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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.198/203/2012-RA

23/9

Date of Issue: 07/12/2018

ORDER NO. 407 /2018-CX (WZ)/ASRA/MUMBAI DATED 30.11.2018  
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.

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

Respondent : M/s Indian Oil Corporation Ltd., Vadodara.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
Commr.(A)/231/VDR-I/2011 dated 09.06.2011 passed by the  
Commissioner (Appeals), Central Excise & Customs, Vadodara.



ORDER

This Revision Application has been filed by the Commissioner of Central Excise, Customs, & Service Tax, Vadodara-I (hereinafter referred to as "the applicant") against the Order in Appeal No. Commr.(A)/231/VDR-I/2011 dated 09.06.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Vadodara.

2. The issue in brief is that the respondent, M/s Indian Oil Corporation Ltd, (IOCL) Gujarat Refinery, a registered manufacturer under Central Excise with registration number AAACI 1681 GXM038 is engaged in the manufacture, sale and distribution of interalia Motor Spirit, Aviation Turbine Fuel (ATF) etc. falling under Heading 27.10 of the First Schedule to Central Excise Tariff Act, 1985 in their refinery at P.O. Jawaharnagar, District Vadodara, Gujarat.

3. The respondent, during January 2005 from their Koyali refinery had supplied 4081.560 KLS of ATF vide invoice No.90469106 dt. 04.01.2005 and invoice No.90470707 dt. 05.01.2005 involving duty of Rs.62,43,603/- (Rupees Sixty Two Lakh Forty Three Thousand Six Hundred and Three only) to their own depot located at Shakurbasti, New Delhi. From Shakurbasti Depot, the ATF was sold to M/s Bharat Petroleum Corporation Ltd. (BPCL) which was in turn was sold to international airlines during January 2005. The respondent filed the refund claim for Rs.62,43,603/- (Rupees Sixty Two Lakh Forty Three Thousand Six Hundred and Three only) on 12/09/2005.

4. The original Adjudicating authority vide Order in Original No. 24/ Ref/D.C. Div.IV/BKG/2008-09 dated 19.09.2008 rejected the refund claim primarily on the ground that the respondent failed to produce sufficient evidence to correlate the exported goods viz. ATF with the goods on which they claimed to have paid duty and based on the findings as recorded therein.

5. Being aggrieved by the said Order in Original the respondent filed appeal before Commissioner (Appeals) who vide Order in Appeal No.



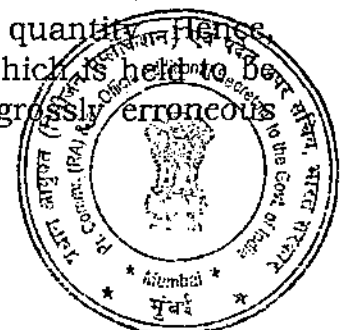
Commr.(A)/231/VDR-I/2011 dated 09.06.2011 allowed the appeal filed by the respondent.

6. Being aggrieved, the applicant i.e. Commissioner of Central Excise, Customs, & Service Tax, Vadodara-I filed the instant Revision Application against the impugned Order in Appeal on the following main grounds :

6.1 The commissioner (Appeals) has failed to acknowledge the basic tenets of rebate/refund claim involving duty paid exported goods needs to be exported as duty paid only. The goods finally exported cannot be the NIL rate of duty goods. In the instant case, the goods finally exported are bonded goods which were NIL rate of duty goods and the same are retrogradely claimed by M/s. IOCL as duty paid goods at the time of clearance from their refinery.

6.2 Movement of petroleum products from Refinery till September 2004 was under warehousing procedure. With effect from 05/06 September 2004 warehousing facility extended to petroleum products was removed and assessment of the petroleum products has been made at factory/refinery gate. However, for the purpose of movement of petroleum products meant for export, export warehousing facility continued subject to the various conditions as stipulated in circular no.581/18/2001-CX dated 29/06/2001 and the same has been clarified by the Board's Circular no.798/31/2004-CX dated 08/09/2004.

6.3 Thus, Shakurbasti terminal of IOCL which received the goods from IOCL's refinery need to maintain tanks/accounts for the purpose of exported goods (as these are duty free bonded quantity) as well as for domestic consumption goods (duty paid goods). Now when the bonded quantity is supplied to BPCL-NIPC at airport for the purpose of export the same remains the duty free quantity and when the duty paid goods were supplied to BPCL-NIPC say for exports then the same remains duty paid goods only which on production of relevant documents can prove the export of duty goods and refund/rebate based on correlation can be admissible. Contrary to this, in the instant case on hand, 8878 KL which was admitted to be bonded quantity both by M/s. IOCL as well as Commissioner (A) the same cannot be a duty paid quantity. Hence, allowing refund of duty on 4081.560 KL of ATF which is held to be from bonded/duty free quantity of 8878 KL is grossly erroneous.



and against the basic tenets of refund/rebate claims on exported goods.

- 6.4 The Commissioner (A) has erroneously accepted the contention of IOCL that the duty paid goods were cleared as duty free/bonded goods. Infact, IOCL has submitted certain AR-3As in respect of the supplies from IOCL, Shakurbasti to BPCL-NITC. In the instant case, duty paid goods received at IOCL Shakurbasti is claimed to be cleared under AR-3A to BPCL-NITC as duty free/bonded good which is not only impermissible but factually incorrect and is an attempt on part of IOCL to retrogradely correlate the duty free clearances as duty paid goods to claim refund. However, in this case, the goods exported are bonded goods which is erroneously claimed by IOCL as duty paid and allowed also by Commissioner (A).
- 6.5 Further, the invoice no.90649106 dated 01.01.2005 and 90470707 dated 05.01.2005 for total quantity of 4082.430 KL were actually duty paid stock transfer to their Shakurbasti Terminal. Has this duty paid quantity been received by BPCL-NITC then the JRO's report that 672.360 KL was received as duty paid by BPCL-NITC and accepted by Commissioner (A) in the above quoted para would have been reflected as quantity equivalent to or in excess of 4082.430 KL. Thus, when duty paid quantity received by BPCL-NITC was admittedly 672.360 KL and in respect of which no refund claim has been filed by the assessee as held by Commissioner (A), no question of refund arises in the matter to M/s. IOCL in respect of duty paid quantity of 4082.430 KL which cannot be covered under the lesser quantity of 672.360 KL received by BPCL as the only duty paid quantity in Jan'2005.
- 6.6 The ATF has been finally exported from IOCL-NITC and hence the exporter in this case is IOCL. However, no ARE-1 has been on the records from IOCL. Further, the ARE-1 on the records are of BPCL.

The ARE-1 clearly reflects that the said consignment was actually manufactured by BPCL and hence no question arises to treat the same as that manufactured and cleared by IOCL Vadodara. Thus, it proves that the goods in respect of which refund/rebate of duty has been allowed by the Commissioner (A) is actually in respect of the goods manufactured and received by BPCL-NITC from their own refinery as manufacturer exporter. Under these circumstances



no refund to IOCL can be held to be admissible particularly when goods claimed to be exported all along belonged to BPCL.

7. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. Respondent vide letter dated 05.11.2012 have filed the following cross objection :-

**7.1 Grounds of Appeal taken by the Appellants:**

1. The Appellants in the grounds of appeal at para (i) have stated that the Commissioner (Appeals) has failed to acknowledge the basic tenets of rebate /refund claim involving duty paid exported goods needs to be exported as duty paid only. The goods finally exported cannot be the Nil rate duty goods. In the instant case, the goods finally exported are bonded goods which were Nil rate of duty goods and same are retrogradedly claimed by M/s. IOCL as duty paid goods at the time of clearance from their refinery. It has been further stated at para (iii) of grounds of appeal that in the instant case on hand, 8878 KL was received at BPCL which was admitted to be bonded quantity both by M/s. IOCL as well as Commissioner(A), the same cannot be duty paid quantity. Hence, allowing refund of duty on 4081,560 KL of ATF which is held to be from bonded / duty free quantity of 8878 KL is grossly erroneous and against the basic tenets of refund / rebate claims on exported goods.

