

SPEED POST



F.No. 195/188-192/2018-RA (CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 12/4/21

Order No. 79-83/21-CX dated 9-4-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 12/HAL/XAP-66,67,68,31 & 65/2017-18 dated 28.02.2018, passed by the Commissioner of CGST & C. Ex. (Appeals), Kolkata North Commissionerate, Kolkata.

Applicant : M/s Indian Oil Corporation Ltd, Haldia.

Respondents : Commissioner of CGST & Central Excise, Haldia

ORDER

Revision Application Nos. 195/188-192/2018-RA dated 06.06.2018 have been filed by the M/s Indian Oil Corporation Ltd, Haldia. (hereinafter referred to as the applicant) against the Orders-In-Appeal Nos. 12/HAL/XAP-66, 67, 68, 31 & 65/2017-18 dated 28.02.2018, passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata, wherein the Orders-in-Original, as detailed below, passed by the Assistant/Deputy Commissioner of Central Excise, Haldia-I Division, Haldia were upheld.

Sr. No.	Order-in-Original No.	Date	Period	Refund Amount (in Rs.)
1.	R-45/Tech/Refund/Hal-I/2016-17	20.09.2016	October, 2006 to December, 2006	18,02,328.92
2.	R-48/Tech/Refund/Hal-I/2016-17	20.09.2016	January, 2007 to March, 2007	17,64,275
3.	R-47/Tech/Refund/Hal-I/2016-17	20.09.2016	April, 2007 to September, 2007	8,48,099.45
4.	R-17/CE/Tech/Refund/Hal-I/2011	08.04.2011	October, 2007 to March, 2008	50,68,808.13
5.	R-46/Tech/Refund/Hal-I/2016-17	20.09.2016	April, 2008 to February, 2009	49,57,482.29
TOTAL				1,44,40,993.76

2. The brief facts of the case are that the applicant filed 05 rebate claims as tabulated above, for the supplies of ATF made to foreign going aircraft under Rule 18 of Central Excise Rules, 2002, for Rs. 1,44,40,993.76. The original adjudicating authority rejected the rebate claims for being barred by limitation in terms of Section 11B of the Central Excise Act, 1944 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, as amended and issued under Rule 18 of the Central Excise Rules, 2002 and Para 2.4 of Chapter 9 of the CBEC's Excise Manual of Supplementary

Instruction, 2005 read with Rule 31 of the Central Excise Rules, 2002. The brief chronological chart is tabulated herein below:

Sr. No.	Initial date of submission of refund claim	Amount of Refund Claim	Period involved	Date of letter on which the refund claim was returned in original for necessary action at the applicant's end	Date on which the applicant resubmitted the refund claim
1	01.10.2007	1802328.92	October, 2006 to December, 2006	23.11.2007	19.03.2014
2	31.12.2007	1764275.00	January, 2007 to March, 2007	15.01.2008	21.03.2014
3	26.03.2008	848099.45	April, 2007 to September, 2007	28.04.2008	19.03.2014
4	29.09.2008	5068808.13	October, 2007 to March, 2008	27.11.2008	05.02.2010
5	30.03.2009	4957482.29	April, 2008 to February, 2009	04.06.2009	25.03.2014

3. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) CGST & C.Ex., Kolkata, who upheld the orders of the original authority and rejected the appeal.

4. The instant revision applications have been filed broadly on the grounds that the rebate claims are not time barred; that benefit of rebate cannot be denied merely on the basis of procedural lapse; that none of the conditions and procedures of the notification no. 19/2004-CE(NT) have been violated; that if rebates are not admissible, the applicant is entitled for recredit of the duty paid on the export goods and that the applicant is entitled for interest on the rebate claim amounts.

5. Personal hearing was held on 07.04.2021. Ms. Sukriti Das, Advocate and Sh. Shashvat Arya, Advocate, attended the hearing on behalf of the applicant. They

filed additional submissions and case compilation which was taken on record, Ms.

Das highlighted that:

- i. Return of rebate claim was ab-initio illegal.
- ii. As such, the date of initial filing may be taken for counting limitation.
- iii. Irrespective of i & ii, there was no limitation prescribed for rebate claim under notification 19/2004 at the relevant time, which was added subsequently.
- iv. The documents required while returning the claim are not relevant. Many of these are internal documents of the department. Hence, the Revision Applications may be allowed.

