

F NO. 195/715/13-RA
F.NO. 195/716/13-RA
F.No. 195/717/13-RA
F NO. 195/40/14-RA

REGISTERED POST
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. 195/715/13-RA

F NO. 195/716/13-RA

F NO. 195/717/13-RA

F NO. 195/40/14-RA / 2429

Date of Issue: 20/12/2018

ORDER NO. 423-426/2018-CX (S/Z) /ASRA/MUMBAI DATED 30.11.2018 OF THE 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 CENTRAL EXCISE ACT, 1944.

Applicants : Hindustan Petroleum Corporation Ltd., Visakh Refinery.

Respondents : Commissioner of Central Excise, Vishhapatnam-I.

Subject : Four Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal Nos. 20/2013 (V-I)CE dt 01.04.2013, 22/2013 (V-I)CE dt 01.04.2013, 23/2013 (V-I)CE dt 01.04.2013 and 44/2013 (V-I)CE dt 11.11.2013 all passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Vishapatnam.

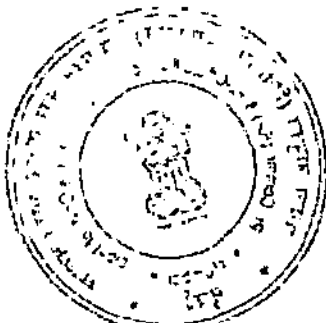


ORDER

These four Revision Applications have been filed by Hindustan Petroleum Corporation Ltd., Viskha Refinery, Viskhapatnam (hereinafter referred to as the "the applicant") against the Orders-in-Appeal No. 20/2013(V-I)CE dated 01.04.2013, 22/2013(V-I)CE dated 01.04.2013, 23/2013(V-I)CE dated 01.04.2013 and 44/2013 (V-I)CE dated 11.11.2013 all passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Vishapatnam.

Sl. No.	RA No	O-in-A No. & date	O-in-O No. & date	Confirmed Amount (Rs)	SCN No. & date
1	F NO. 195/715/13-RA	20/2013 (V-I)CE dated 01.04.2013	46/2011 dt. 27.12.2011	Duty 44,793 +interest+ penalty 4,000/-	C.No. V/15/16/2011-Adj dt. 6.4.11
2	F NO. 195/716/13	22/2013 (V-I)CE dated 01.04.2013	03/2012 dt. 29.01.2012	duty 23,182	C.No. V/15/16/2010-Adj dt. 23.4.10
3	F NO. 195/717/13	23/2013 (V-I)CE dated 01.04.2013	02/2012 dated 29.01.2012	Duty 1,76,160	C.No. V/15/70/2009-Adj dt. 5.11.10
4	F NO. 195/40/14-RA	44/2013 (V-I)CE dated 11.11.2013	VIZ-CEX-001-ADC-085-12 dt 06.06.2012	Duty 36,04,870	C.No. V/15/30/2012-Adj dt 23.02.12

2. Briefly, the Applicant is a Public Sector Undertaking engaged in the business of refining of Crude Petroleum and marketing various finished petroleum products falling under Chapter 27 of the Central Excise Tariff, 1985. They have a refinery in Vishkapatnam and are clearing the goods through pipeline as well as through coastal shipments to various destination on payment of duty. The Applicant was issued Show Cause Notices wherein it was alleged that they had not preferred request for condonation with the proper officer and that they could



not account for losses properly and hence the duty on the losses during the relevant was demanded on the storage loss on the products of Naphtha, ATF, Bitumen & JBO. The Assistant Commissioner of Central Excise, Division-II, Visakhapatnam adjudicated the Show Cause Notices wherein he confirmed the duty demanded along with interest being the duty attributable to the storage losses under Section 11A of the Central Excise Act, 1944 and imposed penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Act. Aggrieved, the Applicant then filed appeals with the Commissioner(Appeals), who vide Orders-in-Appeals modified the impugned Orders-in-Original to the extent that he set aside the penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Act and upheld the confirmed duty along with interest.

3. The Applicant then filed Revision Applications before the Government of India on the following grounds:

- 3.1 The Orders passed by the Appellate Authority to the extent it confirmed the duty and interest demands is erroneous, unjustified.
- 3.2 As per the Board's Circular F.No. 26/23/CXM/54 dated 1.6.1956 and F.No. 9/17/57-CX-II dated 2.3.1956, the procedure for computation of loss in refineries including pipeline transfer has been clearly laid down.