**7.2 On the above, it is submitted as under:**

a) The above statement is based on the findings of Commissioner (A) at para 7.3.1 of the impugned OIA, which is also quoted by the Appellants at (i) of the grounds of appeal put up by Revenue. However, the Respondents would like to point out that this finding of Commissioner(A) has been quoted out of context, ignoring the earlier findings at para No 7.2, para No. 7.3 & para No 7.3.1.

b) What the learned Commissioner (A) has stated in his finding in the impugned OIA is that the qty of 8878 KL which was actually duty paid quantity (duty having been paid at Gujarat Refinery) was considered by BPCL at Nil rate of duty for onward supply for export purpose. Consequently, the refund claims have arisen. In this connection, they would like to quote para No. 7.1, Para No. 7.2, para No. 7.3 and para No 7.3.1 as under :





is reflected as EP No. on the left hand corner of all the invoices issued by Shakurbasti Terminal. I find that on the copies of the invoices, the sales order number is given along with the remark — DUTY PAID IOC — BPCL RATE, from which it is evident that duty paid stock from IOC has been received in BPCL at Nil rate of duty. The correlation that the goods have been dispatched is verified and tallied with invoice No. and date and delivery reference No. (EP No.) mentioned in the annexure A. The said goods have also been duly re-warehoused as per the acknowledgement of BPCL NITC, seen on the Annexure-A.

**7.3** Third aspect of this issue is regarding the dispatch of ATF received at BPCL, NITC to IOCL NITC and for subsequent exports by dispatch to International flights. As a proof, the Appellants have submitted Joint Certificate dated 25.3.05 between IOC Shakurbasti and BPC NITC for dispatches and receipt of ATF at BPCL and Joint certificate dated 28.03.05 between BPC NITC and IOC NITC for dispatches and receipt of ATF at International airport. The Department's contention is that during January 2005, BPCL received only 672.360 KL of duty paid ATF from IOCL, whereas the claim is for 4081.560 EL of duty paid ATF, as per the JRO's report submitted to the Division Office.

**7.3.1** From the Joint Certificates signed by IOC Shakurbasti and BPC NITC for dispatches and receipt of ATF at BPCL, it is seen that 8878 KL of bonded fuel and 672.360 KL of duty paid fuel has been received at BPCL. However, as discussed in para 7.2. above, duty paid stock from IOC has been received in BPCL at Nil rate of duty. Hence the Adjudicating Authority should have actually considered the bonded quantity of 8878 KL, as the duty in this case has been paid at the initial stage at IOCL Vadodara, for which they have filed the refund claim. Instead, the Adjudicating Authority has considered the quantity of 672.36 KL which was supplied as duty paid to BPCL, for which IOC has not filed any refund claim. Further from the invoices submitted by IOC Shakurbasti for supplies to BPCL NITC it is observed that duty paid product received from Koyali refinery has been supplied as NIL duty to BPCL. On a query raised by this office, the Appellants clarified that as per the verification report of JRO during the month of January 2005 only 672.360 KL of ATF was received as duty paid by M/s. BPCL from their Shakurbasti Terminal but as per the joint certificate which



was signed by BPCL & IOC total Nil rate supplies during the month of January 2005 were of 8878 KL which includes the quantity of subject case - 4081.500 KL. They requested to consider the Nil rate supplies of joint certificate which was ultimately exported by them. Their stand is also supported by the correlation statement and the certificate given by C.A. wherein it was certified as under:-

"On being asked for verification of records of Indian Oil Corporation Ltd. (IOCL) at NITC AFS and Shakurbasti Terminal for certification of export of 4082.43 KL of Aviation turbine fuel (ATF), we hereby certify that the export of 4082.43 KL ATF from the storage premises of BPC NITC, New Delhi to IOC customers (International Airlines) at NITC, New Delhi has suffered excise duty at IOCL, Koyali Refinery.

This certificate is issued based on verification of following documents:

1. IOC. Koyali Invoice No 90469106 dated 4.1.05 for dispatch of 2516.45, Invoice No 90470707 dated 5.1.05 for dispatch of 1565.98 KL ATF to IOC Shakurbasti Terminal.
2. Receipt & dispatch record of duty paid ATF maintained at IOC Shakurbasti Terminal during Jan 2005.
3. Invoices for duty paid ATF issued by IOC, Shakurbasti for BPCL, NITC along with Joint Certificate for Jan 05.
- 4 Supply record of duty paid ATF to International flights by IOC, NITC AFS from storage premises of BPCL, NITC AFS (a centralized storage premises for ATF at NITC AFS, New Delhi) along with ARE-1, shipping bills & Joint Certificate.

Accordingly based on the verification of above referred documents and explanation provided to us, we hereby certify that 4082.43 duty paid ATF dispatched by IOC, Koyali Refinery vide Excise Invoice 90469106, 90470707 dated 4.1.05, 5.1.05 has been received at IOC Shakurbasti and subsequently IOC Shakurbasti has supplied 4082.43 KL duty paid ATF to BPCL, NITC AFS and finally paid duty ATF 4082.43 KL was supplied by BPCL, NITC to IOC. NITC for export to International flights during Jan 05."

Thus from the above documents, it is proved that out of the bonded quantity of 8878 KL of ATF received at Shakurbasti IOC Shakurbasti had supplied 4082.43 KL duty paid ATF to BPCL,





*NITC AFS and finally the said duty paid ATF of 4082.43 KL was supplied by BPCL, NITC to IOC, NITC for export to International flights during Jan 05. The Appellants have also submitted a list of date wise supplies made to different flights showing the quantity supplied, flight No Aircraft No and Shipping bill No from 20.1.2005.*

- 7.3 From the above, it is evident that the quantity of 4081.500 KL on the basis of which the instant refund claim was filed was factually duty paid and duty thereon was paid at Gujarat Refinery. Subsequently, this quantity was stock transferred from Gujarat Refinery to Shakurbasti Terminal and during the further stock transfer to BPCL, it was erroneously shown as bonded quantity.
- 7.4 The above fact that the qty of 4081.500 KL for which the subject refund claim for duty has been filed was actually duty paid which has also been established by the Respondents by submitting detailed correlation statement, duly certified by independent Chartered Accountant. The Respondents have also furnished a Disclaimer Certificate from BPCL which also confirms the facts.
- 7.5 The Appellants have stated in the grounds of Appeal that the ARE1s were prepared by M/s. BPCL and not by M/s. IOCL. In this connection, the Respondents would like to submit that IOCL, NITC is the exporter of ATF to International flights as proved by the various documents produced. M/s. BPCL being Industry coordinator at NITC, Delhi, the shipping bills, bills of exports, ARE1s 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 BPCL's tankages, hydrant facilities.
- 7.6 The Appellants have stated at Para (vii) in the grounds of Appeal that in terms of the CBEC Circular No. 804/1/2005-CX dtd. 4.1.05, intermediate storage tanks are required to be used exclusively for storing export goods. Mixed handling of duty paid goods with non-duty paid goods is not permitted at such intermediate storage installations. The Appellants, relying on this circular has stated that at Shakurbasti Terminal, which is an intermediate storage location, the inter-mixing of the bonded goods with the duty paid goods was done and this circular was not followed. They have further concluded that due to such inter-mixing of the product in the storage tanks at Shakurbasti Terminal, the product correlation has not been established.



- 7.7 In this connection, they submit that the above circular was issued by the CBEC for providing relaxation / clarification in export warehousing procedure which was permitted for petroleum products in the context of withdrawal of warehousing facility vide Notification No 17/2004-CE(NT) dtd. 4.9.2004. The circular No 804/1/2005-CX dtd. 4.1.05 was issued in the context of export warehousing and is applicable in a situation where the goods are removed from Refinery by following export warehousing procedure, stored in an intermediate registered storage tank and thereafter, transferred to export warehouse for actual exports. Such movement is permitted in bond without duty payment. In the instant case, the goods have been removed from the Refinery on duty payment and not by following export warehousing procedure. Therefore, the references to non-compliance of this circular as appearing in the grounds of appeal are not relevant in the instant case. In fact, the subject refund claims have arisen due to export of the goods which were duty paid. Further, it is not correct on the part of Appellants to state that product correlation cannot be established. They have already furnished detailed correlation, duly certified by Chartered Accountant which establishes that the duty paid goods have been issued for supply to foreign going aircrafts. (Attached as EXH-"D").
- 7.8 The Appellants have also stated in the grounds of appeal that the product at IOCL was stored in the inter-mixed condition. As stated above, since the export warehousing procedure has not been followed and since the subject goods have not been removed from the refinery without duty payment, the procedure laid down by circular No. 804/1/2005-CX dtd. 4.1.2005 is not applicable in the present situation. Further, although the goods have been stored in inter-mixed condition, proper correlation has been established by them to prove that the duty paid goods have been exported.
- 7.9 The Appellants have stated in the grounds of appeal that goods were cleared under AR3As from IOCL Sabarmati Terminal to BPCL-NITC, They would like to submit that as clarified above, although the ATF supplied to BPCL NITC from Shakurbasti Terminal was duty paid, duty having been paid by Gujarat Refinery, the documents prepared for the dispatch of the product from Shakurbasti Terminal erroneously reflected the same as bonded and erroneously AR3A has been prepared. The Respondents would like to submit that preparation of AR3A by



itself does not mean that the product was non-duty paid when it is established with the product correlation and facts that the product was duty paid.

