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**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. 198/17/WZ/2019-RA

2062

Date of Issue:

05.04.2023

ORDER NO.

204 /2023-CEX (WZ)/ASRA/MUMBAI

DATED 31.03.2023 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 : Pr. Commissioner of CGST, Vadodara-I Commissionerate

Respondent : M/s. Indian Oil Corporation Ltd.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.-
Comm'r(A)/136/VDR-I/2011 dated 31.03.2011 passed by
the Commissioner (Appeals-I), Central Excise & Customs,
Vadodara.

ORDER

This Revision Application has been filed by Pr. Commissioner of CGST, Vadodara-I Commissionerate (hereinafter referred to as "Applicant") against Order-in-Appeal No.- Comm'r(A)/136/VDR-I/2011 dated 31.03.2011 passed by the Commissioner (Appeals-I), Central Excise & Customs, Vadodara.

2. The facts of the case are that M/s. Indian Oil Corporation Ltd. (hereinafter referred to as "Respondent"), have filed an application before the jurisdictional Assistant Commissioner on 13.12.2000 for refund of central excise duty of Rs. 58,52,429/- paid on ATF supplied to Foreign going Aircraft from their Ahmedabad Airport Terminal during November 2005 to October 2006. During scrutiny of the claim certain discrepancies were noticed and therefore a show cause notice dated 06.02.2007 was issued to the Respondent proposing to reject the claim. The said show cause notice was adjudicated vide order No. Ref/10/DC/Dn-IV/BKG/2008-09 dated 29.05.2008 vide which the claims were rejected. Aggrieved by the OIO, the Respondent filed appeal with the Commissioner (Appeals-I), Central Excise & Customs, Vadodara, who vide Order-in-Appeal No.- Comm'r(A)/136/VDR-I/2011 dated 31.03.2011 partially allowed their appeal and modified the OIO by allowing the rebate of duty on the ATF supplied to foreign run aircraft to the extent of Rs. 47,23,462/-.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

- i. the impugned order of the Commissioner (Appeals) is contrary to law, proved facts and evidences and provisions contained in Central Excise Act, 1944 and Rules made there under. Therefore, the impugned order is required to be set- aside to the extent of setting aside the rejection of the refund /Rebate claim;
- ii. the Commissioner (A) while modifying the Order of the original adjudicating authority has observed that the exportation of the impugned goods by way of supply of fuel to a foreign going aircraft is

not in dispute. However, the further amendment of the provision by issue of Notification No. 19/2004-CE(NT) dated 06.09.2004 has escaped his attention.

iii. the effect of the Circular No. 13/2002-Cus dated 25.06.2002 has now been modified with the issue of Notification No. 19/2004-CE(NT) dated 06.09.2004

iv. the Notification No. 19/2004-CE (NT) dated 06.09.2004 (Sr. No. (3) (d) of the Notification) is clearly restrict the rebate on the amount consumed in domestic run of the International flights. The relevant portion of the Notification is reproduced herein below:

"(d) special procedure for store for consumption on board an aircraft on foreign run: Notwithstanding anything contained in the above paragraph, in case of mineral oil products falling under chapter 27 of the first schedule to the central excise Tariff Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run the rebate shall be granted for such quantity of the products as remain on board the aircraft after completion of an international flight but prior to its reversion to foreign run. The concerned Officer of Customs shall certify in the manner specified by the Commissioner of Central excise the quantity of products left on board for determining the quantum of rebate."

v. Under the circumstances, the order of the Commissioner (Appeals) allowing the appeal of the assessee and dropping the rejection of rebate claim in the present case, is contrary to express statutory provisions and hence, the same is unsustainable in law and deserves to be quashed /modified.

4. Personal hearing in this case was scheduled on 02.11.2022, Ms. Manasi Patil, Advocate appeared online on behalf of the Respondent and submitted that rebate on fuel consumed during foreign run of an aircraft is admissible. She submitted that Comm(A) has correctly applied the law into facts of the case. She further submitted that

Department's application merely mentions in the ground of appeal that rebate is not admissible for fuel consumed in domestic run of an aircraft. She submitted that they have sought rebate on fuel consumed during foreign going vessel.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. Government observes that the main issue in the instant case is whether the rebate is admissible on the portion of the ATF(fuel) consumed in domestic run of the International flights.

7. Applicant argued that admissibility of the rebate by the Appellate Authority on that portion of fuel which is consumed in domestic run of the International flights, by relying upon the Circular No. 13/2002-Cus dated 25.06.2002, is not proper. They further argued that the effect of the Circular No. 13/2002-Cus dated 25.06.2002 has been modified with the issue of Notification No. 19/2004-CE(NT) dated 06.09.2004, which escaped the attention of the Appellate Authority while deciding the case. Government reproduces the relevant text of the said Notification:

"(d) special procedure for store for consumption on board an aircraft on foreign run: Notwithstanding anything contained in the above paragraph, in case of mineral oil products falling under chapter 27 of the first schedule to the central excise Tariff Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run the rebate shall be granted for such quantity of the products as remain on board the aircraft after completion of an internal flight but prior to its reversion to foreign run. The concerned Officer of Customs shall certify in the manner specified by the Commissioner of Central excise the quantity of products left on board for determining the quantum of rebate."

From the above it is unambiguously clear that the rebate shall be granted for such quantity of the products as remain on board the aircraft after

completion of an internal flight but prior to its reversion to foreign run. In other words, rebate shall not be allowed on the consumption of stores during the domestic run of the foreign going aircraft. In the instant case, aircraft i.e. AI-191 had a stopover at Mumbai in its run from Ahmedabad to foreign destination. Therefore, rebate claimed by the Respondent against the fuel consumed during the journey from Ahmedabad to Mumbai, which is domestic run of the flight, shall not be admissible as per the aforesaid notification.

8. In view of above, Government modifies the Impugned OIA to the extent that rebate of fuel/ATF consumed during the domestic run of flight shall not be admissible. This needs to be verified and calculated based on verification by the Original Authority. Thus, Government remands the case back to the original adjudicating authority for doing the needful on the basis of observations made above.

Shrawan Kumar
31/3/23
(SHRAWAN KUMAR)

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

ORDER No. 204 /2023-CEX (WZ) /ASRA/Mumbai Dated 31/03/23

To,

1. M/s Indian Oil Corporation Ltd., Gujrat Refinery, P.O. Jawaharnagar, Vadodara - 391320.
2. The Commissioner of CGST, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara - 390007.

Copy to:

1. The Commissioner of Vadodara(Appeals), 1st Floor, New Central Excise Building, Race Course, Vadodara-390007.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.