



**ORDER**

This revision application has been filed by M/s. Bharat Petroleum Corporation Ltd., Mumbai Refinery, Excise Documentation Cell, Mahul, Mumbai – 400 074(hereinafter referred to as “the Applicant”) against Orders-in-Appeal Nos US/59/M-II/2012 dated 24.01.2012 and US/129/M-II/2013 dated 16.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The Applicant are engaged, inter alia, in the manufacture of organic chemical (CH 29) and petroleum products (CH 27) including LPG stored in cylinder (CII 2711.19). The Applicant were availing the benefit of condonation of storage loss extended to the petroleum products falling under erstwhile Tariff item 6,7,8, and 9 for the goods – Benzene and Toluene and under Board Circular No. 26/23/CXM/54-CX dated 01.06.1956 as these were classified under erstwhile Tariff item No. 6. However, the Applicant had availed the benefit of the above Circular for Benzene and Toluene which did not find mention in the said Circular. Hence, it was averred that the applicant was liable to pay Central Excise duty on such unaccounted goods as per Rule 4 of the Central Excise Rules, 2002. The Applicant appeared to have contravened the provisions of Rule 4, Rule 5, Rule 6 and Rule 8 of the Central Excise Rules, 2002 with an intent to evade payment of central excise duty on the said goods as they had not properly accounted for the clearance of various petroleum products by claiming the same as storage loss in the refinery and not discharging duty on such unaccounted goods which resulted in short payment of central excise duty to the tune of Rs. 1,57,232/- for the period May 2010 to October 2010 and Rs. 18,477/- for the period April 2011 to February 2012.

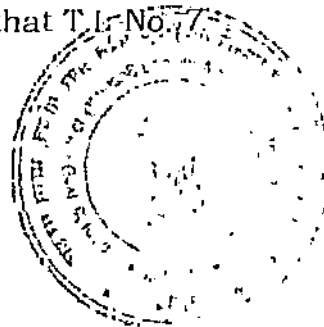
3. The Applicant was therefore issued two Show Cause Notices dated 02.05.2011 and 29.03.2012. Both the SCNs were confirmed vide Orders-in-Original dated 20.10.2011 and 07.01.2013 on the grounds that the condonation of storage loss of 0.5% cannot be made applicable to products as the said products do not find mention in Board’s letter F.No. 26/23/CXM/54-CX dated 01.06.1956 and F. No. 9/17/57-56CX-II dated 02.03.1959. Aggrieved, the Applicant then filed appeals with



the Commissioner of Central Excise (Appeals-II), Mumbai. Commissioner(Appeals) upheld the Orders-in-Original and rejected the Applicant's appeals.

4. Aggrieved, the Applicant then filed the current Revision Applications on the following grounds:

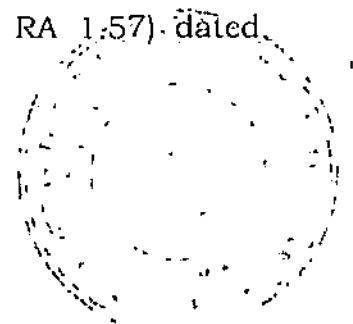
- (a) The SCN had been issued on the ground that the Applicant had availed benefit of the said board Circular for Benzene and Toluene which do not find mention in the Circular and sought to demand duty on losses in the light of Board Circular No. F.No. 26/23/CXM/54-CX dated 01.06.1956 and nowhere it sought to demand duty on the ground that remission was not applied for.
- (b) The Applicant averred that the adjudicating authority vide para 10 and 11 had proceeded on the issue of remission under Rule 21 and had concluded that the Applicant should have sought remission under Rule 21 of the Central Excise Rules and had thus travelled beyond the scope of the SCN.
- (c) There was no requirement of filing remission application under Rule 21 of the CER, 2002 so far as shortage loss of petroleum products, permitted by the Board and the CBEC circulars/letters were binding on the Departmental Officers.
- (d) It is very much evident from the Board's letter dated 02.03.1956 that a cumulative loss allowance is granted towards loss in :
  - (i) storage of end in the tanks at the Refinery's premises;
  - (ii) Handing of products for deliveries by tank wagons/tank trucks or any other manner for consumption outside Refinery premises; and
  - (i) Deliveries by pipeline from the Refinery tanks to the local marketing installations.
  - (ii) They averred that the use of these words meant that the list was not exhaustive as the Refinery produces various products and that T.L. No. 17



includes ATF also. Therefore storage loss on ATF would also get covered under the aforesaid CBEC letter.

- (e) 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 permits the computation of losses on Benzene and Toluene and they are as volatile as Motor Spirit or Raw Naphtha and therefore the loss percentages allowed for Motor Spirit under erstwhile Tariff item No. 6 has to be allowed to Benzene and Toluene.
- (f) Further Chapter V of the Supplement to the Manual of Department Instructions on Excisable manufactured products dealing with the assessment and clearances deals with the Central Excise Tariff and in Para 80 it deals with Tariff Item No. 6. In the said Para 80 under Departmental clarifications item (v) deals with Toluene and item (vii) deals with Benzene. Thus Tariff Item No. 6 covers Benzene and Toluene. Therefore, they have availed the benefit of the said Circular for Benzene and Toluene.
- (g) Though the Central Excise Tariff headings have changed over a period of time, the effect of the Circular dated 01.06.1956 has not been diluted. The Circular deals with the condonation of the storage loss of various products and it includes Benzene and Toluene also.
- (h) The applicant averred that since they were not liable to duty, the question of charging retrospective interest under 11AB of Central Excise Act, 1944 does not arise at all. They further contended that no penalty would be imposable on them as they were Government of India Undertaking. They also submitted that penalty would not be applicable in the absence of mens rea.
- (i) The Applicant prayed to set aside the Orders-in-Appeal dated and allow their applications in full with consequential relief to them.