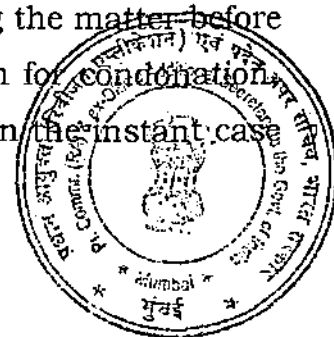
7.10 The Appellants have pointed out that BPCL is shown as manufacturer in the ARE 1s prepared by BPCL NITC. In this connection, they would like to clarify that BPCL is the Oil Industry Coordinator at NITC. The excise registration was only in the name of BPCL and all statutory returns are filed by BPCL. However, the product which is exported from NITC is largely the product manufactured by IOCL since BPCL NITC receives the product from Shakurbasti Terminal of IOCL.

In view of the above, the respondent, IOCL prayed that the department's Revision Application may be rejected with suitable Order for consequential relief.

7. A personal hearing in the case was attended by Shri Dushyant Kumar Tyagi, Assistant Commissioner, Division-I CGST, Vadodara-I Commissionerate on behalf of the applicant and reiterated the submissions made in the Revision Application and pleaded that Order in Appeal be set aside and Revision Application be allowed. Ms. Padmavati Patil, Ms. Manasi Patil, both Advocates, Shri Umesh Patel, Senior Finance Manager, Shri V.G. Gawade, Deputy General Manager (Finance) and Shri Rahul Mali, Accounts Officer appeared on behalf of the respondent and reiterated the Order of Commissioner (Appeals) and documents filed to support the Order and pleaded that instant revision application be dismissed and Order in Appeal be upheld.

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

9. On perusal of records, Government observes that there was delay of 1 year 2 Months & 18 days in filing the present Revision Application (this period of delay includes the no. of days taken for pursuing the matter before CESTAT) by the applicant, and they have filed application for condonation. The applicant in the said application has submitted that in the instant case



Order in Appeal dated 09.06.2011 was received in the Commissionerate on 10.06.2011 and hence Revision Application was required to be filed on or before 09.09.2011; that the Revision Application in this case was filed on 17.08.2012 and thus there was delay of 11 months and 8 days; that the said delay in filing the Revision Application has occurred due to inadvertently filing appeal before CESTAT Ahmedabad considering the claim filed by IOCL as a refund claim; that Hon'ble CESTAT vide Order No. A/1040/WZB/AHD/12 and S/ 1345/ WZB/AHD/2012 dated 05.07.2012 dismissed the appeal of the applicant as non maintainable; that the said CESTAT Order was received by the applicant on 30.07.2012 and the instant Revision Application was filed immediately on 17.08.2012.

10. Government observes that the impugned order-in-appeal was communicated to applicants on 10.06.2011. Against the said order-in-appeal the applicant filed appeal before Hon'ble CESTAT on 5.9.2011 which was not the proper forum for such appeal. The Hon'ble Tribunal vide their Final Order Order No. A/1040/WZB/AHD/12 and S/ 1345/ WZB/ AHD / 2012 dated 05.07.2012 dismissed the appeal as non-maintainable in terms of provisions of Section 35B of the Central Excise Act, 1944. Subsequently, the applicants have filed this revision application which was received in this office on 28.08.2012. The matter has to be examined as to whether revision application is filed within statutory time limit. For understanding the relevant legal provisions, the relevant Section 35EE of Central Excise Act, 1944 is reproduced below :

**“Section 35EE. Revision by Central Government. -** (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :

.....  
.....



(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

**Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

11. Government notes that in judgment dated 25-4-2012 Hon'ble Bombay High Court in case of UOI (Revisionary Authority) v. M/s. EPCOS India Pvt. Ltd. & Anr. - [2013 (290) E.L.T. 364 (Bom.)] has held that the period spent in prosecuting the proceedings bonafidely before the CESTAT, which had no jurisdiction, have to be excluded by giving the benefit of the provision of Section 14 of Limitation Act, 1963 while reckoning the time limit for filing revision application.

