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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/ 1703 /12-RA (REMAND) / 078 Date of Issue : 12.03.2021

ORDER NO. 127/2021-CX (SZ)/ASRA/MUMBAI DATED 05.03.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944

Applicant : M/s. Indian Oil Corporation Limited, Hyderabad.

Respondent : The Commissioner of Central Excise, Hyderabad

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order In Appeal No. 191 & 192 /
2012 (H-I) CE dated 24.08.2012 passed by the Commissioner
(Appeals-II) Customs, Central Excise & Service Tax,
Hyderabad.

ORDER

This order is issued subsequent to representation filed by M/s. Indian Oil Corporation Limited, Aviation Fuelling Station, Rajiv Gandhi International Airport (GHAIL), Shamshabad, Begumpet, Hyderabad (hereinafter referred to as "the applicant") as per the directions of the Hon'ble High Court of Andhra Pradesh at Hyderabad issued vide Interim Order in Writ Petition No. 1275/2021 dated 21.01.2021 filed by the applicant against Revision Order No. 447/2020-CX(SZ)/ASRA/MUMBAI date 16.03.2020 passed by the Government of India.

2. The brief facts of the case are that the applicant is an export warehouse keeper receiving Aviation Turbine Fuel (ATF) without payment of duty under warehousing provisions as prescribed under Central Excise Act, 1944 from Santathnagar / Cheralapally Depot which are also export warehouse keeper and their products only meant for aircrafts on foreign run without payment of duty and aircrafts on domestic run with appropriate Central Excise duty. During the period from April 2008 to December 2009 & January 2010 to April 2010, the applicant could not store sufficient bonded stocks at GHIAL International Airport due to transporter's unrest and switching over the tanks at Cheralapally to IOCL from CPCL leased tanks. To maintain uninterrupted supplies to foreign run aircrafts, the applicant supplied duty paid ATF to foreign going aircrafts after following certain export formalities. The applicant claimed rebate of the duty collectively amounting to Rs. 1,90,62,986/- (Rupees One Crore Ninety Lakh Sixty Two Thousand Nine Hundred Eighty Six Only) paid on foreign run aircrafts during the relevant period as mentioned above.

3. The rebate sanctioning authority rejected the said rebate claims vide Order in Original Nos. 88 & 89 dated 29.02.2012 on the following grounds :

3.1 The applicant did not follow the procedure as laid down under Notification No. 19/2004-CE (NT) dated 06.09.2004 and failed to establish the

duty paid nature of the ATF exported by correlating with relevant duty paid documents.

3.2 The one to one correlation of the goods covered under invoice raised at the place of manufacture i.e. CPCL, Chennai and the goods declared to have been supplied by the applicant in turn to the foreign run aircrafts was not available.

3.4 The Central Excise Invoice Nos. and dates were not mentioned on AC-5 Stock Transfer Advice.

3.5 It was not possible to know whether the goods were exported within six months from the date of clearance from the factory of manufacturer i.e. CPCL, Chennai.

3.6 The applicant has to prove that all the conditions of the Notification and under Rule 18 of Central Excise Rules 2002 are fulfilled in order to become eligible for rebate.

3.7 The impugned goods were not manufactured at the factory premises of the applicant but were procured from the premises of dealer. Hence the payment of duty on such ATF is to be established.

4. Aggrieved by the Order in Original, the applicant filed appeal before the Commissioner (Appeals), Hyderabad who upheld the Order in Original vide impugned Order in Appeal.

5. Being aggrieved by the Orders-in-Appeals dated 29.02.2012, the applicant filed the Revision Application under Section 35EE of the Central Excise Act, 1944, before Government of India on the following grounds :-

5.1 The claims were filed with the documents such as statement of facts, statement of duties paid, copies of delivery receipts, stock transfer advice etc. It was clearly submitted before the rebate sanctioning authority i.e Deputy Commissioner that to maintain uninterrupted supplies to foreign

run Aircrafts, the appellants had to supply Aircraft Turbine fuel to Foreign run Aircraft and claims were supported by Aircraft Delivery Receipts, commercial invoices, excise invoice, ARE1s & shipping Bills.

5.2 So long as accounts have been properly maintained and so long as the correlation of goods supplied to the foreign run aircraft is maintained, the duty paid nature of the goods and the export to foreign run aircraft cannot be doubted.

5.3 There is no statutory prohibition in exporting a product from the premises of a dealer and claiming the rebate so long as duty has been paid on the goods exported.

5.4 The Board has permitted mixed storage of duty paid and non-duty paid goods, subject to the condition of proper maintenance of accounts tank wise by the operator. The applicant submits that they have submitted the correlation statement to indicate proper maintenance of accounts and copies of all the statements referred to hereinabove are enclosed herewith.

5.5 The rebate sanctioning authority has stated that there was availability of non-duty paid stock at the time of export. The applicant submits that as there is no statutory bar in exporting from duty paid stocks, in all the cases, the exports have been effected from duty paid stock on account of short availability of the bonded stock of non-duty paid products.

5.6 The only ground for denying the rebate was that the procedure laid down was not substantially followed. Since all documents relating to proof of export such as ARE-1, shipping bills etc, have been submitted, the original authority should not have rejected the rebate claims for non-observance of the procedure and for not substantiating the exports. Since the applicant have filed correlation statements confirming the supplies to foreign run Aircrafts of such Fuel

from the duty paid stock, the original authority cannot say that the duty paid nature of the goods had not been established.

5.7 They had requested M/s. S.R.Mohan & CO, Hyderabad, Chartered Accountants to verify their records and to confirm the one to one correlation and accordingly they have issued a certificate dated 06.08.2012 in respect of supplies from M/s Chennai Petroleum Corporation Ltd., Chennai and their Koyali Refinery.

5.8 The Government has issued circulars 487/53/99-CX dated 30.09.1999 and 475/41/99-cx dated 2.08.1999 wherein it is the clarified that so long as the goods have actually been exported and duty was paid on such goods, the rebate claims should not be rejected.

5.9 As regard the non-observance of the procedure laid down in the notification No. 19/2004-CE-NT, as already submitted, so long as procedures have been substantially followed and documents relating to proof of export and duty paid nature of goods have been submitted, for procedural lapses, rebate cannot be denied.

5.10 Nowhere in the show cause notice, is it mentioned that First In First Out (FIFO) has not been followed by the exporter.

6. The Revision Authority, Mumbai vide its Order No. 447/2020-CX(SZ)/ASRA/MUMBAI date 16.03.2020 upheld the Order in Appeal. The applicant sought Writ of Certiorari before the Hon'ble High Court of the State of Telangana, Hyderabad with request to quash the said Revision Order and pass orders as deemed fit. The Writ Petition was filed on the following grounds:

6.1 The denial of legitimate rebate citing minor lapses in procedure, defeats the purpose of the export rebates.

6.2 As per Sr. No. 2 of the Notification No. 19/2004-CE (NT) dated 06.09.2004 the crucial factor is that duty is paid on the goods and the said goods are exported.

6.3 In the instant case merely due to non-observance of the procedure set out, the rebate has been denied to the applicant. The applicant had fulfilled the substantive requirement under Notification No. 19/2004-CE (NT) dated 06.09.2004.

6.4 The Government of India vide Para 9 of the Order accepted that the applicant had supplied ATF to aircrafts on foreign run by transferring duty paid products to aviation fuelling station of Begumpet. This aviation station located at Begumpet is registered as a warehouse of excisable goods.

6.5 There is no allegation in the order that the applicant had not fulfilled any of the conditions. Hence rejection of rebate claim in spite of the above findings is not just and proper.

6.6 As per para 8.3 of the Supplementary Instructions of CBEC, 2005 the documents filed with the claim should be verified to see that the goods cleared for export were actually exported and that the goods are of 'duty paid' character.

6.7 When the Government was satisfied that the goods in question have been exported and that they were duty paid, the procedure under para 8.4 of Supplementary Instructions is satisfied and nothing more is required to be considered and verified, the Revision should have been allowed.

6.8 The applicant had filed along with rebate claims certain documents such as statement of facts, statement of duty refund claim, stock statements, shipping bills and ARE-1 which appears to be crucial in ascertaining export of duty paid goods.

6.9 A substantive benefit cannot be denied on the basis of procedural lapses.

6.10 They were not given the opportunity of personal hearing.

7. A personal hearing in this case was held 26.02.2021. Shri S. Mutthu Venkararaman, Advocate appeared online and reiterated that Hon'ble High Court has directed to consider their representation within four weeks. He prayed that rebate should be allowed as held under para 9 of the Revision Order as export and duty paid nature of goods is not in doubt.

7.1 The applicant filed documents to substantiate their case along with brief note explaining the one to one co-relation of the documents.

8. Government has carefully gone through the relevant case records available in the file, submissions, the Order in Appeal as well as the Revision Order issued in this regard.

9. Government observes that in the instant case the Aviation Turbine Fuel (ATF) was supplied by the applicant to foreign going vessels during the period April 2008 to April - 2010 on payment of duty. Consequently, applicant filed the excise duty refund claims collectively amounting to Rs.1,90,62,986/- (Rupees One Crore Ninety Lakh Sixty Two Thousand Nine Hundred Eighty Six Only) before the jurisdictional Deputy Commissioner of Central Excise, Hyderabad -L Division.

10. Since the instant case has been remanded by the Hon'ble High court of the State of Telangana, Hyderabad, the brief recapitulation of the Revision Order is produced below for discussion.

