documents, the question of our receiving payments for these shipping bills does not arise. Also, we do not have at present any payments pertaining to you pending unexecuted at our end for some reasons.

You may check up from the Statement of your account with us whether you have received any export benefits or not.

Details of the pending Shipping Bills as per our record:

1Sr. No.	Export Inv. No	Shipping Bill	
		Nos.	Date
1.	EXP/JEA/06	8426829	17.03.2015
2.	EXP/SHA/11	7910498	19.02.2015
3.	EXP/SIN/09	7892136	18.02.2015
4.	EXP/JEA/07	7698494	09.02.2015
5.	EXP/JEA/04	7273515	17.01.2015
6.	Not known	8614307	26.03.2015

Yours faithfully

Rajan Mankodi
Senior Manager



3.3. Before us, the Id. AR submitted that the assessee would be willing to provide the quantitative details which would prove categorically that the aforesaid six alleged exports were never made by the assessee as it was neither manufactured / purchased nor bought from the grey market by the assessee. In other words, without

the goods coming into existence in the assessee's kitty, the same could not be exported by the assessee. Hence, he prayed for setting aside of this issue to the file of the Id.AO to prove the bonafides of the assessee in this regard. Accordingly, we deem it fit to restore this issue to the file of the Id. AO for denovo adjudication qua the issue in dispute before us, in accordance with law. The assessee is at liberty to furnish additional evidences, if any, in support of its contentions including the quantitative details. The Id. AO also is hereby directed to make necessary enquiries / verification from third parties including outside regulatory agencies such as customs department to understand the outcome of the enquiries conducted by the customs department on the assessee, on Ganesh Forwarders Pvt. Ltd. in connection with the seizure of two containers containing Red sanders. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee also should provide necessary evidences to the Id. AO pertaining to the outcome of enquiries carried out by the customs department as stated supra. Accordingly, the ground raised by the assessee is allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 24/02/2023 by way of proper mentioning in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai; Dated 24/02/2023
KARUNA, sr.ps

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai