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
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Mumbai- 400 005

F.No.195/1014/13-RA / 2935 Date of Issue: 02/06/21

ORDER NO. 202/2021-CX (WZ)/ASRA/MUMBAI DATED 28.5.2021 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.

Subject :- Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PJ/215 to 217/VDR-I/2013-14 dated 16.07.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

Applicant :- M/s Bharat Petroleum Corporation Ltd., Aviation Fuelling Station, Ahmedabad.

Respondent :- Commissioner of Central Excise, Customs & Service Tax, Vadodara-I

ORDER

This revision Application has been filed by M/s Bharat Petroleum Corporation Ltd., Aviation Fuelling Station, Ahmedabad (hereinafter referred as the applicant) against the Order in Appeal No. PJ/215 to 217/VDR-I/2013-14 dated 16.07.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

2. The brief facts of the case are that the applicant had filed three refund claims with Jurisdictional Assistant Commissioner (JAC) as detailed below:

Sl. No.	Amount of Refund claims filed initially. (in Rs)	Date of Filing of Refund claims (shown at column 2).	Date on which Refund claims (shown at column 2 & 3) returned by JAC	Revised Amount of Refund claims. (in Rs.)	Date of filing Revised refund claims (shown at column 5.)
1	2	3	4	5	6
1.	4,86,313/-	27.11.2006	11.12.2006	3,84,151/-	10.10.2012
2.	48,72.911/-	27.11.2006	11.12.2006	38,74,917/-	10.10.2012
3.	38,95,922/-	27.11.2006	11.12.2006	35,55,183/-	10.10.2012

3. The applicant filed the afore stated three refund claims in respect of ATF supplied by them to foreign going aircraft which was duty paid in nature. The ARE-ls involved in the refund claims were addressed to the Jurisdictional Excise Authorities, Ahmedabad. The adjudicating authority returned the refund claims to the applicant to file the same with the Maritime Commissioner having jurisdiction over concerned airports in terms of Explanation III to notification no. 19/2004-(N.T.) dated 06.09.2004 alongwith deficiencies noticed in the said refund claims. The applicant again submitted these three refund claims to the adjudicating authority after a gap of 5 years and 11 months with revised, reduced amount of refund claims (shown at column No. 5 of table supra) on the ground that they also approached to the Maritime Commissioner, Ahmedabad to file their rebate claims but they were informed that it is to be filed at Vadodara Central Excise having jurisdiction over factory of manufacture where actual duty has been paid and did not accept the file and hence refund claims were filed with this office. As per the provisions of Section 11 B of Central Excise Act, 1944, any person claiming any refund / rebate, could file an application for refund of such duty before expiry of one year from the relevant date. In the present case, the refund claims were filed

after expiry of stipulated time period of one year as provided under Section 11B of Central Excise Act, 1944. Therefore, show cause notices were issued to applicant proposing to reject the rebate claims on the ground of time bar and other deficiencies noticed in the refund claims. The adjudicating authority vide Orders in Original Nos. Ref/554/AC.Div.IV/ML/12-13 (ii) Ref/555/AC.Div.IV/ML/12-13 dt.27.12.2012 and (iii) Ref/556/AC.Div.IV/ML/12-13, all dated 27.12.2012 rejected the refund claims on the above referred grounds.

4. Being aggrieved with the impugned orders, the applicant filed three appeals mainly on the grounds that the duty paid ATF received from RIL, Jamnagar was supplied to BPCL Ahmedabad AFS for export to Foreign Bound Flight; that they had exported the duty paid ATF to foreign going aircrafts from Ahmedabad AFS which was manufactured in IOCL, Koyali & RIL, Jamnagar & submitted invoices raised by IOCL Sabarmati as well as RIL, Jamnagar which clearly showed the duty paid nature of goods and also accepted by the department in Orders in Original they filed applications of Form R-l for the period of rebate claims along with related documents at Vadodara Central Excise having jurisdiction over the factory of manufacturer for the respective periods as per Notification no. 19/2004-CE (NT) dt. 06.09.2004 within one year from the date of exports and same were accepted by the department without any remark on the Form-1 of respective claims; that the deficiency memos issued by the adjudicating authority, did not speak about any late submission treating the claims time barred; that they acted on the advice of Maritime Commissioner, Ahmedabad for not to file the claim with them to avoid applicability of time limit and processing of rebate claims with Vadodara Central Excise and the Notification No. 19/2004~CE (NT) did not restrict any applicant to file claim with JAC having jurisdiction over the factory; that in terms of CBEC's Excise Manual of Supplementary instructions in Part -III i.e. instructions in respect of granting of rebate of supplies of mineral oil products falling under chapter 27 and exported as stores for consumption on board of an aircrafts of foreign run wherein the requirement of production of documents evidencing payment of duty was not required; that they again resubmitted all the original documents to the department for respective claims; that they maintained proper records of receipt and disposal of duty paid ATF from the AFS; that they borne the incidence of duty and entitled for refund of duty paid on ATF; that they relied upon various case laws in support of their contention.

5. Commissioner (Appeals) vide Order in Appeal No. PJ/215 to 217/VDR-I/2013-14 dated 16.07.2013 (impugned Order) rejected all the three appeals filed

by the applicant and upheld three Orders in Original, all dated 27.12.2012 passed by the adjudicating authority, holding as under :-

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It is clear from the above statutory provision that the refund claim is required to be filed with the authority whose name and address has been indicated by the exporter on the ARE-I at the time of removal of goods for export. I find that it is not in dispute in the present case that the appellant had opted to claim refund from the Maritime Commissioner, Ahmedabad but they filed refund claims with the DC/AC, C. Ex, Div. IV, Vadodara-I.

5.4 In view of the above discussion, the appellant ought to have filed the refund claims to the Maritime Commissioner, Ahmedabad to avoid the disadvantageous position with respect to limitation period. I find that in the present case, the appellant failed to / do so. The appellant also did not produce any evidence on record or before me that the Maritime Commissioner refused to accept their refund claim applications and also justification for long gap of 5 years and 11 months time period lapsed between refusal of acceptance of refund claim applications by the Maritime Commissioner and again filing of refund claims again before the adjudicating authority.

5.5 In view the above discussion, I hold that the appellant failed to file three refund claims within stipulated time period of one year under Section 11B of Central Excise Act, 1944 and therefore, refund claims were time barred and correctly rejected by the adjudicating authority. I do not find any reason to interfere with the impugned orders. I hold that the three impugned orders are justified.

6. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following grounds :-

6.1 They filed Application of Form R-1 for the period of rebate claim December 2005 on 27.11.06, for January 2006 on 27.11.06 & for February 2006 on 27.11.2006 alongwith related documents at Vadodara Central Excise i.e. the Jurisdiction over the factory of manufacturer for the respective periods, according to Notification No. 19/2004-CE (NT.) dated 06.09.2004 b(ii) within one year of the date of exports and the same had been acknowledged by department without any remark on the respective claim.

6.2 Dy. Commissioner of Central & Customs Vadodara issued the letters Ref. F.No. V. Misc(18)247 /BPCL/Ref./06-07 /6161 dtd. 11.12.06 for the period Dec' 05, Ref. No. F.No.V. Misc (18)247 /BPCL/Ref./06- 07/6162 dtd.11.12.06 for the period Jan'06 & Ref. F.No. V. Misc (18)247/BPCL/Ref./06-07/6160 dtd. 04.12.06 for the period Feb'06, which has intimated them about short of some documents & subsequently advised that the claims may be filed with the Maritime Commissioner

under whose jurisdiction the airport is located. The above mentioned letters confirm the date for filing the original aforesaid claims which is 29.11.2006 without any remark of time barred or late submission, which itself denotes that the aforesaid rebate claim were filed in time at their office by them, thus treating time bar of applications by Asst. Commissioner, Vadodara does not arise at all.

6.3 As per instructions given by Central Excise, Vadodara, they personally tried to re-submit the claim at the Maritime Commissioner, Ahmeadabad, but the office of the Maritime Commissioner; Ahmedabad did not accept the applications & suggested them to file claims before the Central Excise (Vadodara) to avoid the time bar applicability. Thus, they had left with no choice except to file the claims before Central Excise Vadodara for processing the claim and also to avoid time limit clause, thereafter the claims were re-submitted at Central Excise (Vadodara) under the Notification No. 19/2004-CE (N.T.) which did not restrict an applicant who is not manufacturer from filing the claim with Central Excise having jurisdiction over the factory of manufacturer.

6.4 Subsequently they re-submitted all original documents to the department i.e. shipping bills, Original/Duplicate ARE-1, Fuel Delivery Note, Export Invoices for the claim pertaining to the month of Dec'05, Jan'06 and Feb'06 vide letter dated 04.02.2008 & also stated about non acceptance of documents by Range office, Ahmedabad for verification. They once again re-submitted letter dated 09 .03.2010 alongwith all original documents to Asst. Commissioner Central Excise, Vadodara for the respective claims and also requested department to clarify why their claims had not yet been entertained with a request to grant a PH to explain the queries, if any to the department. But the department did not bother to send a single reply which is contrary to natural justice. The long period of ignorance/ negligence by the department for non acceptance of legitimate huge amount of claim of application for number of times forced them to submit the grievances letter dated 14.04.2010 at Central Board of Excise & Customs, New Delhi.

6.5 After submission of the grievances letter dated 14.04.2010 at CBEC, New Delhi, they expected and awaited for the valuable interference of CBEC, New Delhi or reply of Excise Commissioner, Vadodora, but the same did not occur. Hence they again submitted new request letter dated 30.05.2012 at CBEC, New Delhi for their valuable intervention. After various approaches and their valuable efforts to CBEC New Delhi, The Assistant Commissioner, Vadodara issued a letter dated 25.07.2012 referring to their letter dated 14.04.2010 at CBEC, New Delhi & informed them to submit proof of filing and the letters at their office.

6.6 They submitted their reply vide letter dated 10.10.2012 with the brief explanation of the queries raised & also submitted relevant documents regarding the claims in response to the Assistant Commissioner Vadodara's letter dated 25.07.12. Thereafter the Assistant Commissioner Vadodara issued a show cause notice dated 23.11.2012 for the period December 2005, January 2006. & February 2006 and also a personal hearing was scheduled by the department. They attended

the personal hearing on 14.12.2012, subsequently reply was submitted vide letter dated 24.12.2012 against the queries raised in the personal hearing.

6.7 The Assistant Commissioner, Central Excise & Customs Div IV, Vadodara-I, vide Orders-in-Original Nos. Ref/554-555-556/ AC.DIV-IV /ML/2012-13 Dated 27.12.12, rejected the above aforesaid rebate claims on the grounds of time barred.

6.8 On Appeal being filed by them before the Commissioner of Central Excise (Appeals), Vadodara, the same were rejected vide Order-in-Appeal No. PJ/215 to 217 NDR-II 2013-14 dated 16.07.2013 due to time bar. The Commissioner (Appeals), Vadodara in his order mentioned in respect of non production of evidence about the refusal by Maritime Commissioner to process the claims.

6.9 In this regard they submit that they timely approached & waited for the reply of the Central Excise, Vadodora. Thereafter they followed up the matter with CBEC, New Delhi. The Commissioner Appeals, Vadodara has not considered length of period taken by CBEC, New Delhi to instruct the Central Excise, Vadodara and the reply period taken by the Central Excise Vadodara and rejected the aforesaid claims. Thus, the valuable communication between them and CBEC New Delhi & Central Excise, Vadodara itself covers the huge length of period, they requested that the same cannot not be ignored as it is one of the important part of the proceedings. To support the above contentions they rely on the judgment of N. Balakrishnan Vs. M. Krishnamurthy - C.A. Nos. 4575-76 of 1998 (@ S.L.P.· (C) No. 8712-13 of 1998) decided On: 03.09.1998. This case clearly states that "*Length of delay is no matter, acceptability of the explanation is the only criterion: Thus the rule of limitation are not to meant to destroy the right o! the parties. They are meant to see that parties do not resort to dilatory tactics, but seek* their remedy promptly."

6.10 In respect of non-submission of evidence on record at Central Excise, Vadodara, they tried to submit the claims in person but the same were not accepted by the office of Central Excise Vadodara which forced them to re-forward the claims through the courier company but unfortunately they were unable to get the dispatched evidence, as the courier company failed to provide the records due to their system which automatically deletes the data after six months.

6.12 They rely upon the following judgments which clearly state that "if the export is not in dispute the other procedural lapses can be condoned and rebate cannot be denied merely on the ground of procedural infractions"

Barot Exports 2006 (203) ELT 321 (GOI)
Cotfab Exports 2006 (205) ELT 1027 (GOI)

6.13 They hereby bring to kind notice that the claims were originally filed very well before time as per Section 11 B of Central Excise Act 1944 at the office of Central Excise & Customs (Vadodara). Also the re-submission procedure was followed up accordingly with the same authority where the claim was originally

filed. So first submission date should be treated as date of filing the application for the aforesaid claims. Therefore treating the aforesaid claims as time barred or apply of late cut does not arise at all. Hence the order passed by The Commissioner Appeals, Vadodara is null & void and need to be set aside.

6.14 They seek to place reliance on the following decisions in which the refund claims filed were computed from the date of the first submission.

- Oswal Chemicals And Fertilizers Vs Commissioner Of C. Ex. 2004 (97) ECC 69, 2004 (172) ELT 216 Tri Del .

'The period of limitation has to be computed with reference to the first application filed. The ratio of the decision of this Tribunal in Poulose & Matthen v. Collector of Central Excise - 1989 (43) E.L.T. 424 (T) would support the appellant. The view taken by the Tribunal on the above issue was affirmed by the Supreme Court in Collector v. Poulose & Matthen - 2000 (120) E.L.T. A64 (S.C.). A similar view was taken by the Calcutta Bench of the Tribunal in Collector of Central Excise v. I.T.C. Ltd. - 1993 (67) E.L.T. 529 (T). Therefore, we hold that the application for refund made by the appellant cannot be rejected."

- Universal Enteprises Vs. G.O.I. 1991 (55) E.L.T. 137 (G.O.I.)

"Export not in dispute, the claim filed before wrong authority in time, claim subsequently transferred to the correct jurisdictional authority to be treated as having been filed in time".

- Poulose Matthen Vs. CCE 1989 (43) ELT 424 (Tri.) Affirmed by SC 2000 (120) ELT A64 (SC)

"Refund filed before the authority not having territorial jurisdiction. Application is not ab-initio void or non est. Treatable as refund claim if otherwise valid."

6.15 The fundamental requirement for rebate is to manufacture, export & payment of duty thereon. If this fundamental requirement is met, other attendant procedural requirements can be condoned. The intention of Government is not to export taxes but only to export goods. If refund of duty paid on exported goods is not allowed, the Indian manufacturer will become internationally uncompetitive. This is contrary to the intention of the legislature, This view is fortified by decision of this Hon'ble Bombay High Court in the case of Repro India Vs Union of India 2009 (235) ELT 614; para 8 thereof.

6.16 They have borne the incidence of duty. Therefore, they are entitled for refund of duty paid on ATF. Therefore impugned order is liable to be set aside.

7. Personal hearing in this case was fixed on 04.02.2021 which was attended by Shri Jitendra Kumar, Chief Manager Finance-(Taxation) and Shri Ritesh Mehta,

Assistant Manager (Taxation) on behalf of the applicant. They reiterated their additional written submissions filed on the date of hearing. They also relied on similar case of Indian Oil Corporation Limited (IOCL) [2007(220)ELT 609(GOI)] wherein, GOI had allowed the benefit to the applicant. No representative of the respondent Department appeared for the hearing.

8. In their additional written submissions filed on 04.02.2021 the applicant mainly reiterated the grounds of Revision Application and contended as under :-

8.1 Original Refund Claim date should be considered for computing period of

The delay of 5 years and 11 months is on account of rejection of refund claims from both jurisdictions of Vadodara and Ahmedabad and also, the time taken by CBEC to redress their grievances. Further, even if the refund claim after removing all deficiencies is filed after such delay, then also the period of limitations should be considered from the Original Filing of refund claim. They rely on relevant extract of various judicial precedents which are produced hereunder:

a. Indian Oil Corporation Limited [2007 (220) E.L.T. 609 (G.O.I.)]. The applicant reproduced para 8.4 of the GOI Order;

b. Balmer Lawrie & Co. Ltd. Vs CCE Kolkata-VI [2015(315)E.L.T.100 (Tri.-Kolkata)] The applicant reproduced para 5.1 of the CESTAT Order;

8.2 Even in case where refund claim is submitted to wrong jurisdiction, the date on which refund claim is first submitted to wrong jurisdiction should be considered as refund filing date for the purpose of limitation.

In their case, the ATF is manufactured at IOCL Koyali Refinery which fall under the jurisdiction of Vadodara and also the Excise duty collected by IOCL Koyali Refinery from BPCL is deposited to Vadodara Commissionerate. It is also to be noted that the Refund Notification nowhere restricts an applicant who is not a manufacturer from filing refund claim with Central Excise Department having jurisdiction over the factory of manufacture.

Without prejudice to the above, they wish to submit that Deputy Commissioner, Vadodara had initially accepted the refund claim and thereafter issued a letter pointing out deficiencies and directing to submit the refund claim with proper authorities as per Refund Notification. Since the original application for refund was filed within time, though before wrong authority, it cannot be said that the said application was barred by limitation. In this regard, they place reliance on the decision of Hon'ble Gujarat High Court in the case of CCE vs. AIA Engineering Ltd. [2011 (21) S.T.R. 367 (Guj.)]. The applicant reproduced para No. 7 of the Order of Hon'ble High Court.

They wish to submit that subsequent amendment of refund claim amount cannot be considered as withdrawal of original refund claim even if refund amount is changed and therefore, limitations should be calculated from date of original filing of refund claim. They place reliance on the Commissioner (Appeals),

Mangalore in the case of Hindustan Petroleum Corporation Limited [2006 (4) S.T.R. 254 (Commr. Appl.)]. The applicant reproduced para No. 7 of the Commissioner (Appeals) Order.

8.3 Bar of limitation would not apply in case of rebate claimed under Rule 18 of Central Excise Rules, 2002 read with Notification 19/2004-CE (NT).

The period of limitation is not at all specified in the Refund Notification 19/2004; however, the same was mentioned in the earlier notification 40/2001. This shows the conscious decision of the Government to remove the time limitation condition while keeping all other conditions and limitations intact. Further, the period of limitations was brought as condition for eligibility of refund conditions only in the year 2016 by way of amendment notification no. 18/2016-CE (NT) dated 01.03.2006. Since the refund claims pertain to the period of December 2005, January 2006 and February 2006, therefore the Refund Notification as stood before amendment (i.e. without any period of limitation) should apply in their case and in view of this alone, the Refund should be granted to them and the impugned OIA is liable to be set aside.

They would like to place reliance on the following judgments :-

a) Deputy Commissioner V. Dorcas market Makers Pvt. Ltd. [2015(325)ELT A104 (S.C.) has upheld the decision of Hon'ble High Court Madras [2015(321)ELT 45(Mad)]. The applicant reproduced para Nos. 16,17, 30 & 31 of Hon'ble Madras High Court;

b) Hon'ble Punjab and Haryana High Court in the case of JSL Life style Limited Vs Union of India [2015(326)E.L.T.265(P&H)] . The applicant reproduced para Nos. 10,12,15 & 19 of of Hon'ble Punjab and Haryana High Court.

8.4 Substantive benefit, like refund cannot be denied merely on account of procedural lapse of being time barred, that too, in a case where such delay is account of Department and CBEC.

They wish to reiterate the fact that they had submitted the Original refund claim on 29.11.2006, which clearly signifies that they have duly complied with the provision of Section 11 B of Central Excise Act, 1944 of filing the refund claim within 1 year from the relevant date. However, without appreciating the facts of the case, the impugned OIA alleges that they did not provide any justification for delay of 5 years and 11 months in subsequent re-filing of refund. The delay of 5 years and 11 months was on account of delay in response from Department side. A similar situation was faced by Hon'ble Rajsthan High Court in the case of Gravita India Limited Vs Union of India [2016(334)E.L.T.321(Raj)] wherein it was held that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat cause of justice. The applicant reproduced para No. 17 of Hon'ble High Court's Order.

8.5 Export cannot bear the burden of taxes.

It is cardinal principal of Government that exports should not bear the burden of taxes. The EX1M policy of the Government aims to promote export of goods, not taxes. Further, the intention of the Government is to make Indian goods

competitive in the foreign markets. If the exported goods bear the burden of the taxes, it will increase the ultimate cost of the exported goods and render our goods uncompetitive in the foreign market. This will lead to decrease in exports and obstruct the ultimate objective of the Government.

They place reliance on the following:

Ban nari Amman Spinning Mills Ltd, Vs Commr. of C. Ex. & ST., Madurai [2016 (46) S.T.R. 871 (Tri. - Chennai)]

(the applicant reproduced para No 5 of the CESTAT Order).

9. Government has carefully gone through the relevant case records oral and written submissions and perused the impugned orders-in-original and order-in-appeal.

10. Government observes that the applicant had filed three refund claims on 29.11.2006 in respect of ATF supplied by them to foreign going aircraft which was duty paid in nature in the office of the Deputy Commissioner, Central Excise & Customs, Division –IV, Vadodara-I. The said Deputy Commissioner vide letters dated 04.12.2006, 11.12.2006 and 11.12.2006 observed some discrepancies in these claims and also observed that as the ARE-1s have been addressed to jurisdictional excise authorities at Ahmedabad, as per explanation III to Notification No. 19/2004 CE (NT) dated 06.09.2004, M/s BPCL (the applicant) may file the said claim with the maritime commissioner under whose jurisdiction the Airport is located. Accordingly, the said Deputy Commissioner enclosed the refund applications filed by the applicant on 29.11.2006 to his letters and returned the refund claims to the applicant for doing the needful. The applicant has contended that they personally tried to re-submit the claim at the Maritime Commissioner, Ahmedabad, but the office of the Maritime Commissioner, Ahmedabad did not accept the applications & suggested to file before the Central Excise (Vadodara) to avoid the time bar applicability; that they had left with no choice except to file the claims before Central Excise Vadodara, for processing the claim and also to avoid time limit clause; that thereafter the claims were resubmitted at Central Excise (Vadodara) under Notification No.19/2004-CE(N.T.) which do not restrict an applicant who is not a manufacturer from filing the claim with Central Excise having jurisdiction over the factory of manufacture.

11. Government observes that para 8 of Chapter 8 of C.B.E.& C. Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner

and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. Further, Para 3(b) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under :-

"3(b) Presentation of claim for rebate to Central Excise :-

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

12. As per these statutory provisions and procedure prescribed under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 discussed above, the rebate claim can be filed before either Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner as the case may be.

13. Government observes that in the instant cases ATF which was procured by the applicant from M/s IOCL and exported from Ahmedabad was manufactured at IOCL, Koyali Refinery and where actual duty has been paid. As the Koyali refinery of IOCL falls under the jurisdiction of Vadodara-I Central Excise Commissionerate and these rebate claims could also be filed before AC/DC, Vadodara-I Commissioerate who had jurisdiction over IOCL, Koyali. In fact, the adjudicating authority in all the three Orders in Original (Para No.14.3) in its findings observed as under:-

'From the above, it is crystal clear that the rebate claim is required to be filed with the authority whose name and address has been indicated by the exporter on the A.R.E.1 at the time of removal of export goods. ***I find that in the present case the claimant had option either to file rebate claim with this office or to file rebate claim with the Maritime Commissioner, Ahmedabad.*** *I further find that it is an admitted fact that name and address of Assistant Commissioner of Central Excise, Division-I, Jivabhai Chambers, Ashram Road, Ahmedabad has been indicated on AR.E.ls by the exporter (the claimant) and thereby they had opted to file rebate claim not with this office but with the Maritime Commissioner, Ahmedabad. Moreover, this office is not in receipt of the triplicate copy of AR.E.ls on which certificate with regard to 'duty paid' character of the goods as certified from the jurisdictional Superintendent of Central Excise (Range Officer). I am, thus, of considered view that the rebate claim submitted by the exporter on 29.11.2006 was rightly returned to the claimant with an advice for filing with the Maritime Commissioner under whose jurisdiction the airport is located. I find that till date, there has been no change in the above position'.*

14. From the aforesaid findings it is clear that the applicant had option to file rebate claims with Vadodara – I Commissionerate or Maritime Commissioner,

Ahmedabad. Further, the Dy. Commissioner of Central & Customs Vadodara while returning the claims vide letters Ref. F.No. V. Misc(18)247 /BPCL/Ref./06-07 /6161 dtd. 11.12.06 for the period Dec' 05, Ref. No. F.No.V. Misc (18) 247 /BPCL/Ref./06- 07/6162 dtd.11.12.06 for the period Jan'06 & Ref. F.No. V. Misc (18)247/BPCL/Ref./06-07/6160 dtd. 04.12.06 for the period Feb'06, never held that he had no jurisdiction to admit the said claims but stated that *'as the ARE-1s have been addressed to jurisdictional excise authorities at Ahmedabad, as per explanation to Notification No.19/2004 CE(NT) dt.06.09.2004, M/s BPCL may file the said claim with the maritime commissioner under whose jurisdiction the airport is located'.*

15. Hence, the jurisdictional Dy. Commissioner on the ground that the applicant addressed the ARE-1s to the Jurisdictional excise authorities at Ahmedabad advised them that they 'may' file claims with Maritime Commissioner, Ahmedabad. However, discretion vested expressly in the said advice by the yardstick of the word "may" to file / re-submit the claim either before Vadodara or Ahmedabad and as such applicant's decision to re-submit the claims at Vadodara-I Commissionerate cannot be said to be contrary to the provisions of the Act, or without jurisdiction or illegal.

16. Government also observes that the applicant had initially filed these three refund/rebate claims well within the time limit prescribed under Section 11B of the Central Excise Act, 1944. However, the adjudicating authorities as well as Commissioner (Appeals) rejected / upheld rejection of these claims, respectively, mainly on the ground that the applicant did not produce any evidence on record that the Maritime Commissioner refused to accept their refund claim applications and also justification for long gap of 5 years and 11 months time period lapsed between refusal of acceptance of refund claim applications by the Maritime Commissioner and again filing of refund claims again before the adjudicating authority.

17. Government observes that the applicant has claimed to have made attempts to re-submit the claims in the year 2007, 2008 and 2010 though they could not produce any evidence for the same before lower authorities. The applicant being a PSU of Govt. of India, cannot be attributed with, any mala fide to intentionally delay the re-submission of claim in these matters and the fact remains that these claims were initially filed in time by them before Deputy Commissioner, Vadodara-I having jurisdiction over the factory of manufacturer (IOCL Koyali Refinery).

18. In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

> *"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944."*

Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

> *"claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962."*

In Re : Tata Bluescope Steel Ltd.[2018 (364) E.L.T. 1193 (G.O.I.)] while rejecting the Revision Application filed by the Department and holding that re-filing of claim after removing defects cannot be considered as filing of fresh claim, GOI observed as under :-

> ***7.*** *But the Government does not agree with the applicant's view as it is quite evident from the above facts that withdrawal of the claim took place with the discussion, direction, approval, knowledge or consent with the Asstt./Deputy Commissioner of a Central Excise Division and after having accepted this fact a technical stand of no communication from the Department cannot be resorted to.* ***A verbal communication from a public authority like Asstt./Deputy Commissioner of a division with regards to withdrawal of rebate claim is as good as written communication and if a person from the public has acted as per such communication it is bound to be regarded at the behest of the Department. Such fair dealing should also be maintained for the sake of administrative decency and morality.***
>
> ***8.*** *Considering the above facts and circumstances in this case, Government is of the clear view that the applicant does not have any basis to discard the fact of original filing of Rebate Claim on 30-9-2013 and it fully agrees with the Commissioner (Appeals) that resubmission of the claim on 11-10-2013 is in continuation of the original Rebate Claim only and hence the rebate claims filed by the respondent are not time barred.*

19. As regards subsequent amendment of refund claim amount while re-submitting the claim also cannot be considered as filing a fresh claim. Therefore, rectification of mistakes, in the original claim, cannot be construed as a fresh claim

filed for the first time with the authorities within time limit. Also relying on the case laws discussed supra, Government holds that limitation in these cases should be calculated from date of original filing of refund claims.

20. In view of the above discussion, Government modifies and sets aside the impugned Order-in-Appeal and remands the case back to original authority to decide the refund claims afresh in accordance with law, after causing verification and also taking into account the above observations. The applicant is directed to submit all the documents before original authority for verification. A reasonable opportunity of hearing will be afforded to the concerned parties.

21. The revision application is disposed of in the above terms.

Shrawan 28/05/21

(SHRAWAN KUMAR)
Principal Commissioner (RA) &Ex-Officio
Additional Secretary to the Government of India

M/s Bharat Petroleum Corporation Ltd.
Aviation Fuelling Station,
Ahmedabad Airport – 380 003.

ORDER NO.202/2021-CX (WZ)/ASRA/MUMBAI DATED 28.05.2021

Copy to:

1. Commissioner of Goods & Service Tax, Vadodara-I Commissionerate, GST Bhavan,Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Cource Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of Goods & Service Tax, Division-I, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.