12. In the instant case, the applicants have sought the condonation of delay as they have wrongly filed appeal before Hon'ble CESTAT bonafidely and thereby prevented by sufficient cause. The order-in-appeal was received by the applicant on 10.06.2011 and they have filed appeal before CESTAT on 05.09.2011.. The CESTAT order was received by the applicant on 30.07.2012 and they filed revision application on 17.08.2012 which was received in this office on 28.08.2012.

(a) Total time : 10.06.2011 to : 1 year 2  
 taken for filing 28.08.2012 Months & 18  
 the revision days  
 application

(b) Time taken for : 05.09.2011 to : 10 months 25  
 pursuing 30.07.2012 days  
 Appeal before  
 CESTAT

13. Since the revision application is filed within extended condonable period of three months, (excluding the period spent before Hon'ble CESTAT), Government condones the delay of 26 days in exercise of powers vested in



under Section 35EE of Central Excise Act, 1944. 2014 (314) E.L.T. 833 (G.O.I.)

14. On perusal of records, Government observes that the original adjudicating authority has rejected the rebate claim on the following grounds:-

- 1) Duty paying invoices issued by IOCL, Shakurbasti, New Delhi to M/s. BPCL and invoices issued by BPCL to international Airports has not been produced by them.
- 2) No documentary evidence showing element of duty of excise has not been passed on/recovered from M/s.BPCL has been produced.
- 3) Exports were made by M/s.BPCL and no disclaimer certificate has been produced by them.
- 4) The jurisdictional range officer (JRO) reported that during January 2005, BPCL received only 672.360 KL of duty paid ATF from IOCL, whereas the claim is for 4081.560 KL of duty paid ATF

15. On appeal filed by the respondent, Commissioner (Appeals), vide Order-in-Appeal No. Commr. (A) 231/VDR-(/2011 dtd.9.6.2011 allowed the appeal on the following grounds that

i) it is an undisputed fact that duty has been paid by the Respondent's Koyali refinery on ATF supplied to their Shakurbasti terminal vide their invoices No.90469106 dtd.4.1.2005 & invoice No.90470707 dtd.5.1.2005;

ii) in the ER-1 copy submitted by the Shakurbasti Terminal, it is seen that under the column "quantity manufactured / receipt" 8162.270 is shown, along with a foot note that the received quantity was as Export Warehouse for further supply to foreign going aircrafts through BPCL, NITC, PALAM, DELHI. The above documents prove the receipt of the material at Shakurbasti Terminal.

iii) the respondent submitted copies of invoices issued from Shakurbasti terminal to BPCL along with co-relation statement showing movement of goods from Koyali refinery to Shakurbasti terminal, then supplies to foreign going aircraft;



iv) in the invoices issued by Shakurbasti Terminal in favour of BPCL, the sales order number is mentioned along with the specific remark "DUTY PAID IOC-BPCNIL RATE , which clearly shows that duty paid stock was received by BPCL at Nil rate of duty;

v) the co-relation statement submitted by the respondent clearly shows that the goods dispatched has been verified and tallied with invoice number, date of delivery reference number, which also evidences that the goods have been duly re-warehoused as per the acknowledgment of BPC, NITC;

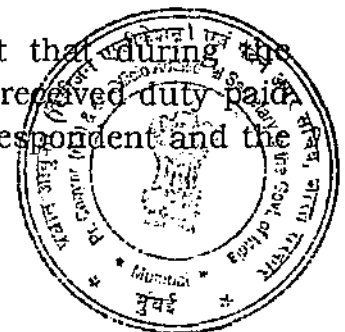
vi) the respondent also submitted joint certificates dated 25.03.2005 between Shakurbasti Terminal and BPCL, NITC for dispatches as well as receipt of the ATF at BPCL and joint certificate dated 28.3.2005 between BPCL, NITC and the respondent, NITC for dispatches and receipt of ATF at airport;

vii) the Adjudicating Authority should have actually considered the bonded quantity of 8878 KL, as the duty in this case has been paid at the initial stage by the Respondents at Koyali refinery at Vadodara, for which they have filed the refund claim, however, instead, the Adjudicating Authority has considered the quantity of 672.36 KL which was supplied as duty paid to BPCL, for which IOC has not filed any refund claim;

viii) the Respondents had also submitted a certificate from Chartered Accountant certifying the fact that export of 4082.43 KL of ATF from the storage premises of BPCL, NITC to the Respondents' customers i.e. International Airlines, has suffered excise duty at the Respondent's end i.e. Koyali Refinery. The said certificate was based on verification of various documents;