"Losses in storage, pipeline deliveries and transit losses during in-bond removals by other than pipeline removals are generally attributable as due to natural causes such as evaporation etc., as also due to variations in temperature, density etc and unavoidable human errors. Such losses are condonable on merits subject to the percentage prescribed from time to time and excess losses are charged to duty unless any particular case, prima facie, merits condonation of loss in excess of the guiding percentages.

A cumulative loss allowance loss in -

- (i) *storage of end products such as Motor Spirit, Kerosene, etc in the tanks at the refinery premises;*

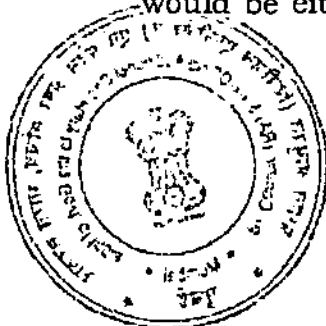


- (ii) *handling of products for deliveries by tank wagons or tank trucks or in any other manner for consumption outside refinery premises; and*
- (iii) *deliveries by pipe line from the refinery tanks to the local marketing installations:*

may be granted to the extent of actual loss subject to a maximum ceiling of 0.5% for Motor Spirit, Kerosene, Refined Diesel Oil and Light Diesel Oil falling respectively under T.I. Nos. 6,7,8 and 9 and 0.25% for Furance Oil falling under T.I. 10. This should be calculated and adjusted on a monthly basis and gain if any, in any month should not be allowed to be set off against loss in subsequent month."

3.3 Despite their submissions made during the course of personal hearing, the Appellate Authority had ignored the submissions and confirmed the demand and has erred in not condoning the losses in respect of Naphtha, ATF, Bitumen & JBO. It was not correct to state that there is no such allowance for the products Naphtha, PB & JBO. The Board Circular F.No.261/6/28/80-CX.8 dt.19.10.1981 allowing 1% condonation of loss covers all petroleum products. There is no allegation in either the SCN or in impugned Order in Original or OIA that the products are not petroleum products.

3.4 The Department had incorrectly not allowed any permissible loss quantity in respect of Naphtha, ATF, Bitumen and JBO. The losses due to storage and transfer through pipelines to local Marketing installations within 50 kms are nothing but dormant storage losses in the Storage tanks primarily due to temperature and density variations, normal operations variations etc. These loss/gains are observed during tank operations on day to day basis. For e.g., Storage Tank dip reading as of close of day one is 10 cm. Subsequently, if the tank has not been in operation for 3 to 4 days and a dip reading taken for -measuring the quantities of the tank after day four, the quantity would be either less than or more than 10 cm. This difference in dip



reading taken at different. points of time even though the tank is not in operation results in loss/gain of product which is attributable to normal losses due to temperature variations, operation variations etc. Such losses are not abnormal losses and hence fall within the purview of the condonable loss limits allowed as per Board Circular F.No.26/23/CXM/54 dated 1.6.56 and F.No.9/17/57-CX-II dt.2.3.1959. Such loss/gain variations also occur during despatch of product i.e. when the dip reading are taken immediately prior to despatch of the product of the particular tank and such dip reading when compared with the dip reading last taken prior to such dip reading before is taken there will always be some variation between the two dip readings. As such, the Applicant prayed for condonation of loss in respect of Naphtha, ATF, Bitumen & JBO

- 3.5 The entire loss qualifies for remission of duty on the product. The losses sustained by the them is very peculiar to the petroleum products and is due to cumulative effects of various factors like temperature, tank behaviour, tank dormancy, recording of improper gauging, and human errors etc., and all these factors have been duly considered by the Board who thereby given Circulars No.F.No.261/6/28/80-CX-8 dt.19.10.1981 that

"for condonation of losses upto the limit of 1%, the authorities need not enter into detailed scrutiny to verify the bonafide of the reported losses".

If the condonation of loss is calculated as per above Board Circular the demand would not survive. They submitted The worksheet wherein it can be seen that for all the products Naphtha, ATF & Bitumen the % of condonation is less than 0.5%. and in excess of the 1% in case of JBO (there is a marginal loss)

- 3.6 The following Orders-in-Appeal passed by the Hon'ble Commissioner (Appeals) Visakhapatnam

- (i) OIA No.37/2009(V-1)CE dated 27.2.2009,
- (ii) OIA No.35/2009(V-I)CE dated 27.2.2009 &



(iii) OIA No.63/2009 (V-1) CE dt.27.04.09

wherein it are clearly held the following:

- a) *Condonation for storage losses on Naphtha is available - The factual position that Naphtha falls under T.I.No.6 in line with the Petroleum Manual has been accepted.*
- b) *Condonation for storage losses of JBO, Bitumen ATF & PB is available*
- c) *Board Circular F.No.261/6/28/80/CX-8 dt.19.10.2081 covers all the petroleum products as per which the condonation of losses (both storage and processing losses) upto 1% is available for all petroleum products. "*

Even though, the subject Appellate Orders were brought to the attention of the Department during the personal hearing and their being binding in nature they were over looked.

3.7 Even demands for losses beyond condonable limits can be raised only after reasons are fully given for disallowing of the losses beyond condonable limits. In this they relied on few case law. In similar instances in the past, transit loss was condoned upto 8% by the Appellate authority vide Order in Appeal No.28/93 (V) CE dt.16.4.1993. They have already suffered loss on the value of the product and charging the excise duty on the lost product is additional burden to them. Therefore, they Appellants prayed that the loss, if any, in excess of the 1% (there is a marginal loss in excess of only JBO) in the impugned demand may kindly be condoned.

3.8 The Department had confirmed the duty demand on the product Naphtha, ATF, Bitumen & JBO on the ground that no condonation has been prescribed vide Para 69 of the Petroleum Product Manual prescribed by the Board Circulars F.No.26/23/CXM/54 dt.1.6.1956 and F.No.9/17/57-CX.II dt.2.3.1959. Further, in Para 8 of the impugned Order-in-Original, the lower authority had referred to the Order passed by the Revisionary Authority vide Order No.496/2011-CX dt.19.5.2011 to disallow the condonation of loss upto 1%. The



Adjudicating authority has also recorded that the above Revisionary Order pertains to "same assessee for the earlier period". Even though, this point was argued before the Appellate Authority and he has recorded the same in the impugned Order-in-Appeal, he has not considered this point. Thus, the basis on which the impugned Order-in-Original was passed itself is incorrect and consequential benefit is to be granted to the Applicants.

3.9 All the recordings made by the Adjudicating authority are factually incorrect for the following reasons:

- (i) From the Revision Order No.496/2011-CX it can be seen that it is not pertaining to Visakh Refinery and it pertains to Visakha Terminal (different assessee). The Department is fully aware that Visakh Refinery and Visakha Terminal are having different Excise registrations and both of them cannot be treated as the same assessee.
- (ii) Further, on a perusal of the said Order, it can be seen that in the subject Revision application, the issue of condonation of storage losses on the product Naphtha was not at all an issue and neither HPCL, Visakha Terminal nor the Excise Department made an issue on the said subject. In this regard, the Applicants refer to the recordings made in Para 3 & 9 where it is clearly recorded that product Naphtha was not involved.
- (iii) From Para 8 of the said Order, it can also be seen that the Revisionary Authority allowed the Revision application by reversing the Order passed by the Appellate authority (where Appellate authority allowed the condonation of loss upto 1%) on the ground that HPCL, Visakha Terminal failed to make any justified case based on specific reason for condonation of losses in excess of prescribed limits whereas in the current case the issue is regarding non

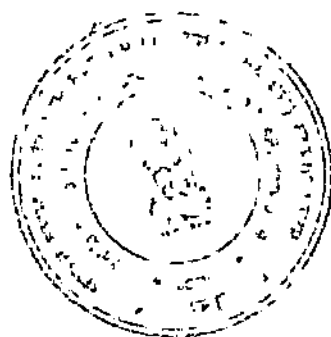


allowance of condonation of any losses for the product Naphtha, ATF, Bitumen & JBO. Thus, even otherwise the Applicants' current matter is distinguishable from the subject Revision Order.

- (iv) The Applicants have also quoted the Order of jurisdictional Addl. Commissioner of Central Excise and various Appellate Orders in their own case where condonation on the above products have been regularly allowed and these Orders are directly involving the Applicants and the Department having not filed any Appeal against the above Orders, the same are binding on the Department.
- (v) They have also proved by means of worksheet that the losses for which they have claimed condonation is within the limit of 0.5%.
- (vi) In the impugned Orders-in-Appeal where the Appellate Authority quoted from the Order No.533/2012-CX, dt.3.5.2012 in F.No.198/415/2010-RA, reported in [2012 (285) ELT 307 (G.O.I)] as under:

"The Circular, dated 1-6-1956 and 2-3-1959 are case specific Circulars while the said Circular, dated 19-10-1981 nowhere mention about its applicability on pipeline deliveries and transit losses during in bond removal but simply indicates storage and processing losses. "

Thus, even in the past, it has been accepted that 19.10.1981 Circular covers the storage loss. While on the one hand recording the subject factual position and on the other hand, the benefit is not being extended to grant the condonation of storage losses claimed by the Applicants thereby leading to the confirmation of subject demand which is contradictory.



For the above reasons, the entire demand confirmed by the impugned Order is liable to be dropped.

3.10. The losses are within condonable limits and entirely due to natural causes. Also there is no allegation of theft, pilferage, clandestine removal etc. As the losses are condonable in full, the provisions of Section 11AB will not apply.

3.11 They prayed that the impugned Orders-in-Appeal be set aside and their Revision Applications be allowed.

4. A personal hearing in the case was held which was attended which was attended by Ms P Vedavalli, Deputy General Manger(Finance) and Shri Manish Jhakotia, Manager(Finance) attended on behalf of the Applicant and Shri B Ajay Kumar, Assistant Commissioner, CGST, Vishakhapatnam Central attended on behalf of the Department. The Applicant reiterated the submission filed in the 04 Revision Applications. It was pleaded that the impugned Orders-in-Appeal be set aside and the instant 04 Revision Applications be allowed. The Department submitted para-wise comments on the Revision Applications.

5. Department submitted their comments which are given below:

5.1 In respect of the products Naphtha, ATF, Bitumen & JBO asking for the condonation of the storage losses at the rate of 1% as per the Board's Circular F.No. 261/6/28/80-CX.8 dated 19.10.1981 is not correct, since when there are specific Circulars for condonation of storage losses for a particular commodity, reliance on the general circular is not acceptable.

5.2 In the Circular dated 19.10.1981, nowhere it is mentioned about its applicability on pipeline deliveries and transit losses during in-bond removal rather it simply specifies that nature of such losses should be storage.



- 5.3 The Appellate Authority while passing the impugned Order-in-Appeal has relied on a Revision Order no. 533/2012-CX dated 03.05.2012 in which the Revisionary Authority has opined that

"Government observes that as per the Petroleum Manual the Board has specifically prescribed cumulative loss allowance of 0.5% for motor spirit, kerosene, refined oil and 0.25% of furnace oil and 0.5% for LSHS which is the maximum condonable limit. Government also observes that Circular No.663/54/2002-CX wherein at para 2 thereof it is clearly laid down that the limit stipulated for condonation of the losses in respect of petroleum product is the maximum limit to which the losses can be condoned. The Circular dated 01.06.1956 and 02.03.1959 are specific circulars while the said circular dated 19.10.1981 nowhere mention about its applicability on pipeline deliveries and transit losses during in bond removal but simply indicates storage and processing losses. The Commissioner(Appeals) without going into the merit of case allowed losses upto 1%. Government notes that the original adjudicating authority has observed that M/s HPCL was not maintaining proper accounts of such losses properly, which shows that there was negligence on the part of the respondents. Further they also failed to make any justifiable case based on specific reasons for condonation of losses in excess to the specifically prescribed limit. Hence, the losses exceeding prescribed limits cannot be condoned in normal course. The same view has already been taken by the Government in the revision order No.976/06, dated 24.11.2006 and 496/2011-CX dated 19.5.2011 in the applicant's own case".

The facts of the present case are also very much similar to said case .

- 5.4 The Appellants claim that they have already suffered losses on the value of the product. However, these losses are arrived at after setting them off with the gains on monthly basis as given under Para 69 of Petroleum commodity manual. Hence these losses are beyond prescribed limits as given under Para 69 and 74 of Petroleum commodity manual and do not merit condonation.



5.5 The Appellate Authority has taken cognizance of the facts in the case of the Revision Order 496/2011 dated 19.05.2011(relied upon by the Appellant) which dealt with an issue completely different (ie. non-maintenance of proper leading to pilferage etc.) and remarked that admissibility of condonation Naphtha/ Bitumen/JBO losses was not covered in the scope of that Revision Order. Further the Appellate Authority has relied on RA Order No. 533/2012-CX and rightly confirmed the demand, which supercedes all the Orders in appeal/case laws quoted by the Appellant.

5.6 The Appellant stated that, while passing the Order-in-Original the authority has referred to the Revisionary Authority vide Order No. 496/2011-CX 19-05-2011 to disallow the condonation of loss upto 1% and also recorded that the Revisionary Order pertains to "same assessee for the earlier period" where as the Appellant contended that both are different assessees. However, significant issue here is not the registration of the assessee whether it is M/s. HPCL Refinery or M/s HPCL, Visakha Terminal but the significant factor is condonation of losses for petroleum products. Moreover, M/s. HPCL Visakha Refinery is only registrant of Central Excise Department as on date and its notified area includes the Visakha Terminal premises.

5.7 Prayed that the Revision Applications may be dismissed.

6. 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.

7. On perusal of records, Government observes that the Applicants are a Government of India Undertaking engaged in the business of refining of crude and marketing various petroleum products thereof. They have an installation "Vishaka Refinery" at Visakhapatnam, where they clear the goods through pipeline as well as through coastal shipments to various destination on payment of duty. The Applicant was issued Show Cause Notices wherein it was alleged that they had



not preferred request for condonation with the proper officer and that they could not account for losses properly and hence the duty on the losses during the relevant was demanded on the storage loss on the products of Naphtha, ATF, Bitumen & JBO.

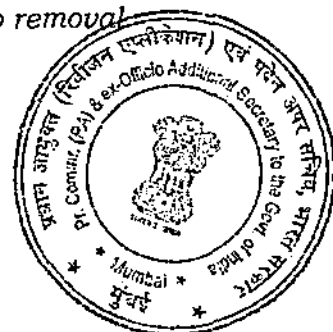
8. Government observes that the Applicant in continuation of the monthly return in ER-1s, have been submitting loss/gain arisen during the relevant months for storage of products and allied refinery operation in letters addressed to the Asstt. Commissioner of Central Excise, Division-II, Vishakhapatnam. Specimen of one of the month's Applicant's letter No. FIN:AK:EXC dated 08.10.2010 is as given below:

"Sub : Storage loss/gain for the month of September 2010

We have submitted monthly return in ER-1 format for the month of September 2010 on October 08th. In continuation of the return of the return so filed we are now submitting loss/gain arisen during the month of September 2010 for storage of products and allied refinery operations.

*We request you to consider the statement enclosed in respect of cumulative loss/gain in handling, storage of the products as part and parcel of the ER-1 for the month of October, 2010. **We request you to kindly condone such losses in full** as indicated in the attached statement as per Board's letter F.No.26/23/CXM/54 dt.1.6.1956 and F.No.9/17/57-CX.II dt.2.3.1959, F.No. 8/7/57-CX.III dated 27.03.1957, F.No. 8/17/62-CX.III and 636/27/2002-CX dt. 22.04.02, 663/64/2002-CX dt. 23.9.2002 and Board Circular No. 261/6/28/80-CX.8 dt. 19.10.81, wherein storage losses upto 1% has been allowed for the refinery operation in line with Para No. 69 & 70 of the Petroleum Commodity Manual.*

We also request you to condone such losses in line with decision taken by the Division Bench of Delhi, High Court in the case of Caltex Oil Refinery India Limited Vs Union of India - 1997 (4) ELT J581 (Del.) wherein it has been held that disappearance of a product by natural cause does not amount to removal



hence no duty liability arises. It has been amply cleared by Allahabad High Court in the case of Cement Corporation Ltd – 1996 (86) ELT 6 that the word 'Natural cause' encompasses all the losses incurred in the normal course of handling transport etc. The losses as indicated in the statement have arisen out of natural cause during the month of October 2010. Please also note that in similar instances of losses in the past, losses were condoned upto 8% by the Appellate authority vide Order in Appeal No. 28/93 (V) CE dt 16.04.93.

