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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. 195/05/WZ/2021-RA, 3436 Date of Issue: 01.05.2023

ORDER NO. 239 /2023-CEX (WZ)/ASRA/MUMBAI
DATED 26.04.2023 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 : M/s. Indian Oil Corporation Ltd.

Respondent : The Commissioner of CGST & CX, Vadodara-I
Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.- Vad-
Excus-01-App-155/2020-21 dated 09.12.2020 passed by the
Commissioner(Appeals),CGST & Central Excise, Vadodara.

ORDER

This Revision Application has been filed by M/s. Indian Oil Corporation Ltd. (hereinafter referred to as "Applicant") against Order-in-Appeal No.- Vad-Excus-01-App-155/2020-21 dated 09.12.2020 passed by the Commissioner(Appeals),CGST & Central Excise, Vadodara.

2. The facts of the case are that the applicant is a manufacturer of various petroleum products falling under Chapter 27 and 29 of the First Schedule to the Central Excise Tariff Act, 1985. Koyali Refinery of the applicant at Gujarat, supplied 680.550 KL of ATF to an intermediary storage location at Shakur Basti during the month of December 2004. Out of this 680.550 KL of ATF received at Shakur Basti terminal, 589.29 KL of ATF was supplied to a storage facility of Bharat Petroleum Corporation Limited at the International Airport, New Delhi and ultimately to International Aircrafts during the period January 2005 and February 2005. The applicant was bound to clear ATF from Koyali Refinery on payment of excise duty, even though the goods were being supplied for exports, because by Notification No. 19/2004-CE(NT) dated September 06, 2004, warehousing provisions were withdrawn for petroleum products. BPCL was the oil industry coordinator and owned the storage facility for ATF at the International Airport, New Delhi. All oil companies such as IOCL, HPCL, etc. procured and stored their ATF at the BPCL's premises, which was then supplied to foreign going aircrafts. As BPCL was the industry coordinator all shipping bills were made in the name of BPCL. On export BPCL would in turn supply these Shipping Bills to other industry members, who would claim refund. The applicant filed a refund claim on January 03, 2006 for refund of the Central Excise duty paid on the supply of ATF to foreign run Aircraft. The applicant's claim was returned on the ground that the applicant had failed to produce sufficient evidence to correlate the duty paid goods removed from Koyali refinery with the goods exported. Applicant litigated this issue further before various forums including before the Revisionary Authority. After two rounds of remand proceedings, the Appellate Authority vide the impugned

Order-in-Appeal No.- Vad-Excus-01-App-155/2020-21 dated 09.12.2020, rejected the refund claim for the same reason of non-correlation.

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

- i. Sufficient identity of the export goods and its correlations with the duty paid exported goods has been established.
- ii. Even rebate claim can be processed in absence of Form ARE-1s when cogent evidences produced.
- iii. Payment of duty for which rebate claim has been filed is not in dispute.
- iv. The rebate claim has been filed with proper Authority
- v. Provisions of Notification No. 19/2004-CE(NT) have been followed
- vi. Factum of export is established-procedural infractions can be condoned.
- vii. Similar matter has already been decided by the Department favoring IOCL at another location.
- viii. In view of above, Applicant requested to allow the refund amount and set aside the impugned OIA.

4. Personal hearing in this case was scheduled on 17.01.2023, Ms. Shreya Dahiya, Advocate appeared online and submitted that the duty paid ATF has been supplied to foreign going aircrafts. She correlated duty paid invoices to quantity supplied. She further referred to an earlier order 407/2018-CX(WZ)/ASRA/Mumbai dated 30.11.2018 on identical facts. She also informed that BPCL has submitted a disclaimer certificate. She requested to allow the RA.

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 Applicant is eligible for the refund/rebate of duty paid on ATF supplied to the International Flights.

7. Government notes that the said issue has already been decided vide GOI Revision Order No. 407/2018-CX(WZ)/ASRA/Mumbai dated 30.11.2018 (F.No. 198/05/WZ/2021-RA) in the Applicant's own case. In the said case, Applicant had filed revision applications against Order-in-Appeal No. 256/2011/Cus/Comr(A)/AHD dated 05.07.2011 passed by the Commissioner of Customs (Appeals), Ahmedabad.