ix) based on the documents submitted by the respondent, it is proved that out of the bonded quantity of 8878 KL of ATF received at Shakurbasti Terminal, and the said Shakurbasti terminal supplied 4082.43 KL of duty paid ATF to BPCL, NITC AFS which in turn was finally supplied by BPCL, NITC to the respondent, NITC for export to International flights during the month of January, 2005 i.e during the period 20.01.2005 to 26.01.2005;

x) disclaimer certificate from BPCL to the effect that during the months of January and February, 2005, they had received duty paid ATF as bonded from Shakurbasti terminal of the respondent and the



same has been delivered as bonded to the respondent at NITC for supply to International Aircrafts, and that, no refund claim has been lodged by BPCL for the said supplies was also submitted;

xi) reliance was also placed on the judgments in the respondent's own case as reported in 2006 (197) ELT 435 (G.O.) and 2008 (229) ELT 1000 (Tri).

xii) based on Certificate of Chartered Accountants, flight wise listing of supplies, commercial invoices issued in favour of airlines, joint certificates etc., submitted by the respondent proves the movement of goods from the Respondent Koyali refinery upto their onwards exports;

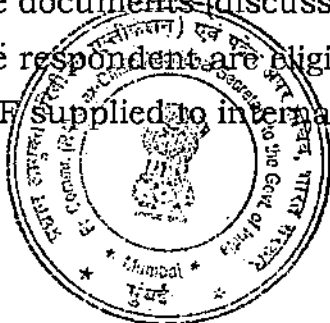
xiii) the basic eligibility for claiming rebate claim is exportation of duty paid goods which is satisfied in the present case:

xiv) Procedural deficiencies can be condoned based on the judgments on the issue.

16. Being aggrieved by the impugned Order-in-Appeal, the applicant department have filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the grounds mentioned at para 6 Supra.

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.

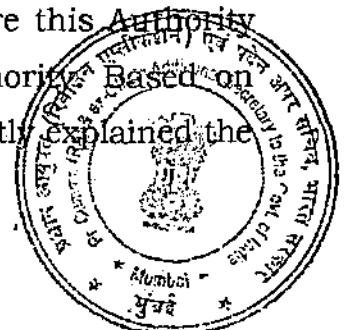




19. The department in its grounds of appeal has observed that the ARE1s were prepared by BPCL and not by IOCL. In this connection, Government observes that the respondent have clarified that IOCL, NITC is the exporter of ATF to International flights as proved by the various documents produced; BPCL being 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

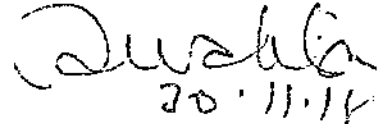


clearance of duty paid goods under Central Excise invoices as well as other records and Chartered Accountant's certificate. The duty paid nature of the ATF supplied to international flights has been substantiated and hence the Commissioner (Appeals) has rightly allowed the appeal filed by the applicant 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-I/2011 dated 09/10.06.2011 is therefore upheld.

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

24. So, ordered.

  
20.11.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 407 /2018-CX (WZ)/ASRA/Mumbai DATED 30.11.2018.

To,  
Commissioner of Goods and Service Tax, Vadodara-I,  
GST Bhavan, Race Course Circle,  
Vadodara-390 007

Copy to:

1. M/s Indian Oil Corporation Limited, Gujarat Refinery, P.O. Jawahar Nagar, Dist Vadodara, Gujarat -391320 .
2. The Commissioner, Goods and Service Tax, (Appeals) Central Excise Bldg, 1<sup>st</sup> Floor Annexe, Race Course Circle, Vadodara -390 007.
3. The Deputy / Assistant Commissioner Division-I, Goods and Service Tax, Vadodara-I Central Excise Bldg, 5<sup>th</sup> Floor, Race Course Circle, Vadodara -390 007.



**ATTESTED**

  
21/12/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

4. CEN-EX Services, Advocates & Consultants, Post Office Building, 2<sup>nd</sup> Floor, J.B. Nagar, Andheri Kurla Road, Andheri (East), Mumbai 400 059
5. Sr. P.S. to AS (RA), Mumbai
- ✓ 6. Guard file
7. Spare Copy.

Recd original copy of order no 407/2018 - CX  
on 12/12/18 by RAHUL MALOO, ACCOUNTS OFFICER,  
WESTERN REGION, CONTACT - 8460771461

Rahul Maloo