Considering the huge volumetric nature of operation at our refinery these losses are negligible in nature and have occurred during the normal production/operation activities and are not due to any unauthorized withdrawal, theft, pilferage etc. If the condonable limits are allowed in line with Board Circular No. 261/6/20/80-CX.8 dt. 19.10.81 there is no a single case where losses beyond condonable limits warrants any payment of duty."

The Government notes that every month, the applicants had filed for condonation on transit loss in case of Naphtha, ATF, Bitumen & JBO as these being in form of storage losses.

9. Government observes that the department had confirmed the duty demand on the product Naphtha, ATF, Bitumen & JBO on the ground that no condonation has been prescribed vide Para 69 of the Petroleum Product Manual prescribed by the Board Circular F.No.26/23/CXM/54 dt.1.6.1956 and F.No.9/17/57-CX.II dt.2.3.1959. The Original Adjudicating Authorities passed the impugned orders based on the Government Order No. 496/2011-CX dated 19.05.2011 and Order No. 533/12-CX dated 03.05.2012 (in F.No. 198/415/10-RA) in the case of the Applicant, wherein allowance was not extended to Naptha. Government notes that against the Government Revision Order No. 533/12-CX dated 03.05.2012 the Applicants have filed an appeal Writ Petition No. 34377 of 2012 with the Hon'ble Andhra Pradesh High Court, who vide its Order dated 05.11.2012 has granted them interim stay.



10. Government observes that in the Applicant's similar case Vs Union of India & Ors, the Hon'ble Bombay High Court in Writ Petition No 1497 of 2011 vide order dated 10.11.2012 –

"5. Petroleum products being volatile, transit loss from the place of loading to the place of discharge is allowed to the extent permitted under the notification issued from time to time.

6. In the present case we are concerned with transportation of Naphta 15C through Coastal Tanker MT JAG PRABHAT from Mumbai to Vasco, Mangalore and Tuticorin in the month of April-Mar 1997.....

7.

8.

9.**It is not in dispute that the transit loss in case of naphta is permitted to the extent of 1% and transit loss amounting to 106.449 KL out of 25520.222KL of naphta constitutes transit loss which is less than 1%.**

10. As per circular No.56 of 1989 dated 15.12.1989 the storage loss and handling loss should be taken up for condonation on accumulative basis month wise as per the guidelines dated 1.6.1956 and 2.3.1959. If one calculates the loss/gain month wise, then out of 12112.013 KL of naphta loaded on 4.4.1997, the quantity discharged by 17.5.1997 at three places namely Vasco, Mangalore and Tuticorin, being 12061.512 KL the storate loss comes to 50.501 KL which is less than 1% condonable as per circular No. 55/89. Similarly, 13418.209 KL of naphta loaded on 29.4.1997, 13362.261 KL naphta has been unloaded by 14.5.1997 at three places thereby resulting in the transit loss amounting to 55.948 KL which again is less than 1%, and hence within the permissible limits. Thus, view from any angle, it is seen that the transit loss is less than 1%.

11. All the authorities below committed error in holding that if a part of the quantity liable to be discharged at Mangalore is discharged at Vasco then there would be transit loss at Mangalore and transit grain at Vasco. As noted earlier, transit loss can be computed only after the entire quantity is discharged and with reference to the total discharge at each of the destination. In the present case, the



difference between the quantity loaded and the quantity unloaded at all the three places taken together results into the transit loss amounting to 106.449 KL which is within the permissible limits. **In view of the matter the decision of the authorities held that the decision of the authorities below in holding that there is transit loss/transit grain and that the transit loss exceeds 1% and therefore the assessee is liable to pay duty with interest cannot be sustained.**

12. In the result, the orders passed by the authorities below are quashed and set aside and the respondents are directed to refund to the petitioner the amount of duty with interest collected from the petitioner within a period of six weeks from today. Rule is made absolute in above terms with no order as to costs."