Revision Order No. 447/2020-CX(SZ)/ASRA/Mumbai dated 16.03.2020

The Government finds that in para 9 of the Revision Order No. 447/2020-CX(SZ)/ASRA/MUMBAI dated 16.03.2020 the Revision Authority has discussed the issue in detail with observations that the applicant had supplied the ATF to aircrafts on foreign run by transferring duty paid products to the Aviation Fueling Station (AFS), Begumpet which has been registered as

a warehouse of excisable goods. It was further noted in the impugned Revision Order that these facts would denote compliance with the condition in para 2(a) of the Notification No. 19/2004-CE (NT) dated 06.09.2004. The Government had also opined in the said Revision Order at para 9 that if excisable goods are exported after payment of duty directly from a factory or a warehouse, then nothing more is required to be considered and verified. Although, the Government had opined that the rejection of rebate claims solely for non-compliance of the conditions of Notification No. 19/2004-CE (NT) dated 06.09.2004 was not just and proper. It must be reiterated that the applicant would not be absolved of the onus of satisfying the rebate sanctioning authority about the duty paid nature of the exported goods by establishing correlation. Moreover, although the applicant had claimed to have submitted the certificate dated 06.08.2012, the same was not available on the record for verification / correlation at the time of passing the Revision Order dated 16.03.2020.

11. Now, in the light of the directions of the Hon'ble High Court of the Andhra Pradesh and fresh submissions made by the applicant in the case, the Government takes up the case for reconsideration of its Revision Order No. 447/2020-CX(SZ)/ASRA/MUMBAI date 16.03.2020 issued in the matter.

12. At present, the Government finds that the applicant, to further clarify and satisfy the bonafides of the subject transactions pertaining to instant case, have submitted the photocopies of certificates dated 06.08.2012 (One Certificate) and 24.02.2021 (Three Certificates) of Chartered Accountant for verification.

12.1 On perusal of the fresh submissions as above, the scrutiny was done in respect of the sample transactions to correlate the documents and establish the duty paid character of the exported goods. The process carried out and results noted thereof are as under :-

a) It is found that CPCL, Manali has issued Invoice Nos. PSTI/001256/08-09 dated 19.12.2008 whereby the duty paid goods are transferred to CPCL, Tondiarpet.

b) Further, the impugned goods were transferred from CPCL, Tondiarpet to IOCL, Sanathnagar (Hyderabad) under the Invoice bearing reference of the Original Invoice No. PSTI/001256/08-09 dated 19.12.2008 issued by CPCL, Manali.

c) In continuation to the same, the impugned goods were supplied from IOCL, Sanathnagar (Hyderabad) to IOCL, Hyderabad International AFS (Shamshabad) under invoice having reference of the Original Invoice PSTI/001256/08-09 dated 19.12.2008 issued by CPCL, Manali.

12.2 Similar activity was worked out in respect of Invoice No. 93738956 dated 12.10.2009 pertaining to the Stock Transfer of duty paid goods from CPCL, Manali to CPCL, Tondiarpet Terminal.

12.3 Thus, the Government observes that the documents and certificates of Chartered Accountant are of assistance in correlating the exported goods with the duty payment particulars.

13. Since the documents and CA's Certificates which have now been placed on record can establish correlation between exported goods and duty payment particulars, the Government holds that ends of justice would be met if the case is remanded back to the original adjudicating authority for the limited purpose of verification of the claims with directions that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying himself about the duty paid nature of goods.

14. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. 191 & 192 / 2012 (H-I) CE dated 24.08.2012 passed by the Commissioner (Appeals-II) Customs, Central Excise

& Service Tax, Hyderabad and remands the case to the Original authority for verification of impugned rebate claims filed by the applicant with directions that he shall reconsider the claim for rebate on the basis of the above directions. The applicant are directed to submit the Correlation Statement along with relevant documents in original to enable verification of the same before the Original Authority. The original adjudicating authority shall pass the order within eight weeks from the receipt of the documents from the applicant.

15. The Revision applications are allowed on above terms.

Shrawan
05/03/21

(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India.

ORDER No. 127/2021-CX (SZ)/ASRA/Mumbai DATED 05.03.2021

To,
M/s. Indian Oil Corporation Limited,
Begumpeth AFS,
Hyderabad Airport (old),
Hyderabad - 500 016.

Copy to:

1. The Commissioner of CGST & C.Ex., Secunderbad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheer Bagh, Hyderabad-500 004.
2. The Commissioner of CGST & C.Ex. (Appeals-I), Secunderbad GST Commissionerate, GST Bhavan, L.B. Stadium Road, Basheer Bagh, Hyderabad-500 004.
3. The Chief Finance Manager, Indian Oil Corporation Limited, Southern Regional Office, Indian Oil Bhavan, 139, Mahatma Gandhi Road, Nungmbakkam High Road, Chennai- 600 034.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.