

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.195/74/13-RA &amp; 195/710/13-RA

1988

Date of Issue:- 22.11.2018

ORDER NO. <sup>379-380</sup> /2018-CX (WZ)/ASRA/MUMBAI DATED 31.10.18 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sr. No.	Revision Application No	Applicant	Respondent
1	195/74/13-RA	M/s Bharat Petroleum Corporation Ltd., Wadibunder, Mumbai	The Commissioner of Central Excise, Mumbai South
2	195/710/13-RA	M/s Bharat Petroleum Corporation Ltd., Wadibunder, Mumbai	The Commissioner of Central Excise, Mumbai South

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal No.

1. BR/368/M-I/2012 dated 08.10.2012,
2. BR/44/M-I/2013 dated 20.03.2013 respectively,  
passed by the Commissioner (Appeals), Central Excise, Mumbai - I.



**ORDER**

The following revision Application have been filed by the applicant against the Orders-in-Appeal, detailed in table below passed by Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I.

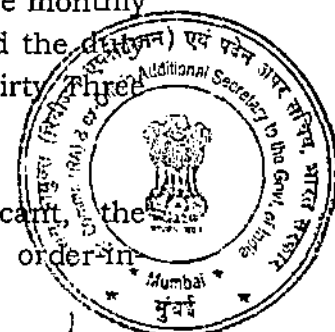
Sl. No.	Revision Application File No.	Revision Application filed by	Order-in-Original No. & date	Order-in-Appeal No. & date	Amount of rebate claim involved (Rs.)
1	195/74/13-RA	M/s Bharat Petroleum Corporation Ltd., Wadibunder	01/2012-13 dated 24.05.2012	BR/368/M-I/2012 dated 08.10.2012	3,44,445/-
2	195/710/13-RA	M/s Bharat Petroleum Corporation Ltd., Wadibunder	02/2012-13 dated 23.08.2012	BR/44/M-I/2013 dated 20.03.2013	2,36,103/-

2. The applicant are holding Central Excise Registration No. AAACB2902MXM050 for manufacture of excisable goods viz. lubricants falling under Chapter 27 & 34 CET Act, 1985. Though the applicant declared these shortages in their monthly E.R.1 returns for the month of April 2010 & April 2011, they have not furnished any reasons / explanations for the shortages found in their excisable goods and neither they have discharged the duty liability in respect of the said quantity of excisable goods found short and shown in their monthly returns. The details are as under :-

a) The shortage of 23,851.442 Ltr. of lubricating oils of various grades were noticed in the monthly E.R.1 return for April 2010 valued at Rs. 23,88,663/- and the duty involved in the same was Rs. 3,44,445/- (Rupees Three Lakh Forty Four Thousand Four Hundred Forty Five Only).

b) similarly the shortage of 15,493.224 Ltr. of lubricating oils of various grades & 210.000 Ltr. of speciality oils were noticed in the monthly E.R.1 return for April 2011 totally valued at Rs. 16,45,457/- and the duty involved in the same was Rs. 2,36,103/- (Rupees Two Lakh Thirty Three Thousand One Hundred Seventy Three Only).

3. After duly considering the submissions of the applicant, the adjudicating authority adjudicated the case vide impugned order-in-



originals confirming the duty demand and imposed equal amount of penalty in both cases.

4. Being aggrieved by the impugned orders, the applicant filed appeal with appellate authority. The appellate authority have noticed that during the annual stock taking of excisable products, shortages were noticed and same were declared by the applicant in ER-1 returns for the month of April 2010 and April 2011 but they have not given any reason for shortages in the finished goods and neither they have paid duty in respect of shortage. The shortages have been occurred in lubricating oils packed in unit containers and they have taken into consideration of quantity of lubricating oils packed in those unit containers to claim as shortages. These goods were deemed to have been removed by appellants without payment of Central Excise Duty in contravention of Rule 4 & Rule 8 of Central Excise Rules, 2002. The finished goods i.e. lubricant oil was packed in unit containers and entered in RG-1 register. After packing is done, there is no reason for shortage of finished goods due to vagaries of weather or viscosity loss. As per CBEC Circular F. No. 11-A/6/70/Cx.8 dated 30.04.1971, where the limit of 0.1% is fixed for condonation of shortage loss of lubricating oil. The benefit of below 0.1% had been given by the adjudicating authority and the duty demanded on the remaining shortages as it is deemed to have been cleared without payment of duty. Hence, the appellate authority upheld the order in originals and rejected appeals in both the above cases.

5. Being aggrieved by the said order in appeals, the applicant have filed these revision applications under section 35EE of Central Excise Act, 1944 before the Central Government on the following grounds :-

5.1 At the first, applicants submit that Hon'ble Revisionary Authority vide Order No. 138/09 dated 04.06.2009 on the identical issue of same location have allowed the condonation of losses up to 0.1% in the line with CBEC circular No. 11-A/6/70/Cx.4 dated 30.04.1971 and gave a direction that condonation of losses may be allowed taking into account Order in Original No. 15/M-I/2003 dated 31.07.2003 passed by the Commissioner which has attained finality.