11. Government notes the Board Circular F.No.261/6/28/80/CX-8 dt.19.10.1981

"Subject : Storage Losses-Condonation of - Regarding

As assessee has to properly account for any storage or processing loss to the satisfaction of the proper office, before duty thereon is remitted, because every storage loss or deficiency found in stock cannot always be attributed to natural or permissible causes, like evaporation or pilferage losses.

*What should be the percentage of the storage & processing losses, depends upon the facts and circumstances of each individual case. **However in relation to goods where evaporation or pilferage can take place CBE & C has prescribed 1% as a standard permissible loss (Para 4 CBE & C Bulletin for the period January - March 1965) Vol.XI Page No.55).***

For condonation of loss upto the limit of 1% the authorities need not enter into detailed scrutiny to verify the bonafide of the reported loss. However, when a claim for the condonation of loss above 1% is made the officers concerned have to very close scrutinize the case and satisfy themselves that the claim is genuine. Technical advice may also be sought.

When the remission of duty on storage or other losses claimed by the assessee does not appear to be genuine, the Department has to issue a Show Cause Notice before rejecting the claim."

12. Government notes that the petroleum products by their very nature are volatile and losses occur in storage as well as while handling. The percentage



whatever may be admissible loss is only a guiding factory. Even Board in their Circular supra have clarified that when the remission of duty one storage or other losses claimed by the assessee exceeds 1%, the department has to closely scrutinize the case and satisfy themselves that the claim is genuine. In the present case, Applicant is a Government of India Undertaking and while submitting their relevant monthly ER 1s, they have also submitted storage loss statements and requested for condonation of storage losses in full. There is no dispute that the losses are only on account of natural causes, and the alleged storage loss is genuine in nature even though it is more than 0.5% or 1% as the case may be. Again, they have no case that products were removed clandestinely Further, the operational losses incurred having disclosed in their relevant ER-1s, the department ought to have conducted periodical verification and satisfied themselves before raising a demand. This apart, all the Show Cause Notices shows that they were issued based upon the Cumulative loss/gain statements and ER-1s submitted/filed by the Applicant for the relevant periods.

13. In view of the above, Government holds that Board Circular F.No.261/6/28/80/CX-8 dt.19.10.1981 covers all the petroleum products as per which the condonation of losses (both storage and processing losses) upto 1% are available for all petroleum products and since the said Circular dated 19.10.1981 succeeds 1965 Circulars, the latest Circular of 1981 is applicable in the present case. Further, Government also rely on the above Hon'ble Bombay High Court order supra.

14. Government finds in the present case, there is no dispute that the losses are only on account of natural causes and the alleged storage loss is genuine in nature even though it is more than 0.5% or 1% as the case may be. Hence Government hereby allows the condonation on transit loss in case of products Naphtha, ATF & Bitumen & JBO to the extent of 1%, as these being in form of storage losses loss and the Board Circular No. 261/6/28/80-CX.8 dated. 19.10.1981 is applicable.



F NO. 195/715/13-RA
F NO. 195/716/13-RA
F.No. 195/717/13-RA
F NO. 195/40/14-RA

15. In view of the above, Government sets aside all the impugned Orders-in-Appeal Nos. 20/2013(V-I)CE dated 01.04.2013, 22/2013(V-I)CE dated 01.04.2013, 23/2013(V-I)CE dated 01.04.2013 and 44/2013 (V-I)CE dated 11.11.2013 all passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Vishapatnam. and all the Orders-in-Original Nos 46/2011 dated 27.12.2011, 03/2012 dated 29.01.2012, 02/2012 dated 29.01.2012, and VIZ-CEX-001-ADC-085-12 dated 06.06.2012.

16. The four Revision Applications are allowed in terms of above.

17. So, ordered.

(Signature)
20.11.18

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

ORDER No 433-426/2018-CX (SZ) /ASRA/Mumbai DATED 30.11.2018

To,
M/s Hindustan Petroleum Corporation Ltd.,
Visakh Refinery,
Finance Department,
Malkapuram, Vishakhapatnam,
Andhra Pradesh - 530 011.

Copy to:

1. The Commissioner of Central Excise, Customs & Service Tax, Vishkhapatnam-I.
2. The Commissioner of Central Excise, Customs & Service Tax (Appeals), Vishapatnam
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

