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F.Nos. 373/58/DBK/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..... 31/3/14

ORDER NO. 40/14-Cus DATED 26.03.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 129 DD OF THE CUSTOMS ACT
1962 AGAINST THE ORDER-IN-APPEAL appeal No.
No.04/13-VCH dated 20.03.2013 passed by
Commissioner of Central Excise (Appeals)
Visakhapatnam

APPLICANT : M/s Hindustan Petroleum Corporation Ltd., Visakh LPG
Plant, Malkapuram Post, Visakhapatnam – 530011

RESPONDENT : Commissioner of Customs, Visakhapatnam

ORDER

This revision application is filed by M/s Hindustan Petroleum Corporation Ltd., Visakh LPG Plant, Malkapuram Post, Visakhapatnam – 530011 against the order-in-appeal No.04/13-VCH dated 20.03.2013 passed by Commissioner of Central Excise (Appeals) Visakhapatnam.

2. Brief facts of the case are that applicants are a Government of India Undertaking engaged in the business of refining of crude oil and marketing various petroleum products thereof. Applicants have a Liquefied Petroleum Gas (LPG) storage facility at Visakhapatnam, to receive and store imported as well as indigenous LPG in bulk. From Visakhapatnam, LPG is sent to various LPG bottling plants of all the PSU Oil Marketing Companies (HPC, IOC and BPC) in the states of Andhra Pradesh, Orissa, Chattisgarh etc., for bottling and selling cooking gas to the common public through the retail distributors.

2.1 The imports of LPG/Butane through visakh port for the period 21.04.2005 and 25.04.2005 were under provisional assessment and the Deputy Commissioner of Customs sought for submission of original documents. Upon the submission of documents, Deputy Commissioner of Customs proposed to finalize the bills of entry without adopting NIL rate duty as per Notification No.11/2005-Customs dated 01.03.2005.

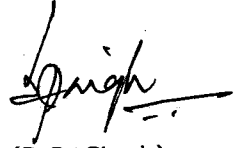
2.2 The imports of LPG/Butane vide Into Bond B/E no. 00981 dated 21.04.2005 and Ex-Bond B/E No. 00983 dated 25.04.2005, vide LPG Vessel MT Maharshi Vyas of a quantity of 1959.840 MT is for domestic purpose as already confirmed vide our declaration dated 26.07.2005. Accordingly it should get assessed adopting CTH 2711.19.00 with NIL rate of duty as per Notification number 11/2005 – Customs dated 01.03.2005 as amended by notification No. 37/2005-Customs dated 02.05.2005.

- 2.3 Applicants had provisionally paid the duty amounting to Rs.1,19,62,219/- on the LPG and cleared vide Ex. Bond B/E No. 00983 dated 25.04.2005 due to the insistence of the department under compulsions to clear the product to avoid shortage of LPG in the public market.
- 2.4 Refund claim was filed on 26.07.2005 and various subsequent dates seeking refund of the excess duty paid on account of non-implementation of Nil rate of duty as per Notification No. 11/2005-Cus dated 01.03.2005.
- 2.5 After following due process of law, the original authority, Deputy Commissioner of Customs, rejected the refund claim of Rs.1,19,62,219/-.
3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.
4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government on various grounds.
5. Personal hearing scheduled in this case on 21.03.2014 at Chennai was attended by Shri R. Venkatachalam, Manager of Company on behalf of the applicant. On a query regarding maintainability of this revision application under Section 129 DD of Customs Act as the issue of refund of customs duty was involved, applicant stated that they have filed this application under section 129 DD by mistake. He stated the confusion was created by preamble of order-in-appeal.
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.
7. Government notes that in this case applicant had been claiming benefit of exemption on LPG/Butane but the same was denied by department and accordingly applicant paid duty of Rs.1,19,62,219/-. Subsequently the refund claim filed by applicant for said amount was rejected. The issue involved in this case is refund of

customs duty under section 27 of Customs Act 1962. As such the impugned order-in-appeal is not of the nature referred to in the first proviso to sub-section (1) of Section 129 A of Customs Act, 1962. Therefore, the said revision application is not maintainable under section 129 DD of Customs Act, 1962. In this case the appeal as required to file before Hon'ble CESTAT in terms of section 129 A ibid. The applicant may file appeal before Hon'ble CESTAT.

8. The revision application is thus rejected being filed beyond jurisdiction and not maintainable.

9. So ordered.



(D.P. Singh)

Joint Secretary(Revision Applicatoin)

M/s Hindustan Petroleum Corporation Ltd.,
Visakh LPG Plant, Malkapuram Post,
Visakhapatnam – 530011



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/ New Delhi

Order No. 40/14-Cus Dated 26.03.2014

Copy to:

1. The Commissioner of Customs, Customs House, Port Area, Visakhapatnam – 530 035
2. The Commissioner of Customs (Appeals), 4th Floor, Custom House, Port Area, Visakhapatnam – 530 035
3. Deputy Commissioner of Customs, Customs House, Port Area, Visakhapatnam – 530 035
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

 ATTESTED

(B.P. Sharma)
OSD(REVISION APPLICATION)