5.2 Penalty not imposable in the absence of mala-fide intention and in case of situation beyond the control of the applicant. They have already made the payment of duty alongwith interest and penalty in the instant cases hence the question of paying interest and penalty do not arise.

5.2 they have not intentionally violated the law and they are not guilty of conduct contumacious or dishonest. Hence, the levying penalty is wholly unwarranted.



5.3 Intention to evade duty must be proved for invoking to Section 11A and further levying penalty under Rule 25 of the Central Excise Rules, 2002.

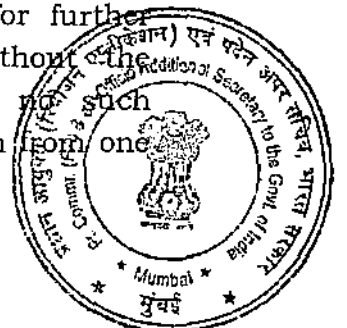
5.4 entire duty liability as claimed in show cause notice admitted and paid without protest, hence penalty should be waived.

6. Personal hearing was scheduled in this case. Shri V. Badrinath, General Manager (Finance), Shri Ananthakrishnan G., Chief General Manager (Taxation) and Shri Deepak Lohiya, Assistant Manager (Taxation) attended hearing on behalf of the applicant who reiterated the grounds of revision application. No representative of the Department appeared for the hearing.

7. Government has carefully gone through the relevant case records, written / oral submissions and perused the impugned order-in-originals and order-in-appeal.

8. On perusal of records, Government observes that duty demand of Rs. 3,44,445/- and Rs.2,36,103/- were confirmed by the adjudicating authority in respect of shortage of various grades of lubricating oils and speciality oils noticed during the month April 2010 and April 2011. In appeal, Commissioner (Appeals) upheld the said order-in-originals. Now applicant are contesting the impugned order in appeal on the ground discussed in para 5 above.

9. The applicants have argued that shortage were actually losses occurring from various storage and handling losses due to natural reasons and same are condonable in the light of C.B.E.& C Circular No. 11-A//6/70/Cx.4 dated 30.04.1971. Government notes that lubricating oil was packed in unit containers and entered in RG-1 register. There is no reason for shortage of packed lubricating oil, on account of the vagaries of weather or viscosity loss. Even if the losses are noticed during conversion from one grade to another, but the records maintained by applicant do not indicate such losses. There is no day to day record of such losses. It is only at the time of annual stock taking, the losses were detected which can be attributed to clandestine removal also. Moreover, after recording the production in RG-1 register, the goods cannot be removed for further processing like conversion from one grade to another, without the permission of Central Excise Authorities. Since there was no such permission granted by Central Excise, the pleading of conversion from one grade to another is baseless and unacceptable.



10. The applicant have cited C.B.E. & C Circular No. 11-A/6/70/Cx.8 dated 30.04.1971 where under limit of 0.1% is fixed for condoning storage loss of base oil. In the instant case, the unit containers filled with lubricating oil were found short, and the same cannot be treated as storage loss as the container itself is removed. The said CBEC Circular relates to base oil in bulk quantity and not to quantity in unit containers.

11. Government also notes that the applicant have argued that they have paid the duty and therefore they are not liable for any penal action under Rule 25 of Central Excise Rules, 2002. In this context, it is observed that the applicants are operating under self removal procedure and bound to follow the procedure laid down under Central Excise Rules 2002. As per the provisions of said rules, it is duty of every manufacturer to find out the actual causes of the shortages if any, in respect of manufactured goods and discharge duty liability on such shortages. Further, it is the responsibility of the applicant to correctly account for and discharge the duty liability on the goods manufactured and cleared by them. In the instant case, the applicants have failed to account for shortages of lubricating oils and could not give substantial reason for the same. The applicant have failed to make payment of duty payable on such short quantity. Hence, the appellate authority have rightly inferred that the applicant's act of non-payment of duty made them liable to pay penalty under Rule 25 of the Central Excise Rules, 2002

12. In view of above circumstances, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

13. The revision applications are dismissed being devoid of merit.

14. So ordered.

  
31.10.18  
(ASHOK KUMAR MEHTA)

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

M/s Bharat Petroleum Corporation Ltd.  
Wadilube Installation, Wadibunder,  
Mallet Road, Mumbai - 400 009.

ORDER NO. 379<sup>380</sup>/2018-CX (WZ)/ASRA/MUMBAI

DATED 31.10.2018.

**ATTESTED**

  
22/11/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)



Copy to:

1. The Principal Commissioner of CGST & Central Excise, Mumbai South, 15th floor, Air India Building, Nariman Point, Mumbai - 400 021.
2. The Commissioner of Central Excise, (Appeals-I), 9<sup>th</sup> Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

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आसिस्टंट सेक्रेटरी (आ.ए.)  
आसिस्टंट सेक्रेटरी (आ.ए.)