5. The Applicant was granted the opportunity of personal hearing on 04.10.2019, 05.11.2019, 20.11.2019. The Applicant vide letter SM:Excise (JS RA 1:57) dated



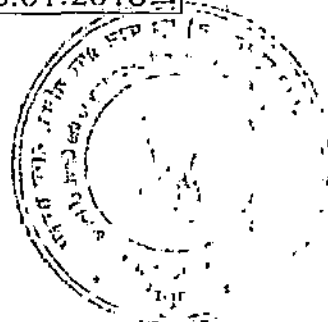
11.11.2019 requested to postpone the hearing till 31.12.2019 as they are in the process of evaluating their case to avail the benefit under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Hence they were granted hearing on 22.01.2020. However non appeared for the hearing. Hence the case is taken up exparte on merits.

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. The issue involved for decision is whether condonation of storage losses to the extent of 0.5% is allowable in case of their products viz. Benzene and Toluene.

7. The main contention of the Department is that the Applicant made unaccounted clearance in the guise of storage loss to the extent of 0.5% of the production of Benzene and Toluene without payment of central excise duty by availing the benefit of Board's Circular F.No. 26/23/CXM/54 dated 1.6.1956 and also the Board's letters do not mention Benzene and Toluene as one of the products on which storage losses are permissible and therefore the demand of duty would arise.

8. The Government finds that although the Applicant have disputed the duty demand in the Revision Application, subsequently they have in principle agreed not to dispute the Department's stand and have already discharged duty liability on these demands, as detailed below:

| Sl.No. | Revision Application No | Period                      | Amt involved (Rs.) | Amount Duty + Interest) paid (Rs)                                   | Remarks  |
|--------|-------------------------|-----------------------------|--------------------|---|--|
| 1      | 195/138/12-RA           | May 2010 to October 2010    | 1,57,232           | Duty - 1,57,232 +<br>Interest - 61,609<br>-----<br>Total - 2,18,841 | Challan No. 07 dated 28.01.2013                          |
| 2      | 195/754/13-RA           | April 2011 to February 2012 | 18,477             | Duty - 18,477 +<br>Interest - 4,538<br>-----<br>Total - 23,015      | PLA debit E.No. 20(A) and Challan No. 3 dated 23.01.2013 |



The Deputy Commissioner, Central Excise, Chembur-I Division, Mumbai-II Commissionerate vide letter F.No. V/T-III/CH-1/19-67/BPCL/2011/12 dated 25.11.2010 have confirmed that the above amount has been paid in view of the fact that the Applicant has, now, principally taken a stand not to claim condonation of storage loss for the products i.e. Benzene and Toluene which are in fact falling under Chapter 29 of the Schedule of the Central Excise Tariff Act, 1985. Since the Applicant has already paid duty with interest, Government deems the contentions addressed by the Applicant against duty demand as redundant and refrains from going into it.

9. The Applicant has made a forceful argument against imposition of penalties under Rule 25/27 of the Central Excise Rules, 2002 on grounds of its intention to evade duty. They assailed adjudicating authorities inference that since condonation for loss was taken suo motto to the Applicant without making any application for condonation, the intent to evade duty was evident and presented a forceful rebuttal that the department was in possession of the fact that the Applicant was following the practice of claiming condonation of normal loss in storage within the limits prescribed by the Board Circular and to pay duty on excess storage loss. Therefore, the Applicants have no intention of indulging in any fraudulent activity to defraud the government of its revenue and the circumstances do not justify of imposition of penalty. They have further argued that any invocation of Section 11AC of the Act and Rule 25 of the Central Excise Rules, 2002 shall be on the basis of finding that there is fraud, mis- representation or suppression of facts with intent to evade duty. In this regard, they have placed reliance on the judgment of Andhra Pradesh High Court in the case of CCE & CE Vs Mahalakshmi Profiles Ltd [2012 (279)ELT 355].

10. The Government concurs with the Applicant's argument that there is no change of clandestine removal of goods or suppression of facts and further being a Public Sector Undertaking, there is reason to believe that the Applicants would not indulge in activities intended to evade of duty. Therefore, the imposition of penalty



under Rule 25/or Rule 27 of Central Excise Rules, 2002 is unwarranted and without any material evidence.

11. In view of the above discussions and findings, Government modifies the Order-in-Appeal Nos US/59/M-II/2012 dated 24.01.2012 and US/129/M-II/2013 dated 16.09.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai to the extent of imposition of penalty under Rule 25 and/or Rule 27 of Central Excise Rules, 2002 as discussed in Para Supra.

12. The two Revision Applications are allowed in terms of above.

13. So ordered

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

449-450  
ORDER No. /2020-CX (WZ) /ASRA/Mumbai DATED 19.03.2020

To,  
M/s. Bharat Petroleum Corporation Ltd.  
Mumbai Refinery,  
Excise Documentation Cell,  
Mahul, Mumbai - 400 074

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

Copy to:

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

