REGISTERED
SPEED POST

सत्यमेव जयते

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/ 1703 /12-RA /5502-5501 Date of Issue : 17.09.2020

ORDER NO. 447/2020-CX (SZ)/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. Indian Oil Corporation Limited, Hyderabad.

Respondent : The Commissioner of Central Excise, Hyderabad

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order In Appeal No. 191 & 192 / 2012 (H-I) CE dated 24.08.2012 passed by the Commissioner (Appeals-II) Customs, Central Excise & Service Tax, Hyderabad.

ORDER

These Revision Applications have been filed by M/s. Indian Oil Corporation Limited, Aviation Fuelling Station, Rajiv Gandhi International Airport (GHAIL), Shamshabad, Begumpet, Hyderabad (hereinafter referred to as "the applicant") against the Order in Appeal No. 191 & 192 / 2012 (H-I) CE dated 24.08.2012 passed by the Commissioner (Appeals-II) Customs, Central Excise & Service Tax, Hyderabad.

2. The brief facts of the case are that the applicant, M/s. Indian Oil Corporation Ltd. (A Govt. of India Undertaking) are an export warehouse keeper receiving Aviation Turbine Fuel (ATF) without payment of duty under warehousing provisions as prescribed under Central Excise Act, 1944 from Santathnagar / Cheralapally Depot which are also export warehouse keeper and their products only meant for aircrafts on foreign run without payment of duty and aircrafts on domestic run with appropriate Central Excise duty. During the period from April 2008 to December 2009 & January 2010 to April 2010, the applicant could not store sufficient bonded stocks at GHIAL International Airport due to transporter's unrest and switching over the tanks at Cheralapally to IOCL from CPCL leased tanks. To maintain uninterrupted supplies to foreign run aircrafts, the applicant supplied duty paid ATF after following all he export formalities. The applicant claimed rebate of the duty collectively amounting to Rs. 1,90,62,986/- (Rupees One Crore Ninety Lakh Sixty Two Thousand Nine Hundred Eighty Six Only) paid on foreign run aircrafts during the relevant period as mentioned above.

3. The rebate sanctioning authority rejected the said rebate claims vide Order in Original Nos. 88 & 89 dated 29.02.2012 on the following grounds :

3.1 The applicant did not follow the procedure as laid down under Notification No. 19/2004-CE (NT) dated 06.09.2004 and failed to establish the duty paid nature of the ATF exported by correlating with relevant duty paid documents.

3.2 The one to one correlation of the goods covered under invoice raised at the place of manufacture i.e. CPCL, Chennai and the goods declared to have been supplied by the applicant in turn to the foreign run aircrafts was not available.

3.4 The Central Excise Invoice Nos. and dates were not mentioned on AC-5 Stock Transfer Advice.

3.5 It was not possible to know whether the goods were exported within six months from the date of clearance from the factory of manufacturer i.e. CPCL, Chennai.

3.6 The applicant has to prove that all the conditions of the Notification and under Rule 18 of Central Excise Rules 2002 are fulfilled in order to become eligible for rebate.

3.7 The impugned goods were not manufactured at the factory premises of the applicant but were procured from the premises of dealer. Hence the payment of duty on such ATF is to be established.

4. Aggrieved by the Order in Original, the applicant filed appeal before the Commissioner (Appeals), Hyderabad who upheld the Order in Original vide impugned Order in Appeal.

5. Being aggrieved by the Orders-in-Appeals dated 29.02.2012, the applicant filed instant Revision under Section 35EE of the Central Excise Act, 1944, before Government of India on the following grounds :-

5.1 The claims were filed with the documents such as statement of facts, statement of duties paid, copies of delivery receipts, stock transfer advice etc. It was clearly submitted before the rebate sanctioning authority i.e Deputy Commissioner that to maintain uninterrupted supplies to foreign run Aircrafts, the appellants had to supply Aircraft Turbine fuel to

Foreign run Aircraft and claims were supported by Aircraft Delivery Receipts, commercial invoices, excise invoice, ARE1s & shipping Bills.

5.2 So long as accounts have been properly maintained and so long as the correlation of goods supplied to the foreign run aircraft is maintained, the duty paid nature of the goods and the export to foreign run aircraft cannot be doubted.

5.3 There is no statutory prohibition in exporting a product from the premises of a dealer and claiming the rebate so long as duty has been paid on the goods exported.

5.4 The Board has permitted mixed storage of duty paid and non-duty paid goods, subject to the condition of proper maintenance of accounts tank wise by the operator. The applicant submits that they have submitted the correlation statement to indicate proper maintenance of accounts and copies of all the statements referred to hereinabove are enclosed herewith.

5.5 The rebate sanctioning authority has stated that there was availability of non-duty paid stock at the time of export. The applicant submits that as there is no statutory bar in exporting from duty paid stocks, in all the cases, the exports have been effected from duty paid stock on account of short availability of the bonded stock of non-duty paid products.

5.6 The only ground for denying the rebate was that the procedure laid down was not substantially followed. Since all documents relating to proof of export such as ARE-1, shipping bills etc, have been submitted, the original authority should not have rejected the rebate claims for non-observance of the procedure and for not substantiating the exports. Since the applicant have filed correlation statements confirming the supplies to foreign run Aircrafts

of such Fuel from the duty paid stock, the original authority cannot say that the duty paid nature of the goods had not been established.

5.7 They had requested M/s. S.R.Mohan & CO, Hydarabad, Chartered Accountants to verify their records and to confirm the one to one correlation and accordingly they have issued a certificate dated 06.08.2012 in respect of supplies from M/s Chennai Petroleum Corporation Ltd., Chennai and their Koyali Refinery.

5.8 The Government has issued circulars 487/53/99-CX dated 30.09.1999 and 475/41/99-cx dated 2.08.1999 wherein it is the clarified that so long as the goods have actually be exported and duty was paid on such goods, the rebate claims should not be rejected.

5.9 As regard the non-observance of the procedure laid down in the notification No. 19/2004-CE-NT, as already submitted, so long as procedures have been substantially followed and documents relating to proof of export and duty paid nature of goods have been submitted, for procedural lapses, rebate cannot be denied.

5.10 Nowhere in the show cause notice, is it mentioned that First In First Out (FIFO) has not been followed by the exporter.

6. A personal hearing in this case was fixed on 04.10.2019, 05.11.2019 and 20.11.2019. However, neither the applicant nor the respondent attended the same. As such, the case is taken up for decision ex-parte on the basis of documents / facts available on records.

7. Government has carefully gone through the relevant case records available in the file, the Revision Application as well as the impugned Order in Appeal.

8. Government observes that in the instant case the Aviation Turbine Fuel (ATF) was supplied by the applicant to foreign going vessels during the period April 2008 to April - 2010 on payment of duty. Consequently, applicant filed the excise duty refund claims collectively amounting to Rs.1,90,62,986/- (Rupees One Crore Ninety Lakh Sixty Two Thousand Nine Hundred Eighty Six Only) before the jurisdictional Deputy Commissioner of Central Excise, Hyderabad –L Division.

9. The Government finds that the applicant has supplied the ATF to aircrafts on foreign run by transferring duty paid products to the Aviation Fuelling Station (AFS), Begumpet which has been registered as a warehouse of excisable goods. As such these facts would denote compliance with the condition in para 2(a) of the Notification No. 19/2004-CE (NT) dated 06.09.2004. That condition reads as under :-

> *"2(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by general of specific order"*

On perusal of this condition, the Government opines that if excisable goods are exported after payment of duty directly from a factory or a warehouse, then nothing more is required to be considered and verified. In the instant case, records show that the export of duty paid goods is from a recognized warehouse viz. AFS, Begumpet. As such, the Government holds that the applicant had complied with the conditions of Notification No. 19/2004-CE (NT) dated 06.090.2004. Hence the rejection of rebate claim on this contention is not just and proper.

10. The Government finds that since there are no identification marks or otherwise on the ATF supplied by the applicant, all the oil marketing companies, including applicant, are following FIFO (First-in-First-out) method. As such the duty paid ATF exported can be identified / correlated only by matching the quantity of the same with other collateral evidence. In

the instant case, the Government observes that the range officer has followed FIFO method and has arrived at conclusion that the ATF supplied to the foreign run air craft was not from the duty paid stock as claimed by the applicant. In view of above, the Government holds that the FIFO method adopted by the range officer to correlate the goods exported with duty paid stock appears to be scientific and reliable.

11. The Government further notes that the rebate claims were rejected by the lower authorities for non submission of copies of original duty paid invoices , ARE-1s , ER-1s, disclaimer certificate along with rebate claims and in the absence of such vital information correlation of the supplies from refinery where the duty was paid with the subject ATF cannot be completed.

11.1 In this regard, Government observes that Rule 18 of the Central Excise Rules, 2002 contemplates that the Central Government may grant rebate of duty paid on such excisable goods or duty paid on material used in the manufacture or processing of such goods and that the rebate would be subject to such conditions or limitations if any and fulfillment of such procedure as may be prescribed in the notification. The notification dated No. 19/2004-CE(NT) dated 06.09.2004 was issued in exercise of powers conferred by Rule 18 of the Rules of 2002. The said notification lays down the procedure by which, an application for grant of rebate is to be considered. Further, Rule 18 of the Central Excise Rules of 2002 endorses the view that, an exporter is entitled to lead supplementary evidence to establish its claim for grant of rebate. The Government opines that non-production of the documents stipulated in the notification *ipso facto* results in the claim being invalid. A claimant making a claim is required to substantiate such claim by cogent evidence However, in the instant case, the applicant have not submitted the copies of ARE-1s in the required manner along with rebate claim nor furnished any corroborative evidence in respect of export of goods removed from the factory premises and their duty paid nature. In view of the above discussion, Government holds that the

applicant has failed to substantiate its claim on the basis of all or any of the documents mentioned in Paragraph 8 of the Supplementary Instructions, 2005 or on the basis of secondary evidence. Since, the applicant could not substantiate their claim for rebate on the basis of any of the documents mentioned in Paragraph 8 of the Supplementary Instructions, 2005 or by leading secondary evidence with regard to its claim, such claim is liable to be rejected due to failure of the claimant to produce all the documents mentioned therein. Hence the appeal on this ground is not tenable.

11.2 The Government also notes that the CBEC Circular No. 294/10/97-CX dated 30.01.1997 held that this condition can be relaxed if the goods exported are identifiable and co-relatable with the goods cleared from the factory of manufacturer.

11.3 In the instant case, the applicant has stated that they have filed the required documents such as statement of facts, statement of duties paid, copies of delivery receipt, stock transfer advice, Commercial Invoices, Excise Invoices, ARE-1s & Shipping Bills etc along with rebate claims. The applicant has also submitted that their Chartered Accountant has made one to one correlation and has issued certificate dated 06.08.2012 to that effect. However, no such certificate is available on records.

11.4 The Government holds that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of *Government of India* v. *Indian Tobacco Association* - 2005 (187) E.L.T. 162 (S.C.); *Union of India* v. *Dharmendra Textile Processors* - 2008 (231) E.L.T. 3 (S.C.). Also it is settled law that a Notification has to be treated as a part of the statute and it should be read along with the Act as held in the case of *Collector of Central Excise* v. *Parle Exports (P) Ltd.* - 1988 (38) E.L.T. 741 (S.C.) and *Orient Weaving Mills Pvt. Ltd.* v. *Union of India* - 1978 (2) E.L.T. J 311 (S.C.) (Constitution Bench).

11.5 Government also notes that when the applicant seeks rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the Judgment in the case of *Mihir Textiles Ltd.* v. *Collector of Customs, Bombay,* 1997 (92) E.L.T. 9 (S.C.) wherein it is held that :

> *"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

11.6 In view of above discussion, the Government finds that the lower authorities have rightly held rebate inadmissible on the grounds of non compliance of the conditions/ procedure under Notification No. 19/2004-C.E. (N.T.), dated 04.09.2004 which could have been relaxed otherwise as per the guidelines given by CBEC in it's Circular No. 294/10/97-CX dated 30.01.1997.

12. In view of above, Government does not find any infirmity in the impugned orders of the Appellate Authority and hence upholds the same.

13. Revision Application is disposed off in the above terms.

14. So, ordered.

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

ORDER No. /2020-CX (SZ)/ASRA/Mumbai DATED

To,

M/s. Indian Oil Corporation Limited,
Begumpeth AFS,
Hyderabad Airport (old),
Hyderabad – 500 016.

Copy to:

1. The Commissioner of CGST & C.Ex., Secunderbad GST Commissionerate, GST Bhavan, L.B.Stadium Road, Basheer Bagh, Hyderbad-500 004.
2. The Commissioner of CGST & C.Ex. (Appeals-I), Secunderbad GST Commissionerate, GST Bhavan, L.B.Stadium Road, Basheer Bagh, Hyderbad-500 004.
3. The Chief Finance Manager, Indian Oil Corporation Limited, Southern Regional Office, Indian Oil Bhavan, 139, Mahatma Gandhi Road, Nungmbakkam High Road, Chennai- 600 034.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.