

REGISTERED  
SPEED POST



F.No. 195/611/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..... 25/9/13

ORDER NO. 1278 /13-Cx DATED 23.09.2013 OF THE  
GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, JOINT SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL  
EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the  
Central Excise Act, 1944 against the order-in-appeal No.-  
SB(16)16/MI-2010 dated 26/3/2010 passed by the  
Commissioner of Central Excise (Appeals), Mumbai  
Zone-I, Mumbai.

Applicant : M/s Hindustan Petroleum Corporation Ltd., Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-I

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**ORDER**

This revision application is filed by the applicant M/s Hindustan Petroleum Corporation Ltd., Mumbai against the Order –in- Appeal No. SB(16)16/MI-2010 dated 26.03.2010 passed by the Commissioner of Central Excise, Mumbai Zone-I, Mumbai with respect to Order – in – Original NO F-II/64/09-10 dated 15.12.2009 passed by the Assistant Commissioner Central Excise, Mumbai-I, Mumbai.

2. The applicant cleared excisable goods for export, without payment of duty under ARE1, after executing Letter of Undertaking with the Divisional Assistant Commissioner. As per procedure laid under Rule 19 of the Central Excise Rules, 2002, the applicant were required to produce proof of export within six months from the date of clearance of goods in the form of Annexure-19 to the Range Superintendent. The applicant failed to produce proof of export in respect of clearances made by them, within stipulated time. The proof of exports were not filed in case of 4 ARE1s and in one case, it was filed after a delay of 101 days. Three Show cause Notices dated 15.9.2009 and 29.9.2009, for recovery of total duty amounting to Rs. 6,24,552/- were issued. The detail of cases where proof of export were not submitted or submitted late is as under:-

ARE1 No	Date	Value	Revenue involved			Total	Due date of submission	Date of filing POE
			BED	Ed. Cess	H.Ed. Cess			
34	10.9.09	1042999/-	146020/-	2920/-	1460/-	150400/-	9.03.09	Not filed
38	17.10.08	120178/-	16825/-	337/-	168/-	17330/-	16.4.09	27.7.09 delay of 101days
51	16.1.09	1212624/	169767/	3395/-	1698/-	174860/	15.7.09	Not filed
52	16.1.09	1212624/	169767/	3395/-	1698/-	174860/	15.7.09	Not filed
55	28.1.09	742732/-	103982/	2080/-	1040/-	107102/	27.7.09	Not filed
		Total	606361/	12127/-	6064/-	624552/		

The adjudicating authority vide impugned Order-in-original dated 15.12.2009 confirmed the demand with Interest and also imposed penalty of Rs. 6,24,552/- under section 11AC of Central Excise Act,1944.

3. Being aggrieved by the said order-in-original, the applicant filed appeals before the Commissioner (Appeals) who upheld the order-in-original with modification to the extent of dropping the penalties imposed on the applicants.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The applicant submit that the demand of duty for delayed submission of ARE-1 duly received from SEZ and Customs Authorities was procedural lapse and beyond the control of Applicants. Accordingly, the demand of duty as per the impugned order should be set aside. Demand of duty being set aside as prayed above, the interest and penalty will also go.

4.2 Without prejudice to the foregoing, the applicants, with respect to imposition of penalty, refer an rely upon the Supreme Court Judgement in the case of M/s Hindustan Steel Ltd. Vs. the State of Orissa (170 25)STC 211 wherein it was held that "an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so". In the present case applicants have neither acted with any malafide intention nor it has been so alleged in the impugned show cause notice.

5. Personal hearing was scheduled in this case on 26.6.2013 and 7.8.2013. The hearing held on 7.8.2013 at Mumbai was attended by Shri

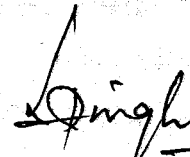
Sachin Chitnis, Advocate on behalf of the applicant who reiterated the grounds of revision application. Sh. R.Y.Deshmukh, Asstt. Commissioner attended hearing on behalf of the respondent department and pleaded to uphold the impugned order-in-Appeal.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that applicant has not submitted valid proof of export (in annexure 19) in respect of ARE-1 Nos 34/10.9.08, 51/16.1.09, 52/16.1.09 and 55/28.1.09. In case of goods exported relating to ARE-1 No.38/17.10.08, involving duty of Rs.17,330/- proof of export was submitted on 27.7.09 after a delay of 101 days. Applicant has not furnished the valid proof of export till date in respect of goods exported vide 4 ARE-1 as mentioned above. This fact is not disputed by applicant. As such, the export of said goods is not proved and demand has been rightly confirmed. As regard demand of Rs. 17,330/- in respect of ARE-1 No.38/17.10.08, applicant has submitted valid proof of export and therefore the export of goods is not in dispute. So the demand of Rs.17,330/- can not sustain and same is set aside. However for delayed submission of said proof of export penalty of Rs. 5,000/- is imposed. The impugned order-in-appeal is modified to this extent.

8. The revision application is disposed off in terms of above.

9. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise, Mumbai-I,  
115, New Central Excise Building  
M.K. Road, Opp.Churchgate Station  
Mumbai-400 020.

(भागवत शर्मा / Bhagwat Sharma)  
सहायक आयुक्त / Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (संशुद्ध विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

ORDER No 1278 /13-CX dated 23.09.2013

Copy to:-

1. Commissioner of Central Excise, Mumbai-I, New Central Excise building, M.K. Road, Opp. Churchgate Station, Mumbai-4000 07.
2. The Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher building, Dadi Sheth Lane, Chowpatty, Mumbai-4000 07.
3. The Assistant Commissioner of Central Excise, Div. F-II, Mumbai I.
4. Shri Sachin Chitnis, Advocate, Post Office Building, 2<sup>nd</sup> Floor, Andheri Kurla Road, J.B. Nagar, Andheri (East), Mumbai-4000 59.
5. ✓ PS to JS (Revision Application).
6. Guard file.
7. Spare Copy.

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

