

REGISTERED SPEED POST AD



**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. 195/750/12-RA / 5511

Date of Issue: 08.10.2020

ORDER NO. H6/2020-CX (WZ) /ASRA/MUMBAI DATED 16.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT.SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Hindustan Petroleum Corporation Ltd.
Refinery Division, B. D. Patil Marg,
Mahul, Mumbai 400 074

Respondent : Commissioner, Central Excise, Mumbai-II

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. BC/149/M-II/2012-13 dated 29.06.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

The revision application has been filed by M/s. Hindustan Petroleum Corporation Ltd., Refinery Division, B. D. Patil Marg, Mahul, Mumbai 400 074(hereinafter referred to as "the applicant") against OIA No. BC/149/M-II/2012-13 dated 29.06.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

2. Due to non-production of rewarehousing AR3A's an amount of Rs. 2,42,09,991/- was paid under protest vide TR-6 challan no. 224/98-99 dated 17.03.1999. After the matter had been adjudicated and had travelled to the appellate authorities, the Additional Commissioner of Central Excise, Mumbai-II had confirmed duty amounting to Rs. 1,41,94,512/- in respect of 12 SCN's vide his OIO No. SP/19/ADC/M-II/10 dated 10.01.2011. The said order was accepted by the Commissioner on 19.04.2011 in the review proceedings. As a consequence of the said order, the applicant had filed a refund claim for an amount of Rs. 1,00,15,479/-[Rs. 2,42,09,991/- minus Rs. 1,41,94,512/-]. On filing the refund claim, the applicant was issued SCN No. V(Ch.27)18-20/Refund-HPCL/10-11 dated 19.04.2011 calling upon the applicant to show cause why the refund should not be rejected because they had not submitted original copies of TR-6 challan and PLA register. The said refund claim was rejected by the Deputy Commissioner, Chembur-II Division vide OIO No. MAD/Refund/03/Ch-II/2011-12 dated 13.07.2011.

3. Aggrieved by the OIO No. MAD/Refund/03/Ch-II/2011-12 dated 13.07.2011, the applicant preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide OIA No. BC/149/M-II/2012-13 dated 29.06.2012 rejected their appeal on the ground that the refund claim was hit by bar of unjust enrichment.


4. The applicant has now filed revision application on the ground that theirs was a case of pre-deposit under Section 35F of the CEA, 1944 and that the bar of unjust enrichment would not apply. The applicant has also filed written submissions on 16.12.2015.

5. 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. On perusal of records, Government observes that this is purely a case of consequential refund of duty paid. As such, the case does not fall into any of the

categories under the first proviso to Section 35B(1) of the CEA, 1944. The revisionary powers vested in the Central Government are not exercisable in such matters.

6. Hence, the revision application filed by the applicant is dismissed as not maintainable.

7. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 446/2020-CX (WZ) /ASRA/Mumbai DATED 16.03.2020.

To,

M/s. Hindustan Petroleum Corporation Ltd.
Refinery Division, B. D. Patil Marg,
Mahul, Mumbai 400 074

Copy to:

1. The Commissioner of CGST & CX, Navi Mumbai Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Raigad
3. Sn P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy