

REGISTERED 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. 373/340/DBK/14-RA/3668 Date of Issue : 15.07.2021

ORDER NO. 163/2021-CUS (SZ)/ASRA/MUMBAI DATED 12.07.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : M/s. Indian Oil Corporation Limited, SR, Chennai.

Respondent : The Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order in Appeal No. 87/2014 dated 12.06.2014 passed by the Commissioner (Appeals) Central Excise, Service Tax, Large Taxpayer Unit, Chennai.

ORDER

This Revision Application has been filed by M/s. Indian Oil Corporation Limited, Southern Region, Aviation Department, Chennai 600 034 (hereinafter referred to as "the applicant") against the Order in Appeal No. 87/2014 dated 12.06.2014 passed by the Commissioner (Appeals) Central Excise, Service Tax, Large Taxpayer Unit, Chennai.

2. The brief facts of the case are that the applicant filed application for fixation of duty Drawback of Aviation Turbine Fuel [ATF for short] on 18.01.2012 to enable them to avail the export benefit for the ATF export already effected as well as ATF export being done from the duty suffered crude at the Airports at Chennai, Hyderabad, Bangalore, Trichy, Coimbatore and Mangalore. Verification was done based on copies of relevant documents submitted and the brand rate to be fixed was worked out based on the Basic Customs Duty ('BCD' for short) and Cess on BCD (which was considered on the strength of Board's Circular No.11/2005-Cus dated 03.03.2005) paid at the time of import of crude being a raw material. The applicant vide mail dated 30.11.2012 requested to consider the inclusion of National Calamity Contingent Duty ('NCCD' for short) and Cess on NCCD paid on imported Crude Oil used in the manufacture of ATF which was subsequently exported.

2.1 A Show Cause Notice dated 11.12.2012 was issued to the applicant as it appeared that the NCCD of Customs levied under the Finance Act, 2003 was not a duty of Customs under the Section 2 of the Customs Act, 1962 and hence cannot be considered for fixation of brand rate. Adjudicating Authority, after due process of law, vide Order in original No. LTUC/01/2013-ADC dated 01.01.2013 allowed to include NCCD in the Brand Rate of Drawback.

3. Being aggrieved by the aforesaid Order in Original, the Department filed appeal before Commissioner (Appeals) Central Excise, Service Tax, Large Taxpayer Unit, Chennai who vide Order in Appeal No. 87/2014 dated 12.06.2014 (impugned Order) allowed the appeal filed by the Department and rejected Order in Original No. LTUC/01/2013-ADC dated 01.01.2013.

4. Being aggrieved by the impugned Order the applicant filed the present Revision Application mainly on the following grounds:-

- NCCD is a duty of Customs;

- In terms of Section 75 of the Customs Act-1962 drawback should be allowed for duties of Customs;
- Definition of duty as per Section 2 read along with Section 12 of the Customs Act, 1962, NCCD is duty of Customs under the Act;
- Basic intention of law is not to export taxes;
- They also place reliance on Board Circular 11/2005-Cus dated 03.03.2005 and Board Circular No. 106/95-Cus dated 11.10.1995

5. A personal hearing in this case was held on 24.02.2021 through video conferencing which was attended online by J. Dhinakaran, Sr. Manager Finance on behalf of the applicant. He submitted that Board has clarified vide Circular No. 5/2020-Cus dated 12.05.2020 that NCCD is admissible for rebate drawback. He also reiterated their earlier submissions He requested to allow their Revision Application.

6. Government has carefully gone through the relevant case records available in case files, oral submissions and perused Order-in-Original and the impugned Order-in-Appeal.

7. Government observes that Commissioner (Appeals) while allowing the appeal of the Department observed as under:-

6. As per Section 75 of the Act which provides for drawback on imported materials used in manufacture of goods which are exported, it is clear that drawback should be allowed of the duties of Customs chargeable under the Act. Drawback Rules was notified vide Notification No.37/1995-Cus(NT), dated 26.05.1995 issued under Section 75 ibid. Thus the scope of the Drawback Rules has been restricted to the provisions contained in Section 75 and drawback can be allowed only of duties levied under the Act. Since NCCD is levied under the Finance Act, 2003 the provisions of Section 75 of the Act would not apply.

6.1 Further, Section 2 of the Act defines the term 'duty' as 'duty of Customs leviable under this Act'. Therefore it is apparent that NCCD which is levied under Section 134 of Finance Act, 2003 is not a duty of Customs and hence, no duty incidence of NCCD can be considered for computing the brand rate eligibility, as NCCD is not specified for fixation of brand rate".

8. Government observes that the issue whether the incidence of National Calamity Contingent Duty (NCCD) levied on the inputs used in the manufacture of export goods should be included in calculation of Brand Rate of duty drawback has been examined by the Board and vide Circular No. 5/2020-Cus.(Instruction) dated 12.05.2020 issued under F.No. 609/38/2019-DBK it is clarified as under:-

3. The matter has been examined keeping in view the relevant statutory provisions, Customs and Central Excise Duties Drawback Rules, 2017 and Board's Instruction No. 4/2019-Customs, dated 11-10-2019. NCCD is levied under Section 136 of Finance Act, 2001 as a duty of excise and under Section 134 of Finance Act, 2003 as a duty of

customs. These legislations respectively inter alia provide that provisions of Central Excise Act, 1944, Customs Act, 1962 and rules and regulations made thereunder including those relating to refunds, exemptions etc. shall apply to this levy. Section 75 of the Customs Act, 1962 allows drawback of duties of customs chargeable under the Act. Section 12 of the said Act provides for levy of duties of customs at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force. NCCD is also taken into account in the calculation of All Industry Rates of duty drawback by the Drawback Committee.

3.1 It is, therefore, clarified that the incidence of NCCD where applicable, is required to be factored in calculation of Brand Rate of duty drawback.

9. Thus, in terms of the clarification issued by the above circular, the elements of NCCD are required to be factored in brand rate of duty drawback. The Additional Commissioner of LTU, Chennai, was, therefore, justified in holding that NCCD is includible in the Brand Rate of Drawback under the Customs, Central Excise and Service Tax Drawback Rules, 1995 vide Order in Original No. LTUC/01/2013-ADC dated 01.01.2013.

10. In view of the above, Government modifies and sets aside Order in Appeal No. 87/2014 dated 12.06.2014 passed by the Commissioner (Appeals) Central Excise, Service Tax, Large Taxpayer Unit, Chennai.

11. Revision Application is allowed with consequential benefits


12/07/21
(SHRAWAN KUMAR)

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

ORDER No. 163/2021-CUS(SZ)/ASRA/Mumbai DATED 12.07.2021

To,

M/s. Indian Oil Corporation Limited,
Marketing Division, Southern Region,
Indian Oil Bhawan, Aviation Department,
139, M.G. Road, Nungambakkam,
Chennai- 600 034.

Copy to:

1. Commissioner Of Central Goods & Services Tax, Chennai Outer, No. 2054-I, II Avenue, 12th Main Road, Newry, Towers, Anna Nagar, Chennai-600034.
2. Commissioner Of Central Goods & Services Tax, Chennai Appeals-I, No. 26/1, Mahatama Gandhi Road, Nungambakkam, Chennai-600034.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.