6. In the additional submission, the applicant has reiterated the grounds of revision already stated in their revision applications. It has been further submitted that even if there was any deficiency in the claim, the adjudicating authority was required to decide the admissibility of rebate claims by passing an order; that the act of returning the rebate applications was itself illegal being beyond the mandate of the law; that reliance placed by the lower authorities on Para 2.4 of Chapter 9 of CBEC supplementary Instruction is incorrect as it pertains to Refund applications only; that re-submission of rebate application does not amount to fresh filing of application and hence time limit under Section 11B of Excise Act is not applicable; that time limit prescribed under Notification No.19/2004 was introduced with effect from 01.03.20016 and hence is not applicable in the instant cases.

7.1 Government has examined the matter. The issue to be decided here is that whether the date on which the rebate claims were initially filed by the applicant should be taken as the date of filing of rebate claims or the date on which the rebate claims were re-submitted subsequently should be taken as date of filing of rebate claims.

7.2 The Government observes that the rebate claims are governed under Section 11 B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and the notification no. 19/2004-Cx (NT) dated 06.09.2004. Sub-Section (1) of the Section 11 B of the Central Excise Act, 1944, provides that any person claiming refund of any duty of excise, if any, paid on such duty may make an application for refund of such duty, if any, paid to the Assistant/Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such format and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him. Under sub-section (2), the Assistant/Deputy Commissioner is empowered to make an order of refund. The Government further observes that the Section 11 B, Rule 18 or notification no. 19/2004- CE-(NT) do not provide that the rebate claims once filed can be returned back, by the department, in original, without taking any decision in respect of such claims.

7.3 In the case of United Phosphorus Ltd. Vs. UOI {2005(184)E.L.T. 240 (Guj.), the Hon'ble Gujarat High^{court} has held that :

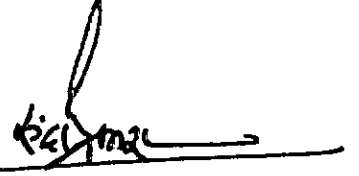
".....It is, therefore, incumbent upon the authority to which an application is made for refund to make an order on such application. By the impugned order, the Assistant Commissioner adopted a novel procedure of returning the claim application which is not contemplated by the provisions of the Act or the Rules made there under. By returning the application claiming refund under Section 11 B which was already filed in the office of the Assistant Commissioner, the officer acted contrary to the provisions of the Act and the Rules under which he was obliged to make an order on the merits of an application for refund. Once any such application is filed before the concerned authority. It becomes a part of the record of the concerned authority and important original record like an application for refund could not have been parted with by the Assistant Commissioner by returning it to the claimant. Returning of such application has a serious consequence, because, the fresh application may not be within time from the relevant date and the claimant would lose a valuable right of filing an appeal, if any adverse order would have been passed on the application rejecting it on the ground of any infirmity that may have been noticed by the authority instead of the unceremonious return of the application. The course adopted by the Assistant Commissioner, of returning the claim application without making an order thereon amounts to refusal to perform the statutory duty imposed on him to consider the application and make an order thereof, in accordance with law.

4. The impugned order returning the application of the petitioners for refund of claim is, therefore, illegal and void and is liable to be set aside only on the ground that it was the duty of the Assistant Commissioner to have considered the claim application

and made an order thereon under the provisions of Section 11 B of the Act, and the relevant rules."

7.4 Government , therefore, finds that the letters returning the rebate claims were not as per law. Further, it would be in the interest of justice that these letters may be treated as deficiency memos and the re-submission of the rebate claims by the applicant may be taken as removal of deficiencies by the applicant. As such, it is held that the subject claims could not have been rejected on the grounds of limitation. Consequently, the matter is remanded to the original authority with the directions to decide the rebate claims afresh, on merits.

8. The revision applications are allowed by way of remand to the original authority, with the above directions.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Indian Oil Corporation Ltd,
Marketing Division, Haldia Installation,
Post Office: Haldia Oil Refinery,
Destt. Purba Medinipur, West Bangal-721606

Order No. 79-83/21-Cx dated 9-4-2021

Copy to:

1. The Commissioner of CGST & C. Ex. (Appeals), Kolkata, GST Bhawan, Room No. 254, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.
2. Commissioner of CGST & C. EX, Haldia, 15/1 Strand Road, Custom House, Kolkata - 700001
3. The Assistant/Deputy Commissioner of CGST & C. Ex., Haldia-I Division, Haldia Commissionerate, Tripathy Complex, Debhog, Haldia-721657.

4. PA to AS(RA)
5. Guard File
6. Spare Copy

Attested

N Devi
12/04/2021

(Nirmala Devi)

Section Officer (Revision Application)