8. The operative portion of the said GOI Revision order dated 30.11.2018 is extracted as under:

"17. Government has carefully gone through the relevant case records available in the case files, the Revision Application, oral submission made during the personal hearing, the documents submitted by the respondent during the personal hearing and have perused the impugned Order-in- Original and Order-in-Appeal. The Government observes that the issue to be decided in this Revision Petition is whether the respondent, viz. IOCL are eligible for refund/rebate of duty paid on 4082.43 KL of ATF supplied to International Flights during the month of January 2005.

18. Government observes that Commissioner (Appeals) has examined all the documents (discussed at para 15 supra) and arrived at a conclusion that the respondent are eligible for the refund/rebate of duty paid on 4082.43 KL ATF supplied to international Flights.

19. The department in its grounds of appeal has observed that the ARE1s were prepared by BPCL and not by IOCL. In this connection, Government observes that the respondent have clarified that IOCL, NITC is the exporter of ATF to International flights as proved by the various documents produced; BPCL being Industry coordinator at NITC, Delhi, the shipping bills, bills of exports, ARE-1s have been filed in the name of BPCL on behalf of the Oil Industry. The refueling is done by individual oil companies like IOCL through the BPCL's tankages, hydrant facilities.

20. Government further observes that a contention has been raised by the Department that the oil companies cannot intermix duty paid and non-duty paid

ATF. However, this contention does not have basis in fact. The CBEC Circular No. 804/1/2005-CX dated 4.01.2005 relied upon by the Department in fact clearly envisions a situation where the oil companies are unable to install separate tanks to store duty paid and non-duty paid goods at Aviation Fuel Station (AFS) at airports. The second issue raised in the circular deals with such a situation where oil companies at International Airports cater to both domestic as well as international flights and the companies had "reported difficulties in installing multiple storage tanks (separate for domestic and export clearances) at the site of the airport due to space constraints". The circular permits mixed storage of duty paid and non-duty paid goods subject to the condition that a tank-wise regular account is to be maintained about the receipt and discharge of duty paid and non-duty paid stocks of ATF. Therefore, in a situation like the one at hand, where the oil company is able to satisfactorily account for the quantities of duty paid and non-duty paid goods, the CBEC circular could be said to have been adhered to in sum and substance.

21. Government further observes that the respondent (IOCL) has produced / submitted the identical set of documents before this Authority which were submitted by them before the Appellate Authority. Based on these documents the Commissioner (Appeals) have sufficiently explained the clearance of duty paid goods under Central Excise invoices as well as other records and Chartered Accountant's certificate. The duty paid nature of the ATF supplied to international flights has been substantiated and hence the Commissioner (Appeals) has rightly allowed the appeal filed by the applicant and therefore, Government finds no merit in the Revision Application filed by the Department.

22. In view of above circumstances, Government holds that Commissioner (Appeals) has rightly allowed the rebate claims after satisfying himself that duty paid goods have been exported. The impugned Order-in-Appeal viz. Commr.(A)/VDR-1/2011 dated 09/10.06.2011 is therefore upheld.

23. Revision Application is thus dismissed being devoid of merit.

24. So, ordered."

9. Government observes that the discussion in above order is squarely applicable to this case as facts of the cases are identical.

10. In view of above position, Government set asides the Order-in-Appeal No.- Vad-Excus-01-App-155/2020-21 dated 09.12.2020 passed by the Commissioner(Appeals),CGST & Central Excise, Vadodara and allows the revision application filed by the Applicant.


26/4/23
(SHRAWAN KUMAR)

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

ORDER No. 239/2023-CEX (WZ) /ASRA/Mumbai Dated 26.4.23

To,

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

Copy to:

1. The Commissioner of CGST &CX(Appeals), GST Bhavan, 1st Floor Annexe, Race Course Circle, Vadodara-390007.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.